



# Mekong River Commission

P.O. Box 6101, 184 Fa Ngoum Road, Unit 18,  
Ban Sithane Neua, Sikhottabong District, Vientiane 01000, Lao PDR  
Telephone: (856-21) 263 263. Facsimile: (856-21) 263 264

**SUPPLIES TENDER No: 001-2020**

**Purchase of Spare part for HYCOS Project for 4 Countries**

**Vientiane, Lao PRD, 13 April 2020**

## Table of Contents

Invitation for Tenders (IFT) .....	3
<b>PART 1 – Tendering Procedures .....</b>	<b>1</b>
Section I. Instructions to Tenderers.....	3
Section II. Tender Data Sheet (TDS).....	31
Section III. Evaluation and Qualification Criteria .....	35
Section IV. Tendering Forms .....	36
Section V. Eligible Countries .....	53
<b>PART 2 – Supply Requirements .....</b>	<b>60</b>
Section VI. Schedule of Requirements.....	61
<b>PART 3 – Contract (Over US\$20,000) .....</b>	<b>67</b>
Section VII. General Conditions of Contract .....	69
Section VIII. Special Conditions of Contract.....	91
Section IX. Contract Forms.....	95

## Invitation for Tenders (IFT)

### *Mekong River Commission*

#### **PURCHASE OF SPARE PART OF HYCOS FOR 4 COUNTRIESRFP2020-001**

1. The *Secretariat of the Mekong River Commission (MRC)* has allocated budget toward the cost of **AGENCE FRANÇAISE DE DÉVELOPPEMENT (AFD)**, and it intends to apply the funds to payments under the Supply Contract for *a The spare parts for HYCOS Project for 4 Countries The spare parts for HYCOS Project*.
2. The *Secretariat* now invites sealed Tenders from eligible and qualified Tenderers for the **Purchase of Spare part of HYCOS for 4 Countries**.
3. Tendering will be conducted through the International Tendering procedures as specified in the MRC's Procurement Implementation Rules, and is open to all Tenderers from Eligible countries as defined in the Rules.
4. Interested eligible Tenderers may obtain further information from *MRC, Procurement Unit represented by Mr. Oudorn Phanekham, Procurement Officer by writing to oudorn@mrcmekong.org* and view the Tender Documents at MRC website.
5. Qualifications requirements include: *Technical and Financial Proposals*. Additional details are provided in the Technical Specifications.
6. A complete set of Tender Documents in *English* may be downloaded by interested bidders from the MRC website: [www.mrcmekong.org](http://www.mrcmekong.org) and [afd.dgmarket.com](http://afd.dgmarket.com)
7. Tenders must be delivered to the address below at or before **3:00 PM local time (GMT+7), 08 May 2020**

More details of the tender submission and date and address of the opening session are provided in the Tender Data Sheet.

9. The address referred to above is:

**Mekong River Commission Secretariat**  
Administration Division  
Procurement Unit  
P.O. Box 6101, Unit 18 Ban Sithane Neua  
Sikhottabong District, Vientiane 01000, Lao PDR  
Tel: (856) 21 263 263; Fax: (856) 21 263 264  
Email: [procurement@mrcmekong.org](mailto:procurement@mrcmekong.org)

10. Please inform us in writing at the above mentioned address:

(a) An acknowledgement of receipt of the Letter of Invitation. This Letter of Invitation can also be downloaded from the MRC website; and

(b) Whether you will submit a proposal alone or in association.

Yours sincerely,

An Pich Hatda  
Chief Executive Officer

**PART 1 – Tendering Procedures**



## Section I. Instructions to Tenderers

### Table of Clauses

<b>General.....</b>	<b>5</b>
Scope of Tender .....	5
Source of Funds.....	5
Fraud and Corruption.....	5
Eligible Tenderers.....	7
Eligible Goods and Related Services .....	9
<b>Contents of Tender Documents .....</b>	<b>9</b>
Sections of Tender Documents.....	9
Clarification of Tender Documents.....	10
Amendment of Tender Documents .....	10
<b>Preparation of Tenders .....</b>	<b>10</b>
Cost of Tendering.....	10
Language of Tender .....	11
Documents Comprising the Tender .....	11
Tender Submission Form and Price Schedules .....	12
Alternative Tenders .....	12
Tender Prices and Discounts.....	12
Currencies of Tender.....	14
Documents Establishing the Eligibility of the Tenderer.....	15
Documents Establishing the Eligibility of the Goods and Related Services.....	15
Documents Establishing the Conformity of the Goods and Related Services .....	15
Documents Establishing the Qualifications of the Tenderer .....	16
Period of Validity of Tenders .....	16
Tender Security .....	17
Format and Signing of Tender .....	18
<b>Submission and Opening of Tenders.....</b>	<b>19</b>
Submission, Sealing and Marking of Tenders .....	19
Deadline for Submission of Tenders .....	19
Late Tenders.....	20
Withdrawal, Substitution, and Modification of Tenders .....	20
Tender Opening .....	20
<b>Evaluation and Comparison of Tenders .....</b>	<b>21</b>

---

Confidentiality.....	21
Clarification of Tenders.....	22
Responsiveness of Tenders.....	22
Nonconformities, Errors, and Omissions.....	23
Preliminary Examination of Tenders.....	23
Examination of Terms and Conditions; Technical Evaluation.....	24
Conversion to Single Currency.....	24
Margin of Preference.....	24
Evaluation of Tenders.....	24
Comparison of Tenders.....	26
Postqualification of the Tenders.....	26
Purchaser’s Right to Accept Any Tender, and to Reject Any or All Tenders.....	26
<b>Award of Contract.....</b>	<b>26</b>
Award Criteria.....	26
Purchaser’s Right to Vary Quantities at Time of Award.....	27
Notification of Award.....	28
Signing of Contract.....	29



## Section I. Instructions to Tenderers

### General

- Scope of Tender**
- 1.1 The Secretariat of the Mekong River Commission (MRC) (hereinafter referred to as the “Purchaser”) as **indicated in the Tender Data Sheet (TDS)**, issues these Tender Documents for the supply of Goods and Related Services incidental thereto as specified in Section VI, Schedule of Requirements. The name and identification number of this procurement are **specified in the TDS**. The name, identification, and number of lots of are **provided in the TDS**.
- 1.2 Throughout these Tender Documents:
- (a) the term “in writing” means communicated in written form (e.g. by mail, e-mail, fax, telex) with proof of receipt;
  - (b) if the context so requires, “singular” means “plural” and vice versa; and
  - (c) “day” means calendar day.
- Source of Funds**
- 2.1 The Purchaser has allocated a budget toward the cost of the project **named in the TDS**. The Purchaser intends to apply the funds to eligible payments under the contract for which these Tender Documents are issued.
- Fraud and Corruption**
- 3.1 MRC policy requires that tenderers, suppliers, and contractors and their subcontractors under MRC-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts<sup>1</sup>. In pursuance of this policy, the Purchaser:
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of the Purchaser. This may include the giving or promising to give of, directly or indirectly to any current or former officer or employee of the Purchaser a gratuity in any form, an employment or any other

---

<sup>1</sup> In this context, any action taken by a tenderer, supplier, contractor, or a sub-contractor to influence the procurement process or contract execution for undue advantage is improper.

- thing or service of value, as an inducement with respect to an act or decision of, or procedure followed by, the Purchaser in connection with the procurement proceedings;
- (ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, the Purchaser to obtain financial or other benefit or to avoid an obligation;
  - (iii) “collusive practices<sup>2</sup>” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of the Purchaser;
  - (iv) “coercive practices<sup>3</sup>” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - (v) “obstructive practice”
    - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Purchaser’s investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
    - (bb) acts intended to materially impede the exercise of the MRC’s inspection and audit rights provided for under sub-clause (d) below.
- (b) will reject a proposal for award if it determines that the tenderer recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive,

---

<sup>2</sup> “Parties” refers to participants in the procurement or selection process (including officials of the Purchaser) attempting to establish contract prices at artificial, non-competitive levels.

<sup>3</sup> “Party” refers to a participant in the selection process or contract execution.

coercive, or obstructive practices in competing for the contract in question. Such rejection of a proposal and the reasons therefore will be recorded in the procurement proceedings and promptly communicated to the tenderer concerned.

- (c) will sanction an individual or firm, including declaring ineligible, either indefinitely or for a stated period of time, to be awarded a MRC-financed contract if it at any time determines that they have, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for, or in executing, a MRC-financed contract; and
- (d) will have the right to include in contracts financed by MRC, a provision requiring tenderers, suppliers and contractors to permit the MRC to inspect their accounts and records and other documents relating to the submission of tenders and contract performance and to have them audited by auditors appointed by the MRC

3.2 Furthermore, Tenderers shall be aware of the provision stated in Sub-Clause 35.1 (a) (iii) of the General Conditions of Contract.

**Eligible Tenderers**

4.1 Tenderers may originate in the Member States of MRC or internationally. Regional tenderer is defined as that the Tenderers be a citizen, or is constituted, incorporated, licensed or registered and operates in conformity with the provisions of the laws of a Member State, as evidenced by its Articles of Incorporation or Documents of Constitution, and its Registration Documents. The Tenderers have to provide their evidences to this effect.

The Purchaser may deny to a Tenderer the benefits of these Rules if,

- (a) nationals of any non-Member States own or control that tenderer; and
- (b) that Tenderer has no substantial business activities in the territory of the Member State under whose laws it is constituted, incorporated, licensed or registered.

4.2 Tenderers shall demonstrate that:-

- (a) that they have the legal capacity to enter into the contract;

- 
- (b) that they are not insolvent, in receivership, bankrupt or being wound up, their business activities have not been suspended, and they are not the subject of legal proceedings for any of the foregoing;
  - (c) that they have fulfilled their obligations to pay taxes and social security contributions, and for that purpose, documentary evidence to be provided by the tenderer to demonstrate that it meets the criterion in this paragraph;
  - (d) that they, their servants, or agents have not offered any inducement to any employees of the Purchaser.
- 4.3 A Tenderer shall not have a conflict of interest. All Tenderers found to have conflict of interest shall be disqualified. Tenderers may be considered to have a conflict of interest with one or more parties in this Tendering process, if they:
- (a) are or have been associated in the past, with a firm or any of its affiliates which have been engaged by the Purchaser to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods to be purchased under these Tender Documents ; or
  - (b) submit more than one tender in this tendering process, except for alternative offers permitted under ITT Clause 13. However, this does not limit the participation of subcontractors in more than one tender;
- 4.4 A Tenderer declared ineligible by the Purchaser in accordance with the MRC's Policies for fighting corrupt and fraudulent practices and under domestic legislation of a Member State shall be ineligible to be awarded a MRC-financed contract during such period of time of debarment
- 4.5 A Tenderer shall be excluded from tendering if the Tenderer's country of origin is under sanction with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations required to be complied by the Member States of MRC.
- 4.6 Any subcontractor shall fulfill the criteria of eligibility defined in this section.

- 4.7 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Purchaser, as the Purchaser shall reasonably request.
- Eligible Goods and Related Services**
- 5.1 All the Goods and Related Services to be supplied under the Contract shall have their origin in any member state.
- 5.2 For purposes of this Clause, the term “goods” includes commodities, raw material, machinery, equipment, and industrial plants; and “related services” includes services such as insurance, installation, training, and initial maintenance.
- 5.3 The term “origin” means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed; or, through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

#### **Contents of Tender Documents**

- Sections of Tender Documents**
- 6.1 The Tender Documents consist of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addendum issued in accordance with ITT Clause 8.

#### **PART 1 Tendering Procedures**

- Section I. Instructions to Tenderers (ITT)
- Section II. Tender Data Sheet (TDS)
- Section III. Evaluation and Qualification Criteria
- Section IV. Tender Forms
- Section V. Eligible Countries

#### **PART 2 Supply Requirements**

- Section VI. Schedule of Requirements

#### **PART 3 Contract**

- Section VII. General Conditions of Contract (GCC)
- Section VIII. Special Conditions of Contract (SCC)
- Section IX. Contract Forms

- 6.2 The Invitation for Tenders issued by the Purchaser is not part of the Tender Documents.
- 6.3 The Purchaser is not responsible for the completeness of the Tender Documents and their addendum, if they were not obtained directly from the Purchaser.
- 6.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender Documents. Failure to furnish all information or documentation required by the Tender Documents may result in the rejection of the Tender.

**Clarification of  
Tender Documents**

- 7.1 A prospective tenderer requiring any clarification of the Tender Documents shall contact the Purchaser in writing at the Purchaser's address **specified in the TDS**. The Purchaser will respond in writing to any request for clarification, provided that such request is received no later than twenty-one (21) days prior to the deadline for submission of tenders. The Purchaser shall forward copies of its response to all those who have acquired the Tender Documents directly from it, including a description of the inquiry but without identifying its source. Should the Purchaser deem it necessary to amend the Tender Documents as a result of a clarification, it shall do so following the procedure under ITT Clause 8 and ITT Sub-Clause 24.2.

**Amendment of  
Tender Documents**

- 8.1 At any time prior to the deadline for submission of tenders, the Purchaser may amend the Tender Documents by issuing addendum.
- 8.2 Any addendum issued shall be part of the Tender Documents and shall be communicated in writing to all who have obtained the Tender Documents directly from the Purchaser.
- 8.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their tenders, the Purchaser may, at its discretion, extend the deadline for the submission of tenders, pursuant to ITT Sub-Clause 24.2

**Preparation of Tenders**

**Cost of Tendering**

- 9.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the Purchaser shall not be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

**Language of Tender** 10.1 The Tender, as well as all correspondence and documents relating to the tender exchanged by the Tenderer and the Purchaser, shall be written in the language **specified in the TDS**. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate translation of the relevant passages into the language **specified in the TDS**, in which case, for purposes of interpretation of the Tender, such translation shall govern.

**Documents  
Comprising the  
Tender**

- 11.1 The Tender shall comprise the following:
- (a) Tender Submission Form (and the duly signed appendix its annex Statement of Integrity, Eligibility and Social and Environmental Responsibility) and the applicable Price Schedules, in accordance with ITT Clauses 12, 14, and 15;
  - (b) Tender Security or Tender-Securing Declaration, in accordance with ITT Clause 21, if required;
  - (c) written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT Clause 22;
  - (d) documentary evidence in accordance with ITT Clause 16 establishing the Tenderer's eligibility to tender;
  - (e) documentary evidence in accordance with ITT Clause 17, that the Goods and Related Services to be supplied by the Tenderers are of eligible origin;
  - (f) documentary evidence in accordance with ITT Clauses 18 and 30, that the Goods and Related Services conform to the Tender Documents;
  - (g) documentary evidence in accordance with ITT Clause 19 establishing the Tenderer's qualifications to perform the contract if its tender is accepted; and
  - (h) any other document **required in the TDS**.

- 
- Tender Submission Form and Price Schedules**
- 12.1 The Tenderer shall submit the Tender Submission Form and the Statement of Integrity using the form furnished in Section IV, Tender Forms. This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.
- 12.2 The Tenderer shall submit the Price Schedules for Goods and Related Services, according to their origin as appropriate, using the forms furnished in Section IV, Tender Forms
- Alternative Tenders**
- 13.1 Unless otherwise **specified in the BDS**, alternative Tenders shall not be considered.
- Tender Prices and Discounts**
- 14.1 The prices and discounts quoted by the Tenderer in the Tender Submission Form and in the Price Schedules shall conform to the requirements specified below.
- 14.2 All lots and items must be listed and priced separately in the Price Schedules.
- 14.3 The price to be quoted in the Tender Submission Form shall be the total price of the tender, excluding any discounts offered.
- 14.4 The Tenderer shall quote any unconditional discounts and indicate the method for their application in the Tender Submission Form.
- 14.5 The terms EXW, CIP, DDU, and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by The International Chamber of Commerce, as specified in the **TDS**.
- 14.6 Prices shall be quoted as specified in each Price Schedule included in Section IV, Tender Forms. The dis-aggregation of price components is required solely for the purpose of facilitating the comparison of tenders by the Purchaser. This shall not in any way limit the Purchaser's right to contract on any of the terms offered. In quoting prices, the Tenderer shall be free to use transportation through carriers registered in an eligible country. Similarly, the Tenderer shall obtain insurance services from any of the member states. Prices shall be entered in the following manner:
- (a) For Goods manufactured in the Country where the goods are to be supplied:



- (i) the price of the Goods quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of the Goods;
  - (ii) any sales tax and other taxes of the Country where the goods are to be supplied which will be payable on the Goods if the contract is awarded to the Tenderer; and
  - (iii) the price for inland transportation, insurance, and other local services required to convey the Goods to their final destination (Project Site) specified in the **TDS**.
- For Goods manufactured outside the Country where the goods are to be supplied:, to be imported:
    - (i) the price of the Goods, quoted CIP named place of destination, in the Country where the goods are to be supplied:, or CIF named port of destination, as specified in the **TDS**;
    - (ii) the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination (Project Site) specified in the **TDS**;
    - (iii) in addition to the CIP prices specified in (b)(i) above, the price of the Goods to be imported may be quoted FCA (named place of destination) or CPT (named place of destination), if so specified in the **TDS**;

*The price shall exclude Import duties and taxes, which have been and/or have to be exempted.*

- For Goods manufactured outside the Country where the goods are to be supplied:, already imported:
  - (i) the price of the Goods, including the original import value of the Goods; plus any mark-up (or rebate); plus any other related local cost, and custom duties and other import taxes already paid or to be paid on the Goods already imported.

(ii) any sales tax and other taxes of the Country where the goods are to be supplied which will be payable on the Goods if the contract is awarded to the Tenderer; and

(iii) the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination (Project Site) specified in the **TDS**.

- for Related Services, other than inland transportation and other services required to convey the Goods to their final destination, whenever such Related Services are specified in the Schedule of Requirements:

(i) the price of each item comprising the Related Services (inclusive of any applicable taxes).

14.7 Prices quoted by the Tenderer shall be fixed during the Tenderer's performance of the Contract and not subject to variation on any account, unless otherwise specified in the **TDS**. A tender submitted with an adjustable price quotation shall be treated as non responsive and shall be rejected, pursuant to ITT Clause 30. However, if in accordance with the **TDS**, prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract, a tender submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

14.8 If so indicated in ITT Sub-Clause 1.1, tenders are being invited for individual contracts (lots) or for any combination of contracts (packages). Unless otherwise indicated in the **TDS**, prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Tenderers wishing to offer any price reduction (discount) for the award of more than one Contract shall specify the applicable price reduction in accordance with ITT Sub-Clause 14.4 provided the tenders for all lots are submitted and opened at the same time.

**Currencies of  
Tender**

15.1 The Tenderer shall quote in the currency of the Country where the goods are to be supplied which will be payable on the Goods if the contract is awarded to the Tenderer; and

- 15.2 the portion of the tender price that corresponds to expenditures incurred in the currency of the country where the goods are to be supplied, unless otherwise specified in the **TDS**.
- 15.3 The Tenderer may express the tender price in the currency of any country in accordance with Section V, Eligible countries. If the Tenderer wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but shall use no more than three currencies in addition to the currency of the Country where the goods are to be supplied.
- Documents  
Establishing the  
Eligibility of the  
Tenderer**
- 16.1 To establish their eligibility in accordance with ITT Clause 4, Tenderers shall complete the Tender Submission Form, included in Section IV, Tender Forms.
- Documents  
Establishing the  
Eligibility of the  
Goods and Related  
Services**
- 17.1 To establish the eligibility of the Goods and Related Services in accordance with ITT Clause 5, Tenderers shall complete the country of origin declarations in the Price Schedule Forms, included in Section IV, Tender Forms.
- Documents  
Establishing the  
Conformity of the  
Goods and Related  
Services**
- 18.1 To establish the conformity of the Goods and Related Services to the Tender Documents, the Tenderer shall furnish as part of its Tender the documentary evidence that the Goods conform to the technical specifications and standards specified in Section VI, Schedule of Requirements.
- 18.2 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Goods and Related Services, demonstrating substantial responsiveness of the Goods and Related Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Schedule of Requirements.
- 18.3 The Tenderer shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods during the period **specified in the TDS** following commencement of the use of the goods by the Purchaser.
- 18.4 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Purchaser in the Schedule of Requirements, are

intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Purchaser's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Schedule of Requirements.

**Documents  
Establishing the  
Qualifications of the  
Tenderer**

19.1 The documentary evidence of the Tenderer's qualifications to perform the contract if its Tender is accepted shall establish to the Purchaser's satisfaction:

- (a) that, if **required in the TDS**, a Tenderer that does not manufacture or produce the Goods it offers to supply shall submit the Manufacturer's Authorization using the form included in Section IV, Tender Forms to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods in the country where the goods are to be supplied;
- (b) that, if **required in the TDS**, in case of a Tenderer not doing business within the country where the goods are to be supplied, the Tenderer is or will be (if awarded the contract) represented by an Agent in the Country where the Goods are to be supplied equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications; and
- (c) that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.

**Period of Validity of  
Tenders**

20.1 Tenders shall remain valid for the period **specified in the TDS** after the Tender submission deadline date prescribed by the Purchaser. A Tender valid for a shorter period shall be rejected by the Purchaser as non responsive.

20.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Purchaser may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT Clause 21, it shall also be extended for a corresponding period. A Tender may refuse the request without forfeiting its Tender Security. A Tenderer

granting the request shall not be required or permitted to modify its Tenders, except as provided in ITT Sub-Clause 20.3.

20.3 In the case of fixed price contracts, if the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial Tender validity, the Contract price shall be adjusted as specified in the request for extension. Tender evaluation shall be based on the Tender Price without taking into consideration the above correction.

### **Tender Security**

21.1 The Tenderer shall furnish as part of its Tender, a Tender Security or a Tender-Securing Declaration, if required, as **specified in the TDS.**

21.2 The Tender Security shall be in the amount specified in the TDS and denominated in the currency of the Country where the goods are to be supplied or a freely convertible currency, and shall:

- (a) at the Tenderer's option, be in the form of either a letter of credit, or a bank guarantee from a banking institution;
- (b) be issued by a reputable institution selected by the Tenderer and located in any member state.
- (c) be substantially in accordance with one of the forms of Tender Security included in Section IV, Tender Forms, or other form approved by the Purchaser prior to Tender submission;
- (d) be payable promptly upon written demand by the Purchaser in case the conditions listed in ITT Clause 21.5 are invoked;
- (e) be submitted in its original form; copies will not be accepted;
- (f) remain valid for a period of 28 days beyond the validity period of the Tenders, as extended, if applicable, in accordance with ITT Clause 20.2;

21.3 If a Tender Security or a Tender- Securing Declaration is required in accordance with ITT Sub-Clause 21.1, any Tender not accompanied by a substantially responsive Tender Security or Tender Securing Declaration in accordance with ITT Sub-Clause 21.1, shall be rejected by the Purchaser as non-responsive.

- 21.4 The Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's furnishing of the Performance Security pursuant to ITT Clause 44.
- 21.5 The Tender Security may be forfeited or the Tender Securing Declaration executed:
- (a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the ITT, except as provided in ITT Sub-Clause 20.2; or
  - (b) if the successful Tenderer fails to:
    - (i) sign the Contract in accordance with ITT Clause 43;
    - (ii) furnish a Performance Security in accordance with ITT Clause 44.
- 21.6 The Tender Security or Tender- Securing Declaration of a JV must be in the name of the JV that submits the Tender. If the JV has not been legally constituted at the time of Tendering, the Tender Security or Tender-Securing Declaration shall be in the names of all future partners as named in the letter of intent mentioned in Section IV "Tender Forms," Tender Information Form Item 7.
- 21.7 If a Tender security is **not required in the TDS**, and
- (a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the ITT, except as provided in ITT 20.2, or
  - (b) if the successful Tenderer fails to: sign the Contract in accordance with ITT 43; or furnish a performance security in accordance with ITT 44;

the Purchaser may, **if provided for in the TDS**, declare the Tenderer disqualified to be awarded a contract by the Purchaser for a period of time **as stated in the TDS**.

**Format and Signing of Tender**

- 22.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT Clause 11 and clearly mark it "ORIGINAL." In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **TDS** and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

- 22.2 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer.
- 22.3 Any interlineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

### **Submission and Opening of Tenders**

#### **Submission, Sealing and Marking of Tenders**

- 23.1 Tenderers may always submit their Tenders by mail or by hand. When so specified in the **TDS**, Tenderers shall have the option of submitting their Tenders electronically.

- (a) Tenderers submitting Tenders by mail or by hand, shall enclose the original and each copy of the Tender, including alternative Tenders, if permitted in accordance with ITT Clause 13, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITT sub-Clauses 23.2 and 23.3.
- (b) Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the **TDS**.

- 23.2 The inner and outer envelopes shall:

- (a) Bear the name and address of the Tenderer;
- (b) be addressed to the Purchaser in accordance with ITT Sub-Clause 24.1;
- (c) bear the specific identification of this Tendering process indicated in ITT 1.1 and any additional identification marks as **specified in the TDS**; and
- (d) bear a warning not to open before the time and date for Tender opening, in accordance with ITT Sub-Clause 27.1.

- 23.3 If all envelopes are not sealed and marked as required, the Purchaser will assume no responsibility for the misplacement or premature opening of the Tender.

#### **Deadline for Submission of Tenders**

- 24.1 Tenders must be received by the Purchaser at the address and no later than the date and time **specified in the TDS**.
- 24.2 The Purchaser may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender Documents in

accordance with ITT Clause 8, in which case all rights and obligations of the Purchaser and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

**Late Tenders**

25.1 The Purchaser shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT Clause 24. Any tender received by the Purchaser after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

**Withdrawal, Substitution, and Modification of Tenders**

26.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice in accordance with ITT Clause 23, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT Sub-Clause 22.2, (except that no copies of the withdrawal notice are required). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

- (a) submitted in accordance with ITT Clauses 22 and 23 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION;" and
- (b) received by the Purchaser prior to the deadline prescribed for submission of Tenders, in accordance with ITT Clause 24.

26.2 Tenders requested to be withdrawn in accordance with ITT Sub-Clause 26.1 shall be returned unopened to the Tenderers.

26.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the ITT or any extension thereof.

**Tender Opening**

27.1 The Purchaser shall conduct the Tender opening in public at the address, date and time **specified in the TDS** which should not be later than two hours after the deadline for their submission. Any specific electronic Tender opening procedures required if electronic Tendering is permitted in accordance with ITT Sub-Clause 23.1, shall be as **specified in the TDS**.

27.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Tender shall not be



opened, but returned to the Tender. If the withdrawal envelope does not contain a copy of the “power of attorney” confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening. Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening. Envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening. Only envelopes that are opened and read out at Tender opening shall be considered further.

- 27.3 All other envelopes shall be opened one at a time, reading out: the name of the Tender and whether there is a modification; the Tender Prices, including any discounts and alternative offers; the presence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the Purchaser may consider appropriate. Only discounts and alternative offers read out at Tender opening shall be considered for evaluation. No Tender shall be rejected at Tender opening except for late Tenders, in accordance with ITT Sub-Clause 25.1.
- 27.4 The Purchaser shall prepare a record of the Tender opening that shall include, as a minimum: the name of the Tenderer and whether there is a withdrawal, substitution, or modification; the Tender Price, per lot if applicable, including any discounts, and alternative offers if they were permitted; and the presence or absence of a Tender Security or Tender-Securing Declaration, if one was required. The Tenderer’s representatives who are present shall be requested to sign the attendance sheet. A copy of the record may on request be made available to a tenderer and posted online when electronic Tendering is permitted.

#### **Evaluation and Comparison of Tenders**

#### **Confidentiality**

- 28.1 Information relating to the examination, evaluation, comparison, and postqualification of Tenders, and recommendation of

contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the successful Tenderer is notified of the award except for any required notifications by the Purchaser, which may be required by this Tender Documents.

28.2 Any effort by a Tenderer to influence the Purchaser in the examination, evaluation, comparison, and post qualification of the Tenderers or contract award decisions may result in the rejection of its Tender.

28.3 Notwithstanding ITT Sub-Clause 28.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact the Purchaser on any matter related to the Tendering process, it should do so in writing.

**Clarification of Tenders**

29.1 To assist in the examination, evaluation, comparison and post-qualification of the Tenders, the Purchaser may, at its discretion, ask any Tenderer for a clarification of its Tender. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by the Purchaser shall not be considered. The Purchaser's request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the Evaluation of the Tenders, in accordance with ITT Clause 31.

**Responsiveness of Tenders**

30.1 The Purchaser's determination of a Tender's responsiveness is to be based on the contents of the Tender itself.

30.2 A substantially responsive Tender is one that conforms to all the terms, conditions, and specifications of the Tender Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

(a) affects in any substantial way the scope, quality, or performance of the Goods and Related Services specified in the Contract; or

(b) limits in any substantial way, inconsistent with the Tender Documents, the Purchaser's rights or the Tenderer's obligations under the Contract; or

(c) if rectified would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.

- 30.3 If a Tender is not substantially responsive to the Tender Documents, it shall be rejected by the Purchaser and may not subsequently be made responsive by the Tenderer by correction of the material deviation, reservation, or omission.
- Nonconformities, Errors, and Omissions**
- 31.1 Provided that a Tender is substantially responsive, the Purchaser may waive any non-conformities or omissions in the Tender that do not constitute a material deviation.
- 31.2 Provided that a Tender is substantially responsive, the Purchaser may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the Tender related to documentation requirements. Such omission shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.
- 31.3 Provided that the Tender is substantially responsive, the Purchaser shall correct arithmetical errors on the following basis:
- (a) if there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the line item total as quoted shall govern and the unit price shall be corrected;
  - (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
  - (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.
- 31.4 If the Tenderer that submitted the lowest evaluated Tender does not accept the correction of errors, its Tender shall be rejected.
- Preliminary Examination of Tenders**
- 32.1 The Purchaser shall examine the Tenders to confirm that all documents and technical documentation requested in ITT Clause 11 have been provided, and to determine the completeness of each document submitted.

- 32.2 The Purchaser shall confirm that the following documents and information have been provided in the Tender. If any of these documents or information is missing, the offer shall be rejected.
- (a) Tender Submission Form, in accordance with ITT Sub-Clause 12.1;
  - (b) Price Schedules, in accordance with ITT Sub-Clause 12.2;
  - (c) Tender Security or Tender Securing Declaration in accordance with ITT Clause 21, if applicable.
- Examination of Terms and Conditions; Technical Evaluation**
- 33.1 The Purchaser shall examine the Tender to confirm that all terms and conditions specified in the GCC and the SCC have been accepted by the Tenderer without any material deviation or reservation.
- 33.2 The Purchaser shall evaluate the technical aspects of the Tender submitted in accordance with ITT Clause 18, to confirm that all requirements specified in Section VI, Schedule of Requirements of the Tender Documents have been met without any material deviation or reservation.
- 33.3 If, after the examination of the terms and conditions and the technical evaluation, the Purchaser determines that the Tender is not substantially responsive in accordance with ITT Clause 30, it shall reject the Tender.
- Conversion to Single Currency**
- 34.1 For evaluation and comparison purposes, the Purchaser shall convert all tender prices expressed in amounts in various currencies into an amount in a single currency **specified in the TDS**, using the selling exchange rates established by the source and on the date **specified in the TDS**.
- Margin of Preference**
- 35.1 Margin of Preference for Regional Tenderers will be applied if indicated in the **TDS**.
- Evaluation of Tenders**
- 36.1 The Purchaser shall evaluate each tender that has been determined, up to this stage of the evaluation, to be substantially responsive.
- 36.2 To evaluate a Tender, the Purchaser shall only use all the factors, methodologies and criteria defined in ITT Clause 36. No other criteria or methodology shall be permitted.

- 36.3 To evaluate a Tender, the Purchaser will consider the following:
- (a) evaluation will be done for Items or Lots, as **specified in the TDS**; and the Tender Price as quoted in accordance with clause 14;
  - (b) price adjustment for correction of arithmetic errors in accordance with ITT Sub-Clause 31.3;
  - (c) price adjustment due to discounts offered in accordance with ITT Sub-Clause 14.4;
  - (d) adjustments due to the application of the evaluation criteria **specified in the TDS** from amongst those set out in Section III, Evaluation and Qualification Criteria;
- 36.4 The Purchaser's evaluation of a Tender will exclude and not take into account:
- (a) in the case of Goods manufactured outside the Country where Goods are to be supplied, which are to be imported, customs duties and other import taxes levied on the imported Good, sales and other similar taxes, which will be payable on the Goods if the contract is awarded to the Tender;
  - (b) any allowance for price adjustment during the period of execution of the contract, if provided in the Tender.
- 36.5 The Purchaser's evaluation of a Tender may require the consideration of other factors, in addition to the Tender Price quoted in accordance with ITT Clause 14. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Goods and Related Services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of Tenders, unless otherwise specified in Section III, Evaluation and Qualification Criteria. The factors, methodologies and criteria to be used shall be as specified in ITT 36.3 (d).
- 36.6 If so **specified in the TDS**, these Tender Documents shall allow Tender to quote separate prices for one or more lots, and shall allow the Purchaser to award one or multiple lots to more than one Tender. The methodology of evaluation to determine the lowest-evaluated lot combinations, is specified in Section III, Evaluation and Qualification Criteria.

- 
- |   |   |
|---|---|
| <b>Comparison of Tenders</b>  | 37.1 The Purchaser shall compare all substantially responsive Tenders to determine the lowest-evaluated Tender, in accordance with ITT Clause 36.   |
| <b>Postqualification of the Tenders</b>   | 38.1 The Purchaser shall determine to its satisfaction whether the Tender that is selected as having submitted the lowest evaluated and substantially responsive Tender is qualified to perform the Contract satisfactorily.  |
|   | 38.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT Clause 19.  |
|   | 38.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Purchaser shall proceed to the next lowest evaluated Tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.             |
| <b>Purchaser's Right to Accept Any Tender, and to Reject Any or All Tenders</b> | 39.1 The Purchaser reserves the right to accept or reject any Tender, and to annul the Tendering process and reject all Tenders at any time prior to contract award, without thereby incurring any liability to Tenderers. The Purchaser shall upon request communicate to any Tenderer the grounds for its rejection but is not required to justify those grounds. |
|   | 39.2 Notice of the rejection shall be given promptly to all Tenderers   |
|   | 39.3 If the decision to reject all tenders is taken before the closing date, tenders received will be returned unopened to the tenderers submitting them.   |

#### **Award of Contract**

- |                       |   |
|-----------------------|---|
| <b>Award Criteria</b> | 40.1 The Purchaser shall award the Contract to the Tenderer whose offer has been determined to be the lowest evaluated Tender and is substantially responsive to the Tender Documents, provided further that the Tenderer is determined to be qualified to perform the Contract satisfactorily. |
|-----------------------|---|

**Purchaser's Right to Vary Quantities at Time of Award**

41.1 At the time the Contract is awarded, the Purchaser reserves the right to increase or decrease the quantity of Goods and Related Services originally specified in Section VI, Schedule of Requirements, provided this does not exceed the percentages **specified in the TDS**, and without any change in the unit prices or other terms and conditions of the Tender and the Tender Documents.

**Notification of Award**

42.1 Prior to the expiration of the period of Tender validity, the Purchaser shall notify the successful Tenderer, in writing, that its Tender has been accepted and shall simultaneously notify the other Tenderers of the fact, and the notification of award to the successful Tenderer shall specify the time, not being less than twenty one days within which the contract must be signed.

Where the award of contract is subject of an appeal under the provisions of this Tender documents and the Secretary General fails to render his decision within the period provided therein, the Purchaser shall advise the successful Tenderer to proceed with the supply.

42.2 Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.

42.3 After receipt of performance security pursuant to ITT Clause 44 and signing of the contract with the successful Tenderer, the Purchaser shall:-

- (a) Publish the result in MRC website and procurement websites of the Member States, as the case may be, identifying the tender and lot numbers and the following information: (i) name of each Tenderer who submitted a Tender; (ii) Tender prices as read out at Tender opening; (iii) name and evaluated prices of each Tender that was evaluated; (iv) name of Tenderers whose Tenders were rejected and the reasons for their rejection; and (v) name of the winning Tenderer, and the price it offered, as well as the duration and summary scope of the contract awarded. After publication of the award, unsuccessful Tenderers may request in writing to the Purchaser for a debriefing seeking explanations on the grounds on which their Tenders were not selected.
- (b) Promptly notify the name of the winning Tenderer to each unsuccessful Tenderer and discharge the Tender Securities of the unsuccessful Tenderer pursuant to ITT Sub-Clause 21.4.



- Signing of Contract**
- 43.1 Promptly after notification, the Purchaser shall send the successful Tenderer the Agreement and the Special Conditions of Contract.
- 43.2 Within twenty-eight (28) days of receipt of the Agreement, the successful Tenderer shall sign, date, and return it to the Purchaser.
- 43.3 Notwithstanding ITT 43.2 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Purchaser, to the country where the goods are to be supplied, or to the use of the products/goods, systems or services to be supplied, where such export restrictions arise from trade regulations from a country supplying those products/goods, systems or services, the Tenderer shall not be bound by its Tender, always provided, , however, that the Tenderer can demonstrate to the satisfaction of the Purchaser that signing of the Contact Agreement has not been prevented by any lack of diligence on the part of the Tenderer in completing any formalities, including applying for permits, authorizations and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract.
- Performance Security**
- 44.1 Within twenty eight (28) days of the receipt of notification of award from the Purchaser, the successful Tenderer, if required, shall furnish the Performance Security in accordance with the GCC, using for that purpose the Performance Security Form included in Section IX Contract forms, or another Form acceptable to the Purchaser.
- The performance security shall be issued by an institution located in a member state.
- 44.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tenderer Security or execution of the Tenderer -Securing Declaration. In that event the Purchaser may award the Contract to the next lowest evaluated Tenderer, whose offer is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily.
- Administrative Review**
- 45.1 Subject to the provisions of this paragraph, any tenderer who claims to have suffered, or to risk suffering, loss or damage due to a breach of duty imposed on the Purchaser by the provisions of the Tender

documents may seek administrative review in writing with the Chief Executive Officer.

### Section II. Tender Data Sheet (TDS)

The following specific data for the goods to be procured shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail over those in ITT.

ITT Clause Reference	A. General
ITT 1.1	The Purchaser is: The <u>Mekong River Commission (MRC)</u>
ITT1.1	The name and identification number of the Tender are: <u>RFP001-2020 Purchase of spare parts for HYCOS Project for 4 Countries</u> . The number, identification and names of the lots included in this Tender are: <u>1 (one)</u>
ITT 2.1	The name of the Project is: <u>Supply of spare parts for HYCOS Project for 4 Countries</u>
ITT 3.1	The following paragraph is added: “The AFD requires compliance with its policy regarding corrupt and fraudulent practices as set forth in Section VI.”
ITT 5	The following paragraph is added:  “The AFD’s eligibility criteria to bid are described in Section V, Eligibility criteria.”
ITT 5.1	Delete first paragraph of sub-clause 5.1 in its entirety and replace it with the following:-  5.1 Goods supplied and Consulting Services provided under the Contract may originate from any country subject to the eligibility rules defined under ITT 4.
<b>B. Contents of Tender Documents</b>	
ITT 7.1	For <b>Clarification of Tenders purposes</b> only, the Purchaser’s address is: Attention: Procurement Unit Address: <i>Mekong River Commission Secretarial in Vientiane 184 Fa Ngoum Road, Unit 18, Ban Sithane Neua, Sikhottabong Vientiane, Lao PDR</i> Telephone: (+856-21) 263 263 Facsimile number: (+856-21) 263 264

	Electronic mail address: <a href="mailto:oudorn@mrcmekong.org">oudorn@mrcmekong.org</a>
	<b>C. Preparation of Tenders</b>
<b>ITT 10.1</b>	The language of the Tender is: <i>English</i>
<b>ITT 11.1 (h)</b>	The Tenderer shall submit the following additional documents in its Tender: <ul style="list-style-type: none"> <li>• Company profiles</li> </ul>
<b>ITT 13.1</b>	Alternative Tenders <i>shall not be considered</i> .
<b>ITT 14.5</b>	The Incoterms edition is: INCOTERMS 2000
<b>ITT 14.6 (b) (i) and (c) (iii)</b>	Place of Destination: (List attached)
<b>ITT 14.6 (a) (iii);(b)(ii) and (c)(v)</b>	“Final destination (Project Site)”:
<b>ITT 14.6 (a) (ii)</b>	MRC as Inter-governmental Organization is exempt from import taxes to its member states, including Vietnam, Lao PDR, Cambodia and Thailand. Support to clearance documents will be provided if required.
<b>ITT 14.6 (b) (iii)</b>	The price of the Goods manufactured outside the Country where the goods are to be supplied shall be quoted: <i>DDU</i>
<b>ITT 14.7</b>	The prices quoted by the Tenderer <i>shall not</i> be adjustable.
<b>ITT 15.1</b>	The Tenderer <i>is</i> required to quote in US dollar (USD) only.
<b>ITT 18.3</b>	Period of time the Goods are expected to be functioning (for the purpose of technical support): 3 years.
<b>ITT 19.1 (a)</b>	Manufacturer’s authorization is: <i>required</i>
<b>ITT 19.1 (b)</b>	After sales service is required
<b>ITT 20.1</b>	The Tender validity period shall be <b>120 days</b> .

<b>ITT 21.1</b>	Tender shall include “Tender Security” using the form included in Section IV Tender Forms.
<b>ITT 21.2</b>	
<b>ITT 21.2 (b)</b>	Delete “in any Member State” under sub-clause 21.2 (b) and replace it by:- “in a member state or an institution located outside member states in correspondence with an institution in a member state”
<b>ITT 21.7</b>	If the Tenderer incurs any of the actions prescribed in subparagraphs (a) or (b) of this provision, the Purchaser will declare the Tenderer ineligible to be awarded contracts by the Purchaser for a period of 5 years.
<b>ITT 22.1</b>	In addition to the original of the Tender , the number of copies is: <i>5 sets</i>
<b>D. Submission and Opening of Tenders</b>	
<b>ITT 23.2 (c)</b>	The inner and outer envelopes shall bear the following additional identification marks: <b><i>RFP20202-001 Purchase of Spare part for HYCOS in 4 Countries</i></b> and “DO NOT OPEN BEFORE THE TENDER SUBMISSION DEADLINE”.
<b>ITT 24.1</b>	For Tender submission purposes, the Purchaser’s address is: <b>Mekong River Commission Secretariat</b> Administration Division Procurement Unit P.O. Box 6101, Unit 18 Ban Sithane Neua Sikhottabong District, Vientiane 01000, Lao PDR Tel: (856) 21 263 263; Fax: (856) 21 263 264 The deadline for the submission of Tenders is: <b>Date: 08 May 2020 Time: 3:00 PM local time (GMT+7)</b>
<b>ITT 27.1</b>	The Tender opening shall take place at: <b>Mekong River Commission Secretariat</b> Administration Division Procurement Unit P.O. Box 6101, Unit 18 Ban Sithane Neua Sikhottabong District, Vientiane 01000, Lao PDR Tel: (856) 21 263 263; Fax: (856) 21 263 264 <b>Date: 08 May 2020</b>

	Local Time: 3:30 PM
ITT27.1	Electronic Tender submission is not permitted
	<b>E. Evaluation and Comparison of Tenders</b>
ITT 34.1	<p>Tender prices expressed in different currencies shall be converted in: <i>US dollars</i></p> <p>The source of exchange rate shall be: UN monthly rate at the link below:  <a href="http://www.un.org/Depts/treasury/">http://www.un.org/Depts/treasury/</a></p> <p>The date for the exchange rate shall be May 2020</p>
ITT 36.3(a)	<p>Evaluation will be done for 1 (one) Package</p> <p>Note: <i>If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. An item not listed in the Price Schedule shall be assumed to be not included in the Tender, and provided that the Tender is substantially responsive, the average price of the item quoted by substantially responsive Tenderers will be added to the Tender price and the equivalent total cost of the Tender so determined will be used for price comparison.</i></p>
ITT 36.3(d)	<p>The adjustments shall be determined using the following criteria, from amongst those set out in Section III, Evaluation and Qualification Criteria:</p> <p>(a) Deviation in payment schedule: <i>No</i></p> <p>(b) the cost of major replacement components, mandatory spare parts, and service: <i>No</i></p> <p>(c) the performance and productivity of the equipment offered: <i>Yes</i>  <i>Commitment to the deliverables and requirements specified in the Technical Specifications</i></p>
ITT 36.6	Tenderers shall quote prices for 1 Package

### **Section III. Evaluation and Qualification Criteria**

*This Section complements the Instructions to Tenderers. It contains the criteria that the Purchaser may use to evaluate a Tender and determine whether a Tender has the required qualifications in addition to the Technical Criteria following the technical requirements mentioned in the Part 2 below. No other criteria shall be used.*

#### **I. Financial Criteria:**

For award of Contract, the Bidder shall meet the following minimum criteria, if disqualified, the Bidder will be rejected:

1. The Bidder shall have a minimum annual turnover within the last 03 years of: US\$200,000 (*Two hundred thousand US Dollars*).
2. The Bidder's performance shall have the annual profit within the last 03 years.

For comparison with the data declared by the Bidder, Financial Statements and certified copies of one of following documents:

- i. Minutes of tax inspection and finalization in recent 3 fiscal years;
- ii. Self-declaration of tax finalization (VAT and enterprise income tax) certified by the tax authority at the submission time of declaration in recent 3 fiscal years;
- iii. Written confirmation from a tax management body (confirmation of payment of the year) on the execution of tax obligations in recent 3 fiscal years;
- iv. Audit Report.

#### **II. Experience Criteria:**

For award of Contract, the Bidder shall meet the following minimum criteria, if disqualified, the Bidder will be rejected:

1. The Bidder shall have at least 10 years of experience in the supply of Goods and Related Services.
2. Within 03 recent years, the Bidder has completed at least 03 similar contracts (nature, scale, and each with a value of at least US\$50,000) or bigger contracts of this package. To demonstrate, the Bidder shall submit notarized copies of those contracts. The Purchaser is entitled to require the bidder to provide with original contracts for comparison with those notarized copies of contracts if necessary. Where the Bidder fails to provide the original contracts as required by the Purchaser for comparison, the Purchaser shall evaluate those notarized copies of contracts as invaluable similar contracts made.

#### **III. Supply capacity:**

For award of Contract, the Bidder shall meet the following minimum criteria, if disqualified, the Bidder will be rejected:

If a Bidder is not a Manufacturer, shall enclose with their Bids the Manufacturer's original Power of Attorney attesting that the Bidder is fully authorized on behalf of the manufacturer bidding for this package. Without the Manufacturer's Power of Attorney, that Bidder shall be rejected.

## Section IV. Tendering Forms

### Table of Forms

<b>Tenderer Information Form .....</b>	<b>37</b>
<b>Joint Venture Partner Information Form .....</b>	<b>38</b>
<b>Tender Submission Form.....</b>	<b>39</b>
<b>Tender Security (Bank Guarantee).....</b>	<b>51</b>
<b>Manufacturer's Authorization .....</b>	<b>52</b>



## Tenderer Information Form

*[The Tenderer shall fill in this Form in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted.]*

Date: *[insert date (as day, month and year) of Tender Submission]*  
Procurement Reference No.: *[insert number of Tendering process]*

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Tenderer's Legal Name <i>[insert Tenderer's legal name]</i>
2. In case of JV, legal name of each party: <i>[insert legal name of each party in JV]</i>
3. Tenderer's actual or intended Country of Registration: <i>[insert actual or intended Country of Registration]</i>
4. Tenderer's Year of Registration: <i>[insert Tenderer's year of registration]</i>
5. Tenderer's Legal Address in Country of Registration: <i>[insert Tenderer's legal address in country of registration]</i>
6. Tenderer's Authorized Representative Information  Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone/Fax numbers: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</i>
7. Attached are copies of original documents of: <i>[check the box(es) of the attached original documents]</i> <ul style="list-style-type: none"><li>▪ Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITT Sub-Clauses 4.1 and 4.2.</li><li>▪ In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT Sub-Clause 4.1.</li></ul>

### Joint Venture Partner Information Form

*[The Tenderer shall fill in this Form in accordance with the instructions indicated below].*

Date: *[insert date (as day, month and year) of Tender Submission]*

Procurement Reference No.: *[insert number of Tendering process]*

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Tenderer's Legal Name: <i>[insert Tenderer's legal name]</i>
2. JV's Party legal name: <i>[insert JV's Party legal name]</i>
3. JV's Party Country of Registration: <i>[insert JV's Party country of registration]</i>
4. JV's Party Year of Registration: <i>[insert JV's Party year of registration]</i>
5. JV's Party Legal Address in Country of Registration: <i>[insert JV's Party legal address in country of registration]</i>
6. JV's Party Authorized Representative Information Name: <i>[insert name of JV's Party authorized representative]</i> Address: <i>[insert address of JV's Party authorized representative]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's Party authorized representative]</i> Email Address: <i>[insert email address of JV's Party authorized representative]</i>
7. Attached are copies of original documents of: <i>[check the box(es) of the attached original documents]</i> <ul style="list-style-type: none"> <li>▪ Articles of Incorporation or Registration of firm named in 2, above, in accordance with ITT Sub-Clauses 4.1 and 4.2.</li> </ul>

## Technical Proposal Submission Form

[Location, Date]

To: Mekong River Commission Secretariat P.O. Box 6101, 184 Fa Ngoum Road, Unit 18,  
Ban Sithane Neua, Sikhottabong District, Vientiane 010000, Lao PDR.

Ladies and gentlemen,

We, the undersigned, offer to provide spare parts for HYCOS Project for 4 Countries, in accordance with your Request for Proposal dated [Insert Date] and our Technical Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal, and a Financial Proposal sealed under a separate envelope.

If negotiations are held during the period of validity of the Proposal, i.e., before [Insert Date], we undertake to negotiate on the basis of the proposed staff. Our Proposal is binding upon us and subject to the modifications resulting from contract negotiations.

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

Authorized Signature [In full and initials]: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

**Tender/Financial Submission Form**

*[The Tenderer shall fill in this Form in accordance with the instructions indicated No alterations to its format shall be permitted and no substitutions shall be accepted.]*

Date: *[insert date (as day, month and year) of Tender Submission]*

Tender No.: *[insert number of Tendering process]*

Invitation for Tender No.: *[insert No of IFT]*

Alternative No.: *[insert identification No if this is a Tender for an alternative]*

To: *[insert complete name of Purchaser]*

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Tender Documents, including Addenda No.: \_\_\_\_\_ *[insert the number and issuing date of each Addenda];*
- (b) We offer to supply in conformity with the Tender Documents and in accordance with the Delivery Schedules specified in the Schedule of Requirements the following Goods and Related Services \_\_\_\_\_ *[insert a brief description of the Goods and Related Services];*
- (c) The total price of our Tender, excluding any discounts offered in item (d) below, is: \_\_\_\_\_ *[insert the total Tender price in words and figures, indicating the various amounts and the respective currencies];*
- (d) The discounts offered and the methodology for their application are:

**Discounts.** If our Tender is accepted, the following discounts shall apply. \_\_\_\_\_ *[Specify in detail each discount offered and the specific item of the Schedule of Requirements to which it applies.]*

**Methodology of Application of the Discounts.** The discounts shall be applied using the following method: \_\_\_\_\_ *[Specify in detail the method that shall be used to apply the discounts];*

- (e) Our Tender shall be valid for the period of time specified in ITT Sub-Clause 20.1, from the date fixed for the Tender submission deadline in accordance with ITT Sub-Clause 24.1, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) If our tender is accepted, we commit to obtain a performance security in accordance with ITT Clause 44 and GCC Clause 18 for the due performance of the Contract;
- (g) We, including any subcontractors or suppliers for any part of the contract, have nationality from eligible countries \_\_\_\_\_ *[insert the nationality of the Tenderer, including that of all parties that comprise the Tenderer, if the Tenderer is a JV, and the nationality each subcontractor and supplier]*
- (h) We have no conflict of interest in accordance with ITT Sub-Clause 4.2;

- (i) We declare that:-

- We fulfil the MRC eligibility requirements as stated in the Tender documents and hereby attach all the required Articles of Incorporation, Documents of Constitution, or Registration Documents to that effect;
- We have the legal capacity to enter into the contract;
- We are not insolvent, in receivership, bankrupt or being wound up, their business activities have not been suspended, and we are not the subject of legal proceedings for any of the foregoing;
- We have fulfilled our tax obligations to pay taxes and social security contributions, and for that purpose, documentary evidence is hereby attached to demonstrate that we meet this criterion ;
- We, our servants, or agents have not offered any inducement to any employees of the Purchaser;
- We are not declared ineligible by the Purchaser in accordance with the MRC's Policies and domestic legislation of a Member State as defined in the Tender documents;
- Our country of origin is not under sanction with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, which is required to be complied by member states.

(j) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____

(If none has been paid or is to be paid, indicate "none.")

(l) We understand that this Tender, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed.

(m) We understand that you are not bound to accept the lowest evaluated Tender or any other Tender that you may receive.

Signed: \_\_\_\_\_ *[insert signature of person whose name and capacity are shown]*  
 In the capacity of \_\_\_\_\_ *[insert legal capacity of person signing the Tender Submission Form]*

Name: \_\_\_\_\_ *[insert complete name of person signing the Tender Submission Form]*

Duly authorized to sign the Tender for and on behalf of: \_\_\_\_\_ *[insert complete name of Tenderer]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

## Appendix to Tender Submission Form

### Statement of Integrity, Eligibility and Social and Environmental Responsibility

Reference name of the bid or proposal: \_\_\_\_\_ (The "**Contract**")

To: \_\_\_\_\_ (The "**Contracting Authority**")

1. We recognise and accept that *Agence Française de Développement* ("AFD") only finances projects of the Contracting Authority subject to its own conditions which are set out in the Financing Agreement which benefits directly or indirectly to the Contracting Authority. As a matter of consequence, no legal relationship exists between AFD and our company, our joint venture or our suppliers, contractors, subcontractors, consultants or subconsultants. The Contracting Authority retains exclusive responsibility for the preparation and implementation of the procurement process and performance of the contract. The Contracting Authority means the Purchaser, the Employer, the Client, as the case may be, for the procurement of goods, works, plants, consulting services or non-consulting services.
2. We hereby certify that neither we nor any other member of our joint venture or any of our suppliers, contractors, subcontractors, consultants or subconsultants are in any of the following situations:
  - 2.1) Being bankrupt, wound up or ceasing our activities, having our activities administered by the courts, having entered into receivership, reorganisation or being in any analogous situation arising from any similar procedure;
  - 2.2) Having been:
    - a. convicted, within the past five years by a court decision, which has the force of *res judicata* in the country where the Contract is implemented, of fraud, corruption or of any other offense committed during a procurement process or performance of a contract (in the event of such conviction, you may attach to this Statement of Integrity supporting information showing that this conviction is not relevant in the context of this Contract);
    - b. subject to an administrative sanction within the past five years by the European Union or by the competent authorities of the country where we are constituted, for fraud, corruption or for any other offense committed during a procurement process or performance of a contract (in the event of such sanction, you may attach to this Statement of Integrity supporting information showing that this sanction is not relevant in the context of this Contract);
    - c. convicted, within the past five years by a court decision, which has the force of *res judicata*, of fraud, corruption or of any other offense committed during the procurement process or performance of an AFD-financed contract;
  - 2.3) Being listed for financial sanctions by the United Nations, the European Union and/or France for the purposes of fight-against-terrorist financing or threat to international peace and security;
  - 2.4) Having been subject within the past five years to a contract termination fully settled against us for significant or persistent failure to comply with our contractual obligations during contract

performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us;

2.5) Not having fulfilled our fiscal obligations regarding payments of taxes in accordance with the legal provisions of either the country where we are constituted or the Contracting Authority's country;

2.6) Being subject to an exclusion decision of the World Bank and being listed on the website <http://www.worldbank.org/debarr> (in the event of such exclusion, you may attach to this Statement of Integrity supporting information showing that this exclusion is not relevant in the context of this Contract);

2.7) Having created false documents or committed misrepresentation in documentation requested by the Contracting Authority as part of the procurement process of this Contract.

3. We hereby certify that neither we, nor any of the members of our joint venture or any of our suppliers, contractors, subcontractors, consultants or subconsultants are in any of the following situations of conflict of interest:

3.1) Being an affiliate controlled by the Contracting Authority or a shareholder controlling the Contracting Authority, unless the stemming conflict of interest has been brought to the attention of AFD and resolved to its satisfaction;

3.2) Having a business or family relationship with a Contracting Authority's staff involved in the procurement process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of AFD and resolved to its satisfaction;

3.3) Being controlled by or controlling another bidder or consultant, or being under common control with another bidder or consultant, or receiving from or granting subsidies directly or indirectly to another bidder or consultant, having the same legal representative as another bidder or consultant, maintaining direct or indirect contacts with another bidder or consultant which allows us to have or give access to information contained in the respective applications, bids or proposals, influencing them or influencing decisions of the Contracting Authority;

3.4) Being engaged in a consulting services activity, which, by its nature, may be in conflict with the assignments that we would carry out for the Contracting Authority;

3.5) In the case of procurement of goods, works or plants:

i. Having prepared or having been associated with a consultant who prepared specifications, drawings, calculations and other documentation to be used in the procurement process of this Contract;

ii. Having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this Contract;

4. If we are a state-owned entity, and to compete in a procurement process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.

5. We undertake to bring to the attention of the Contracting Authority, which will inform AFD, any change in situation with regard to points 2 to 4 here above.

6. In the context of the procurement process and performance of the corresponding contract:

6.1) We have not and we will not engage in any dishonest conduct (act or omission) deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate someone's consent, to make them circumvent legal or regulatory requirements and/or to violate their internal rules in order to obtain illegitimate profit;

6.2) We have not and we will not engage in any dishonest conduct (act or omission) contrary to our legal or regulatory obligations or our internal rules in order to obtain illegitimate profit;

6.3) We have not promised, offered or given and we will not promise, offer or give, directly or indirectly to (i) any Person who holds a legislative, executive, administrative or judicial mandate within the State of the Contracting Authority regardless of whether that Person was nominated or

elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the Person occupies, (ii) any other Person who performs a public function, including for a State institution or a State-owned company, or who provides a public service, or (iii) any other person defined as a Public Officer by the national laws of the Contracting Authority's country, an undue advantage of any kind, for himself or for another Person or entity, for such Public Officer to act or refrain from acting in his official capacity;

6.4) We have not promised, offered or given and we will not promise, offer or give, directly or indirectly to any Person who occupies an executive position in a private sector entity or works for such an entity, regardless of the nature of his/her capacity, any undue advantage of any kind, for himself or another Person or entity for such Person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations;

6.5) We have not and we will not engage in any practice likely to influence the contract award process to the detriment of the Contracting Authority and, in particular, in any anti-competitive practice having for object or for effect to prevent, restrict or distort competition, namely by limiting access to the market or the free exercise of competition by other undertakings;

6.6) Neither we nor any of the members of our joint venture or any of our suppliers, contractors, subcontractors, consultants or subconsultants shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or France;

6.7) We commit ourselves to comply with and ensure that all of our suppliers, contractors, subcontractors, consultants or subconsultants comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the Contract, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the environmental and social commitment plan (ESCP) provided by the Contracting Authority.

7. We, as well as members of our joint venture and our suppliers, contractors, subcontractors, consultants or subconsultants authorise AFD to inspect accounts, records and other documents relating to the procurement process and performance of the contract and to have them audited by auditors appointed by AFD.

Name: \_\_\_\_\_ In the capacity of: \_\_\_\_\_

Duly empowered to sign in the name and on behalf of<sup>4</sup>: \_\_\_\_\_

Signature: \_\_\_\_\_ Dated: \_\_\_\_\_

<sup>4</sup> In case of joint venture, insert the name of the joint venture. The person who will sign the application, bid or proposal on behalf of the applicant, bidder or consultant shall attach a power of attorney from the applicant, bidder or consultant.



## Price Schedule Forms

[The Tenderer shall fill in these Price Schedule Forms in accordance with the instructions indicated. The list of line items in column 1 of the **Price Schedules** shall coincide with the List of Goods and Related Services specified by the Purchaser in the Schedule of Requirements.]

### FORM FIN-2 PROCUREMENT PRICES

<b>List of Requirement</b>					
<i>Item N°</i>	Name of goods	Unit of Measurement	Quantity	Unit Price	Total
1	OTT netDL500 Data logger	Unit	14		
2	GSM antenna external 5dB, 5m cable SMA (m)	Unit	14		
3	Schaltschrank AE 1013.600 B500xH500xT300 VA 1.4301	Unit	6		
4	Solar panel 12V/30W with boom 1" and 10m cable	Unit	8		
5	Rechargeable battery 12V/24 Ah, with cable	Unit	11		
6	OTT CBS Bubble sensor for water level measurement	Unit	5		
7	Measuring tube, 100 m ID 4 mm / OD 4 mm	Unit	16		
8	OTT SE 200 Shaft encoder water level sensor	Unit	5		
9	Float 80 mm dia. for Thalimedes / SE 200 (for shaft encoder)	Unit	4		
10	Counterweight 0.1 kg for Thalimedes / SE 200 (for shaft encoder)	Unit	4		
11	Beaded cable 50 m (for shaft encoder)	Unit	4		
12	ADCON Raingauge RG Pro 02 5m cable	Unit	12		
13	Wall Mounting	Unit	11		

**Package No.: 1 – Ship from Provider to LNMC**

Shipping Address: Mekong River Commission Secretariat  
 184 Fa Ngoum Road, Unit 18 Ban Sithane Neua, Sikhottabong Vientiane  
 01000, Lao PDR

**Package Name: Laos Spare parts**

**Stations to be installed:** Xieng Kok (Long district, Luang Nam Tha Province), Ban Mai Singsamphanh (Xanasomboun District, Champasak province), Thakkek (Khammoun Province), and Paksane (Bolikhamsay province)

<i>Item N°</i>	<b>Name of goods</b>	<b>Unit of Measurement</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Total</b>
1	Rechargeable battery 12V/24 Ah, with cable	Unit	4		
2	Measuring tube, 100 m ID 4 mm / OD 4 mm	Unit	4		
3	Wall Mounting	Unit	4		

<b>Package No. 2 – Ship from Provider to Bangkok</b>					
Shipping Address: Thailand National Mekong Committee 180/3 Soi Phiboonwattana, Rama6 Rd., Phayathai, Bangkok 10400 Thailand					
<b>Package Name: Thai Spare parts</b>					
<b>Stations to be installed:</b> Bung Karn (Bung Karn province), Amnat Charoen (Amnat Charoen province), and Nong Khai (Nong Khai province)					
<i>Item N°</i>	Name of goods	Unit of Measurement	Quantity	Unit Price	Total
1	Solar panel 12V/30W with boom 1" and 10m cable	Unit	2		
2	Rechargeable battery 12V/24 Ah, with cable	Unit	3		
3	Measuring tube, 100 m ID 4 mm / OD 4 mm	Unit	3		
4	Wall Mounting	Unit	3		

**Package No.: 3 – Ship from provider to Phnom Penh**

Shipping Address: Cambodia National Mekong Committee

#576, National Road No. 2, Sangkat Chak Angre Krom, Khan Meanchey,, Phnom Penh, Cambodia

**Package Name: Cambodia Spare parts****Stations to be installed:** Koh Key (Stung Treng Province) and Koh Khel (Koh Thom District, Kandal Province)

<i>Item N°</i>	<b>Name of goods</b>	<b>Unit of Measurement</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Total</b>
1	GSM antenna external 5dB, 5m cable SMA (m)	Unit	2		
2	Solar panel 12V/30W with boom 1" and 10m cable	Unit	2		
3	Rechargeable battery 12V/24 Ah, with cable	Unit	2		
4	Measuring tube, 100 m ID 4 mm / OD 4 mm	Unit	2		
5	Wall Mounting	Unit	2		

**Package No.: 4 – Ship from Provider to Ho Chi Minh city**

Shipping address: Representative Office of Vietnam National Mekong Committee  
200 Ly Chinh Thang street, District 3, Ho Chi Minh City

**Package Name: Vietnam Spare parts**

Stations to be installed: Tra Vinh (Tra Vinh Province) and Dai Ngai (Long Phú District, Soc Trang Province)

<i>Item N°</i>	<b>Name of goods</b>	<b>Unit of Measurement</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Total</b>
1	GSM antenna external 5dB, 5m cable SMA (m)	Unit	2		
2	Schaltschrank AE 1013.600 B500xH500xT300 VA 1.4301	Unit	2		
3	Solar panel 12V/30W with boom 1" and 10m cable	Unit	2		
4	Rechargeable battery 12V/24 Ah, with cable	Unit	2		
5	Measuring tube, 100 m ID 2 mm / OD 4 mm	Unit	2		
6	OTT SE 200 Shaft encoder water level sensor	Unit	2		
7	Float 80 mm dia. for Thalimedes / SE 200 (for shaft encoder)	Unit	2		
8	Counterweight 0.1 kg for Thalimedes / SE 200 (for shaft encoder)	Unit	2		
9	Beaded cable 50 m (for shaft encoder)	Unit	2		
10	Wall Mounting	Unit	2		

<b>Package No.5 – Ship from Provider to MRCS in Vientiane</b>					
Shipping Address: Mekong River Commission Secretariat 184 Fa Ngoum Road, Unit 18 Ban Sithane Neua, Sikhottabong Vientiane 01000, Lao PDR					
<i>Item N°</i>	<b>Name of goods</b>	<b>Unit of Measurement</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Total</b>
1	OTT netDL500 Data logger	Unit	14		
2	GSM antenna external 5dB, 5m cable SMA (m)	Unit	10		
3	Schaltschrank AE 1013.600 B500xH500xT300 VA 1.4301	Unit	4		
4	OTT CBS Bubble sensor for water level measurement	Unit	5		
5	Measuring tube, 100 m ID 4 mm / OD 4 mm	Unit	7		
6	OTT SE 200 Shaft encoder water level sensor	Unit	3		
7	Float 80 mm dia. for Thalimedes / SE 200 (for shaft encoder)	Unit	2		
8	Counterweight 0.1 kg for Thalimedes / SE 200 (for shaft encoder)	Unit	2		
9	Beaded cable 50 m (for shaft encoder)	Unit	2		
10	ADCON Raingauge RG Pro 02 5m cable	Unit	12		
11	Solar panel 12V/30W with boom 1" and 10m cable	Unit	2		



---

**Manufacturer's Authorization**

*[The Tenderer shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorization should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. The Tenderer shall include it in its Tender, if so indicated in the TDS.]*

Date: *[insert date (as day, month and year) of Tender Submission]*

Tender No.: *[insert number of tendering process]*

Alternative No.: *[insert identification No if this is a Tender for an alternative]*

To: *[insert complete name of Purchaser]*

**WHEREAS**

We *[insert complete name of Manufacturer]*, who are official manufacturers of *[insert type of goods manufactured]*, having factories at *[insert full address of Manufacturer's factories]*, do hereby authorize *[insert complete name of Tenderer]* to submit a Tender the purpose of which is to provide the following Goods, manufactured by us *[insert name and or brief description of the Goods]*, and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 27 of the General Conditions of Contract, with respect to the Goods offered by the above firm.

Signed: *[insert signature(s) of authorized representative(s) of the Manufacturer]*

Name: *[insert complete name(s) of authorized representative(s) of the Manufacturer]*

Title: *[insert title]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*



## Section V. Eligible Countries

# Section V. Eligibility Criteria

### Eligibility in AFD-Financed Procurement

1. Financing allocated by the AFD to a Contracting Authority has been entirely untied since 1<sup>st</sup> January 2002. To the exception of any equipment or any sector which is subject to an embargo by the United Nations, the European Union or France, all goods, works, plants, consulting services and non-consulting services are eligible for the AFD financing regardless of the country of origin of the supplier, contractor, subcontractor, consultant or subconsultant inputs or resources used in the implementation processes. The Contracting Authority means the Purchaser, the Employer, the Client, as the case may be, for the procurement of goods, works, plants, consulting services or non-consulting services.
2. Natural or legal persons (including all members of a joint venture or any of their suppliers, contractors, subcontractors, consultants or subconsultants) shall not be awarded an AFD-financed contract if, on the date of submission of an application, a bid or a proposal, or on the date of award of a contract, they:
  - 2.1) Are bankrupt or being wound up or ceasing their activities, are having their activities administered by the courts, have entered into receivership, or are in any analogous situation arising from a similar procedure;
  - 2.2) Have been:
    - a. convicted, within the past five years by a court decision, which has the force of *res judicata* in the country where the contract is implemented, of fraud, corruption or of any other offense committed during a procurement process or performance of a contract, unless they provide supporting information together with their Statement of Integrity (Form available as Appendix to the Application, Bid or Proposal Submission Form) which shows that this conviction is not relevant in the context of this contract;
    - b. subject to an administrative sanction within the past five years by the European Union or by the competent authorities of the country where they are constituted, for fraud, corruption or for any other offense committed during a procurement process or performance of a contract, unless they provide supporting information together with their Statement of Integrity (Form available as Appendix to the Application, Bid or Proposal Submission Form) which shows that this sanction is not relevant in the context of this contract;
    - c. convicted, within the past five years by a court decision, which has the force of *res judicata*, of fraud, corruption or of any other offense committed during the procurement process or performance of an AFD-financed contract;

- 2.3) Are listed for financial sanctions by the United Nations, the European Union and/or France for the purposes of fight-against-terrorist financing or threat to international peace and security;
  - 2.4) Have been subject within the past five years to a contract termination fully settled against them for significant or persistent failure to comply with their contractual obligations during contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against them;
  - 2.5) Have not fulfilled their fiscal obligations regarding payments of taxes in accordance with the legal provisions of either the country where they are constituted or the Contracting Authority's country;
  - 2.6) Are subject to an exclusion decision of the World Bank and are listed on the website <http://www.worldbank.org/debarr>, unless they provide supporting information together with their Statement of Integrity (Form available as Appendix to the Application, Bid or Proposal Submission Form) which shows that this exclusion is not relevant in the context of this contract;
  - 2.7) Have created false documents or committed misrepresentation in documentation requested by the Contracting Authority as part of the procurement process of this Contract.
3. State-owned entities may compete only if they can establish that they (i) are legally and financially autonomous, and (ii) operate under commercial law. To be eligible, a state-owned entity shall establish to the AFD's satisfaction, through all relevant documents, including its Charter and other information the AFD may request, that it: (i) is a legal entity separate from their state (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to their state, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt.

## **Section VI. AFD Policy - Corrupt and Fraudulent Practices– Social and Environmental Responsibility**

### **1. Corrupt and Fraudulent Practices**

The Contracting Authority and the suppliers, contractors, subcontractors, consultants or subconsultants must observe the highest standard of ethics during the procurement process and performance of the contract. The Contracting Authority means the Purchaser, the Employer, the Client, as the case may be, for the procurement of goods, works, plants, consulting services or non-consulting services.

By signing the Statement of Integrity the suppliers, contractors, subcontractors, consultants or subconsultants declare that (i) “it did not engage in any practice likely to influence the contract award process to the Contracting Authority’s detriment, and that it did not and will not get involved in any anti-competitive practice”, and that (ii) “the procurement process and the performance of the contract did not and shall not give rise to any act of corruption or fraud”.

Moreover, the AFD requires including in the Procurement Documents and AFD-financed contracts a provision requiring that suppliers, contractors, subcontractors, consultants or subconsultants will permit the AFD to inspect their accounts and records relating to the procurement process and performance of the AFD-financed contract, and to have them audited by auditors appointed by the AFD.

The AFD reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- (a) Reject a proposal for a contract award if it is established that during the selection process the bidder or consultant that is recommended for the award has been convicted of corruption, directly or by means of an agent, or has engaged in fraud or anti-competitive practices in view of being awarded the Contract;
- (b) Declare misprocurement when it is established that, at any time, the Contracting Authority, the suppliers, contractors, subcontractors, consultants or subconsultants their representatives have engaged in acts of corruption, fraud or anti-competitive practices during the procurement process or performance of the contract without the Contracting Authority having taken appropriate action in due time satisfactory to the AFD to remedy the situation, including by failing to inform the AFD at the time they knew of such practices.

The AFD defines, for the purposes of this provision, the terms set forth below as follows:

- (a) Corruption of a Public Officer means:
  - (i) The act of promising, offering or giving to a Public Officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such Public Officer to act or refrain from acting in his official capacity; or

- (ii) The act by which a Public Officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such Public Officer to act or refrain from acting in his official capacity.
- (b) A Public Officer shall be construed as meaning:
  - (i) Any person who holds a legislative, executive, administrative or judicial mandate (within the country of the Contracting Authority) regardless of whether that person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the person occupies;
  - (ii) Any other person who performs a public function, including for a State institution or a State-owned company, or who provides a public service;
  - (iii) Any other person defined as a Public Officer by the national laws of the country of the Contracting Authority.
- (c) Corruption of a private person means:
  - (i) The act of promising, offering or giving to any person other than a Public Officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations; or
  - (ii) The act by which any person other than a Public Officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations;
- (d) Fraud means any dishonest conduct (act or omission), whether or not it constitutes a criminal offence, deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate consent, to circumvent legal or regulatory requirements and/or to violate internal rules in order to obtain illegitimate profit.
- (e) Anti-competitive practices mean:
  - (i) Any concerted or implied practices which have as their object or effect the prevention, restriction or distortion of competition within a marketplace, especially where they (i) limit access to the marketplace or free exercise of competition by other undertakings, (ii) prevent free, competition-driven price determination by artificially causing price increases or decreases, (iii) restrict or control production, markets, investments or technical progress; or (iv) divide up market shares or sources of supply;
  - (ii) Any abuse by one undertaking or a group of undertakings which hold a dominant position on an internal market or on a substantial part of it;
  - (iii) Any practice whereby prices are quoted or set unreasonably low, the object of which is to eliminate an undertaking or any of its products from a market or to prevent it from entering the market.

## **2. Social and Environmental Responsibility**

In order to promote sustainable development, the AFD seeks to ensure that internationally recognised environmental and social standards are complied with. Candidates for AFD-financed contracts shall consequently undertake in the Statement of Integrity to:

- (i) Comply with and ensure that all their subcontractors or subconsultants comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the contract, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties;
- (ii) Implement environmental and social risks mitigation measures when specified in the environmental and social management plan (ESMP) provided by the Contracting Authority.



**Eligibility for the Provision of Goods, Works and Services in  
MRC-Financed Procurement**

Tenderers shall satisfy the eligibility requirements included in the Instructions to Tenderers

## **PART 2 – Supply Requirements**



**Section VI. Schedule of Requirements**

**Contents**

**1. List of Goods and Delivery Schedule..... 63**

**2. List of Related Services and Completion Schedule ..... 64**

**3. Technical Specifications (in separate documents attached) ..... 65**

---

### Notes for Preparing the Schedule of Requirements

The Schedule of Requirements shall be included in the Tender documents by the Purchaser, and shall cover, at a minimum, a description of the goods and services to be supplied and the delivery schedule.

The objective of the Schedule of Requirements is to provide sufficient information to enable Tenderers to prepare their Tenders efficiently and accurately, in particular, the Price Schedule, for which a form is provided in Section IV. In addition, the Schedule of Requirements, together with the Price Schedule, should serve as a basis in the event of quantity variation at the time of award of contract pursuant to ITT Clause 41.

The date or period for delivery should be carefully specified, taking into account (a) the implications of delivery terms stipulated in the Instructions to Tenderers pursuant to the *Incoterms* rules (i.e., EXW, or CIF, CIP, FOB, FCA terms—that “delivery” takes place when goods are delivered **to the carriers**), and (b) the date prescribed herein from which the Purchaser’s delivery obligations start (i.e., notice of award, contract signature, opening or confirmation of the letter of credit).

**1. List of Goods and Delivery Schedule**

Line Item N°	Description of Goods	Quantity	Physical unit	Final (Project Site) Destination as specified in TDS	Delivery Date		
					Earliest Delivery Date		Tenderer's offered Delivery date [to be provided by the Tenderers]
<i>[insert item No]</i>	<i>[insert description of Goods]</i>	<i>[insert quantity of item to be supplied]</i>	<i>[insert physical unit for the quantity]</i>	<i>[insert place of Delivery]</i>	<i>[insert the number of days following the date of effectiveness the Contract]</i>		<i>[insert the number of days following the date of effectiveness the Contract]</i>

## 2. List of Related Services and Completion Schedule

<b>Service</b>	<b>Description of Service</b>	<b>Quantity<sup>1</sup></b>	<b>Physical Unit</b>	<b>Place where Services shall be performed</b>	<b>Final Completion Date(s) of Services</b>
<i>[insert Service No]</i>	<i>[insert description of Related Services]</i>	<i>[insert quantity of items to be supplied]</i>	<i>[insert physical unit for the items]</i>	<i>[insert name of the Place]</i>	<i>[insert required Completion Date(s)]</i>

1. If applicable

### 3. Technical Specifications

#### Spare Part for HYCOS Project in 4 Countries

<i>Item N°</i>	<i>Description</i>	<i>Unit of Measurement</i>	<i>Quantity</i>
1	Data logger <ul style="list-style-type: none"> <li>- Communication interface:USB host and USB device, RS-232, display incl. Jog-shuttle, internal GSM/GPRS/3G modem</li> <li>- Sensor interfaces and outputs: SDI-12 V1.3, SDI- 12 via RS-485, Modbus RTU, Pulse/status input 2, status output, switch output, RS-232 serial input</li> <li>- Display: Graphical dot matrix (122 x 32 pixels), LED backlight, control by jog shuttle</li> </ul>	Unit	14
2	GSM antenna external 5dB, 5m cable SMA (m)	Unit	14
3	Schaltschrank AE 1013.600 B500xH500xT300 VA 1.4301	Unit	6
4	Solar panel 12V/30W with boom 1" and 10m cable	Unit	6
5	Rechargeable battery 12V/24 Ah, with cable <ul style="list-style-type: none"> <li>- Nominal Capacity (20hr): 24, Voltage 12</li> <li>- Dimension (mm) L166 W175 H125 Weight 9Kg</li> </ul>	Unit	11
6	Bubble sensor for water level measurement <ul style="list-style-type: none"> <li>- Indirect pressure measurement</li> <li>- Measuring ranges 30 m +/- 5mm</li> <li>- Resolution 1 mm</li> <li>- Measuring dynamic 1m/min</li> <li>- Interfaces: 4... 20 mA, SDI-12 via RS485</li> <li>- Power supply 9.6...30 V DC, typ. 12/24 V DC</li> <li>- Dimensions: 165x205x115 mm</li> </ul>	Unit	5
7	Measuring tube, 100 m ID 4 mm / OD 4 mm	Unit	16
8	Shaft encoder water level sensor <ul style="list-style-type: none"> <li>- Measuring range 30 m</li> </ul>	Unit	5

	<ul style="list-style-type: none"> <li>- Available interfaces: SDI-12 or 4...20mA</li> <li>- Resolution ajustable: SDI-12 0.01 or 0.001 m, 4...20mA 0.1% of measuring range</li> <li>- Accuracy SDI-12 +/- 0.003% of measuring range, 4...20mA +/- 0.1% of measuring range</li> <li>- Power supply 9...30V</li> <li>- Dimensions L82xW82xH34mm</li> </ul>		
9	Float 80 mm dia. for Thalimedes / SE 200 (for shaft encoder)	Unit	4
10	Counterweight 0.1 kg for Thalimedes / SE 200 (for shaft encoder)	Unit	4
11	Beaded cable 50 m (for shaft encoder)	Unit	4
12	ADCON Raingauge RG Pro 02 5m cable <ul style="list-style-type: none"> <li>- Resolution 0.2 mm</li> <li>- Orifice 200 cm<sup>2</sup></li> <li>- Double tipping bucket, made of stainless steel</li> <li>- Capacity 0...16mm/min</li> <li>- Dimensions: H292 x Dia 190mm</li> </ul>	Unit	12
13	Wall Mounting	Unit	11

**PART 3 – Contract (Over US\$20,000)**





**Section VII. General Conditions of Contract****Table of Clauses**

<b>Definitions .....</b>	<b>71</b>
<b>Contract Documents .....</b>	<b>72</b>
<b>Fraud and Corruption.....</b>	<b>72</b>
<b>Interpretation.....</b>	<b>73</b>
<b>Language .....</b>	<b>75</b>
<b>Joint Venture, Consortium or Association.....</b>	<b>75</b>
<b>Eligibility.....</b>	<b>75</b>
<b>Notices .....</b>	<b>75</b>
<b>Governing Law .....</b>	<b>76</b>
<b>Settlement of Disputes .....</b>	<b>76</b>
<b>Inspections and Audit by the MRC.....</b>	<b>76</b>
<b>Scope of Supply .....</b>	<b>77</b>
<b>Delivery and Documents .....</b>	<b>77</b>
<b>Supplier's Responsibilities.....</b>	<b>77</b>
<b>Contract Price .....</b>	<b>77</b>
<b>Terms of Payment.....</b>	<b>77</b>
<b>Taxes and Duties.....</b>	<b>78</b>
<b>Performance Security.....</b>	<b>78</b>
<b>Copyright.....</b>	<b>78</b>
<b>Confidential Information.....</b>	<b>79</b>

---

<b>Subcontracting .....</b>	<b>80</b>
<b>Specifications and Standards .....</b>	<b>80</b>
<b>Packing and Documents.....</b>	<b>80</b>
<b>Insurance .....</b>	<b>81</b>
<b>Transportation .....</b>	<b>81</b>
<b>Inspections and Tests .....</b>	<b>81</b>
<b>Liquidated Damages .....</b>	<b>82</b>
<b>Warranty.....</b>	<b>83</b>
<b>Patent Indemnity .....</b>	<b>83</b>
<b>Limitation of Liability.....</b>	<b>85</b>
<b>Change in Laws and Regulations .....</b>	<b>85</b>
<b>Force Majeure .....</b>	<b>85</b>
<b>Change Orders and Contract Amendments .....</b>	<b>86</b>
<b>Extensions of Time .....</b>	<b>87</b>
<b>Termination .....</b>	<b>87</b>
<b>Assignment .....</b>	<b>88</b>
<b>Export Restriction.....</b>	<b>89</b>

## Section VII. General Conditions of Contract

### Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- (a) "MRC" means the Mekong River Commission;
- (b) "Contract" means the Contract Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- (c) "Contract Documents" means the documents listed in the Contract Agreement, including any amendments thereto.
- (d) "Contract Price" means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- (e) "Day" means calendar day.
- (f) "Completion" means the fulfillment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
- (g) "GCC" means the General Conditions of Contract.
- (h) "Goods" means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.
- (i) "Purchaser" means the entity purchasing the Goods and Related Services, as specified in the **SCC**.
- (j) "Related Services" means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other such obligations of the Supplier under the Contract.
- (k) "SCC" means the Special Conditions of Contract.
- (l) "Subcontractor" means any natural person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution

---

of any part of the Related Services is subcontracted by the Supplier.

- (m) "Supplier" means the natural person, private or government entity, or a combination of the above, whose Tender to perform the Contract has been accepted by the Purchaser and is named as such in the Contract Agreement.
- (n) "The Project Site," where applicable, means the place named in the **SCC**.

**Contract Documents** 2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

**Fraud and Corruption** 3.1 If the Purchaser determines that the Supplier has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Purchaser may, after giving 14 days notice to the Supplier, terminate the Supplier's employment under the Contract and cancel the contract, and the provisions of Clause 35 shall apply as if such expulsion had been made under Sub-Clause 35.1.

- (a) For the purposes of this Sub-Clause:
  - (i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of the Purchaser. This may include the giving or promising to give of, directly or indirectly to any current or former officer or employee of the Purchaser a gratuity in any form, an employment or any other thing or service of value, as an inducement with respect to an act or decision of, or procedure followed by, the Purchaser in connection with the procurement proceedings;
  - (ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, the Purchaser to obtain financial or other benefit or to avoid an obligation;

- (iii) “collusive practices<sup>5</sup>” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of the Purchaser;
- (iv) “coercive practices<sup>6</sup>” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) “obstructive practice”
  - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Purchaser’s investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
  - (bb) acts intended to materially impede the exercise of the MRC’S inspection and audit rights.

Save in so far what is specified in this clause, the Purchaser will sanction a Supplier, including declaring the Supplier ineligible, either indefinitely or for a stated period of time, to be awarded a MRC-financed contract if it at any time determines that the service provider has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, a MRC-financed contract

- ;3.2 Should any employee of the Supplier be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the purchase of the Goods, then that employee shall be removed.

#### **Interpretation**

- 4.1 If the context so requires it, singular means plural and vice versa.

---

<sup>5</sup> “Parties” refers to participants in the procurement or selection process (including officials of the Purchaser) attempting to establish contract prices at artificial, non competitive levels.

<sup>6</sup> “Party” refers to a participant in the selection process or contract execution.

---

#### 4.2 Incoterms

- (a) Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.
- (b) The terms EXW, CIP, FCA, CFR and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms specified in the **SCC** and published by the International Chamber of Commerce in Paris, France.

#### 4.3 Entire Agreement

The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.

#### 4.4 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

#### 4.5 Nonwaiver

- (a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

#### 4.6 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

**Language**

- 5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in the language specified in the **SCC**. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern.
- 5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Supplier.

**Joint Venture,  
Consortium or  
Association**

- 6.1 If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.

**Eligibility**

- 7.1 The Supplier and its Subcontractors shall have the nationality of the Member States or be an international firm. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, licensed or registered, and operates in conformity with the provisions of the laws of that country.
- 7.2 All Goods and Related Services to be supplied under the Contract and financed by the MRC shall have their origin in the Member States or any other country as the case may be. For the purpose of this Clause, origin means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

**Notices**

- 8.1 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the **SCC**.

- 
- The term “in writing” means communicated in written form with proof of receipt.
- 8.2 A notice shall be effective when delivered or on the notice’s effective date, whichever is later.
- Governing Law** 9.1 The Contract shall be governed by and interpreted in accordance with the laws of the Country where the Goods are to be supplied, unless otherwise specified in the **SCC**.
- Settlement of Disputes** 10.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 10.2 If, after twenty-eight (28) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Purchaser or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure **specified in the SCC**.
- 10.3 Notwithstanding any reference to arbitration herein,
- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
  - (b) the Purchaser shall pay the Supplier any monies due the Supplier.
- Inspections and Audit by the MRC** 11.1 The Supplier shall permit the MRC and/or persons appointed by the MRC to inspect the Supplier’s offices and/or the accounts and records of the Supplier and its sub-contractors relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the MRC if required. The Supplier’s attention is drawn to Clause 3, which provides, inter alia, that acts intended to materially impede the exercise of the



MRC's inspection and audit rights provided for under Sub-Clause 11.1 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility under the Procurement Policies of MRC).

<b>Scope of Supply</b>	12.1 The Goods and Related Services to be supplied shall be as specified in the Schedule of Requirements.
<b>Delivery and Documents</b>	13.1 Subject to GCC Sub-Clause 33.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of shipping and other documents to be furnished by the Supplier are specified in the <b>SCC</b> .
<b>Supplier's Responsibilities</b>	14.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 12, and the Delivery and Completion Schedule, as per GCC Clause 13.
<b>Contract Price</b>	15.1 Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its Tender, with the exception of any price adjustments authorized in the <b>SCC</b> .
<b>Terms of Payment</b>	16.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the <b>SCC</b> . 16.2 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 13 and upon fulfillment of all other obligations stipulated in the Contract. 16.3 Payments shall be made promptly by the Purchaser, but in no case later than sixty (60) days after submission of an invoice or request for payment by the Supplier, and after the Purchaser has accepted it. 16.4 The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the Tender price is expressed. 16.5 In the event that the Purchaser fails to pay the Supplier any payment by its due date or within the period set forth in the <b>SCC</b> , the Purchaser shall pay to the Supplier interest on the amount of such delayed payment at the rate shown in the <b>SCC</b> ,

---

for the period of delay until payment has been made in full, whether before or after judgment or arbitrage award.

**Taxes and Duties**

- 17.1 For goods manufactured outside the Country where the Goods are to be supplied, to be imported, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Country where the Goods are to be supplied. Nevertheless, the supplier is exempted from paying all taxes, stamp duties, license fees, and other such levies imposed within the Country where the Goods are to be supplied.
- 17.2 For goods Manufactured within the Country where the Goods are to be supplied and for goods which are already imported outside the Country where the Goods are to be supplied, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.

**Performance Security**

- 18.1 If required as specified in the SCC, the Supplier shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the **SCC**.
- 18.2 The proceeds of the Performance Security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 18.3 As specified in the SCC, the Performance Security, if required, shall be denominated in the currency (ies) of the Contract or in a freely convertible currency acceptable to the Purchaser; and shall be in one of the format stipulated by the Purchaser in the **SCC**, or in another format acceptable to the Purchaser.
- 18.4 The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) days following the date of Completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the **SCC**.

**Copyright**

- 19.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if

they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party

**Confidential  
Information**

- 20.1 The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 20.
- 20.2 The Purchaser shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Purchaser for any purpose other than the performance of the Contract.
- 20.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:
- (a) now or hereafter enters the public domain through no fault of that party;
  - (b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
  - (c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

- 
- 20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.
- Subcontracting**
- 21.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the Tender. Such notification, in the original Tender or later shall not relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.
- 21.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.
- Specifications and Standards**
- 22.1 Technical Specifications and Drawings
- (a) The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Section VI, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.
- (b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.
- (c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GCC Clause 33.
- Packing and Documents**
- 23.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration,

where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

23.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the **SCC**, and in any other instructions ordered by the Purchaser.

**Insurance**

24.1 Unless otherwise specified in the **SCC**, the Goods supplied under the Contract shall be fully insured—in a freely convertible currency from institutions located in a member state—against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the **SCC**.

**Transportation**

25.1 Unless otherwise specified in the **SCC**, responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.

**Inspections and Tests**

26.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as are specified in the **SCC**.

26.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in the Country where the Goods are to be supplied as specified in the **SCC**. Subject to GCC Sub-Clause 26.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.

26.3 The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 26.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

26.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain

---

from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.

- 26.5 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 26.6 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.
- 26.7 The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-Clause 26.4.
- 26.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC Sub-Clause 26.6, shall release the Supplier from any warranties or other obligations under the Contract.
- Liquidated Damages** 27.1 Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the Goods by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the **SCC** of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those **SCC**. Once the

maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause 35.

**Warranty**

- 28.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 28.2 Subject to GCC Sub-Clause 22.1(b), the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 28.3 Unless otherwise specified in the **SCC**, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the **SCC**, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.
- 28.4 The Purchaser shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.
- 28.5 Upon receipt of such notice, the Supplier shall, within the period specified in the **SCC**, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.
- 28.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the **SCC**, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

**Patent Indemnity**

- 29.1 The Supplier shall, subject to the Purchaser's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged

---

infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- (a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and
- (b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

- 29.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Sub-Clause 29.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 29.3 If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.
- 29.4 The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 29.5 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right



registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

**Limitation of Liability**

- 30.1 Except in cases of criminal negligence or willful misconduct,
- (a) the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser and
  - (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the supplier to indemnify the purchaser with respect to patent infringement

**Change in Laws and Regulations**

- 31.1 Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Tender submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Country where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.

**Force Majeure**

- 32.1 The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 32.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not

---

foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

32.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

**Change Orders and  
Contract  
Amendments**

33.1 The Purchaser may at any time order the Supplier through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:

- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
- (b) the method of shipment or packing;
- (c) the place of delivery; and
- (d) the Related Services to be provided by the Supplier.

33.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's change order.

33.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

33.4 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

**Extensions of Time**

34.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 13, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

34.2 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

**Termination**

35.1 Termination for Default

(a) The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:

(i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 34;

(ii) if the Supplier fails to perform any other obligation under the Contract; or

(iii) if the Supplier, in the judgment of the Purchaser has engaged in fraud and corruption, as defined in GCC Clause 3, in competing for or in executing the Contract.

(b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related

---

Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

35.2 Termination for Insolvency.

- (a) The Purchaser may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser

35.3 Termination for Convenience.

- (a) The Purchaser, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
  - (i) to have any portion completed and delivered at the Contract terms and prices; and/or
  - (ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

**Assignment**

- 36.1 Neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

**Export Restriction**

37.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Purchaser, to the country where the Goods are to be supplied, or to the use of the products/goods, systems or services to be supplied, which arise from trade regulations from a country supplying those products/goods, systems or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided, however, that the Supplier can demonstrate to the satisfaction of the Purchaser and of the Bank that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for the Purchaser's convenience pursuant to Sub-Clause 35.3.



### Section VIII. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

<b>GCC 1.1(j)</b>	The Country where the Goods are to be supplied is: <i>Cambodia, Lao PDR, Thailand and Vietnam</i>
<b>GCC 1.1(k)</b>	The Purchaser is: <i>The Mekong River Commission</i>
<b>GCC 1.1 (q)</b>	The Project Sites/Final Destinations are: <ul style="list-style-type: none"> <li>- Ho Chi Minh City, Vietnam</li> <li>- Vientiane Capital, Lao PDR</li> <li>- Phnom Penh, Cambodia</li> <li>- Bangkok, Thailand</li> </ul> (see attached distribution)
<b>GCC 4.2 (a)</b>	<ul style="list-style-type: none"> <li>- The meaning of the trade terms shall be as prescribed by Incoterms. If the meaning of any trade term and the rights and obligations of the parties there under shall not be as prescribed by Incoterms, they shall be as prescribed by: <b>DDU</b></li> <li>- Ho Chi Minh City, Vietnam</li> <li>- Vientiane Capital, Lao PDR</li> <li>- Phnom Penh, Cambodia</li> <li>- Bangkok, Thailand</li> </ul> (see attached distribution)
<b>GCC 4.2 (b)</b>	The version edition of Incoterms shall be: <i>INCOTERMS 2000</i>
<b>GCC 5.1</b>	The language shall be: <i>English</i>

<b>GCC 8.1</b>	<p>For <b>notices</b>, the Purchaser's address shall be:</p> <p>Mekong River Commission Office of the Secretariat in Vientiane Procurement Unit 184 Fa Ngoum Road, Unit 18 Ban Sithaneua, Sikhottabong Vientiane, Lao PDR Telephone: (+856-21) 263 263 Facsimile number: (+856-21) 263 264 Electronic mail address: <a href="mailto:oudorn@mrcmekong.org">oudorn@mrcmekong.org</a></p>
<b>GCC 9.1</b>	The governing law shall be the law of: <i>Cambodia</i>
<b>GCC 10.2</b>	<p>The rules of procedure for arbitration proceedings pursuant to GCC Clause 10.2 shall be as follows:</p> <p style="padding-left: 40px;">GCC 10.2 (a)—Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.</p> <p style="padding-left: 40px;">In the case of a dispute between the Purchaser and a Supplier who is a national of the Country where the Goods are to be supplied, the dispute shall be referred to adjudication or arbitration in accordance with the laws of the Country where the Goods are to be supplied.</p>
<b>GCC 13.1</b>	<p>Details of Shipping and other Documents to be furnished by the Supplier are <i>as specified in the Part 2, Section 6.3 Technical Specifications</i>.</p> <p style="padding-left: 40px;">The above documents shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.</p>
<b>GCC 15.1</b>	The prices charged for the Goods supplied and the related Services performed <i>shall not</i> be adjustable or negotiable.
<b>GCC 16.1</b>	<p>The method and conditions of payment to be made to the Supplier under this contract shall be as follows:</p> <p style="padding-left: 40px;">Payments shall be made in USD (US dollars) with the following milestones:</p> <p style="padding-left: 40px;">(i) <b>Advance Payment:</b> Twenty (20) percent of the Contract Price shall be paid within thirty (30) days of signing of the Contract,</p>



	<p>and upon submission of an invoice and a bank guarantee for the equivalent amount valid at least 60 days after all the Goods are expected to be delivered and in the form provided in the Tender documents. The guarantee will be released within 30 days of the issue of the provisional acceptance certificate stated under payment milestone (iv)</p> <p>(ii) <b>Upon completion of checking of the:</b> Eighty (80) percent of the Contract Price shall be paid within thirty (30) days of receipt of an invoice supported by the Final Acceptance certificate issued by the Purchaser.</p>
<b>GCC 16.5</b>	<p>The payment-delay period after which the Purchaser shall pay interest to the supplier shall be <i>90</i> days.</p> <p>The interest rate that shall be applied is 0.1% of the due amount per day.</p>
<b>GCC 18.1</b>	<p>A Performance Security <i>shall be required</i></p> <p><i>The amount of the Performance Security shall be: 10% of the Contract Price and shall remain valid for a period of at least 60 days after the expected delivery date. The Purchaser reserves the right to request the Supplier to extend the validity period of the Performance Security to meet this minimum timeframe if it sees a potential delay in the project implementation</i></p>
<b>GCC 18.3</b>	<p>If required, the Performance Security shall be in the form of : <i>a Bank Guarantee</i></p> <p>If required, the Performance security shall be denominated in <i>the currencies of payment of the Contract, in accordance with their portions of the Contract Price</i></p>
<b>GCC 18.4</b>	<p>Discharge of the Performance Security shall take place: <i>30 days after the date of issuing the Final Acceptance Certificate.</i></p>
<b>GCC 23.2</b>	<p>The packing, marking and documentation within and outside the packages shall be: <i>specified the final destination.</i></p>

<b>GCC 24.1</b>	The condition will be replaced as follows:- “The Goods supplied under the Contract shall be fully insured in a freely convertible currency from institutions located in a Member State or a foreign institution in correspondence with an institution located in a Member State against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms”.
<b>GCC 25.1</b>	<i>The Supplier is required under the Contract to transport the Goods to a specified place of final destination within the Country where the Goods are to be supplied, defined as the Project Site, transport to such place of destination in the Country where the Goods are to be supplied, including insurance and storage, as shall be specified in the Contract, shall be arranged by the Supplier, and related costs shall be included in the Contract Price</i>
<b>GCC 26.1</b>	The inspections and tests shall be: <ul style="list-style-type: none"><li>- The recipient line agencies and the MRC</li><li>- Ho Chi Minh City, Vietnam</li><li>- Vientiane Capital, Lao PDR</li><li>- Phnom Penh, Cambodia</li><li>- Bangkok, Thailand</li></ul>
<b>GCC 26.2</b>	The Inspections and tests shall be conducted at: <i>delivery places as per the requirements stated in the Technical Specifications</i>
<b>GCC 27.1</b>	The liquidated damage shall be: 2% of the total contract price per week
<b>GCC 27.1</b>	The maximum amount of liquidated damages shall be: 10 % of the total contract price.
<b>GCC 28.3</b>	The period of validity of the Warranty shall be: at least 365 days For purposes of the Warranty, the place(s) of final destination(s) shall be: <ul style="list-style-type: none"><li>- Vietnam, Cambodia, Lao PDR and Thailand</li></ul>
<b>OC 28.5</b>	The period for repair or replacement of defective goods or parts thereof, at no cost to the Purchaser shall be: 30 days

**Section IX. Contract Forms**

**Table of Forms**

**1. Contract Agreement..... 96**

**2. Performance Security..... Error! Bookmark not defined.**

**3. Bank Guarantee for Advance Payment ..... 98**

## 1. Contract Agreement

*[The successful Tenderer shall fill in this form in accordance with the instructions indicated]*

THIS CONTRACT AGREEMENT is made

the *[ insert: **number** ]* day of *[ insert: **month** ]*, *[ insert: **year** ]*.

BETWEEN

- (1) *[insert complete name of Purchaser ]*, a *[ insert description of type of legal entity]* and having its principal place of business at *[ insert address of Purchaser ]* (hereinafter called “the Purchaser”), and
- (2) *[ insert name of Supplier ]*, a corporation incorporated under the laws of *[ insert: country of Supplier ]* and having its principal place of business at *[ insert: address of Supplier ]* (hereinafter called “the Supplier”).

WHEREAS the Purchaser invited Tenders for certain Goods and ancillary services, viz., *[insert brief description of Goods and Services]* and has accepted a Tender by the Supplier for the supply of those Goods and Services in the sum of *[insert Contract Price in words and figures, expressed in the Contract currency (ies) ]* (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall constitute the Contract between the Purchaser and the Supplier, and each shall be read and construed as an integral part of the Contract:
  - (a) This Contract Agreement
  - (b) Special Conditions of Contract
  - (c) General Conditions of Contract
  - (d) Technical Requirements (including Schedule of Requirements and Technical Specifications)
  - (e) The Supplier’s Tender and original Price Schedules
  - (f) The Purchaser’s Notification of Award
  - (g) *[Add here any other document(s)]*

3. This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.
4. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Purchaser to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
5. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of *[insert the name of the Contract governing law country]* on the day, month and year indicated above.

For and on behalf of the Purchaser

Signed: *[insert signature]*  
in the capacity of *[ insert title or other appropriate designation ]*  
in the presence of *[insert identification of official witness]*

For and on behalf of the Supplier

Signed: *[insert signature of authorized representative(s) of the Supplier]*  
in the capacity of *[ insert title or other appropriate designation ]*  
in the presence of *[ insert identification of official witness]*

### 3. Bank Guarantee for Advance Payment

*[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated.]*

Date: *[insert date (as day, month, and year) of Tender Submission]*  
Tender No. and title: *[insert number and title of Tender process]*

*[bank's letterhead]*

**Beneficiary:** *[insert legal name and address of Purchaser]*

**ADVANCE PAYMENT GUARANTEE No.:** *[insert Advance Payment Guarantee no.]*

We, *[insert legal name and address of bank]*, have been informed that *[insert complete name and address of Supplier]* (hereinafter called "the Supplier") has entered into Contract No. *[insert number]* dated *[insert date of Agreement]* with you, for the supply of *[insert types of Goods to be delivered]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance is to be made against an advance payment guarantee.

At the request of the Supplier, we hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount(s)<sup>7</sup> in figures and words]* upon receipt by us of your first demand in writing declaring that the Supplier is in breach of its obligation under the Contract because the Supplier used the advance payment for purposes other than toward delivery of the Goods .

It is a condition for any claim and payment under this Guarantee to be made that the advance payment referred to above must have been received by the Supplier on its account *[insert number and domicile of the account]*

This Guarantee shall remain valid and in full effect from the date of the advance payment received by the Supplier under the Contract until *[insert date<sup>8</sup>]*.

---

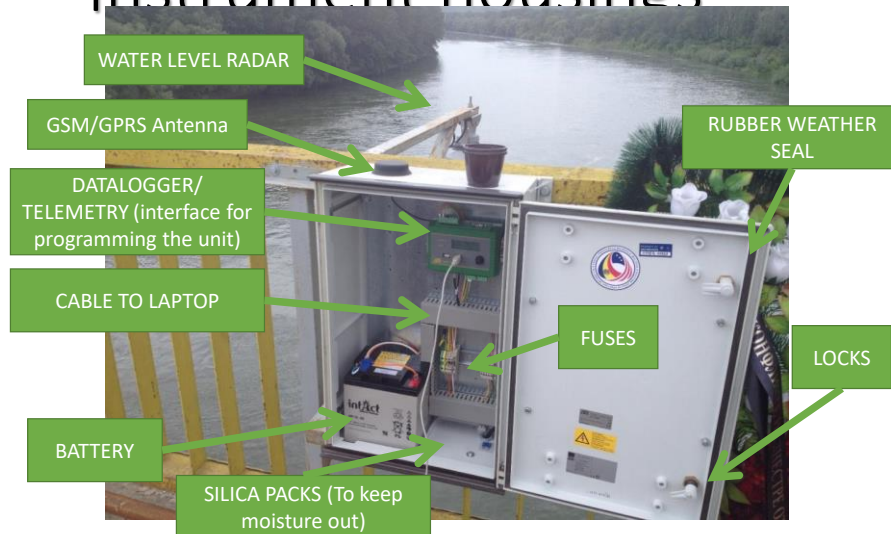
<sup>7</sup> *The bank shall insert the amount(s) specified in the SCC and denominated, as specified in the SCC, either in the currency (ies) of the Contract or a freely convertible currency acceptable to the Purchaser.*

<sup>8</sup> *Insert the Delivery date stipulated in the Contract Delivery Schedule. The Purchaser should note that in the event of an extension of the time to perform the Contract, the Purchaser would need to request an extension of this Guarantee from the bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Purchaser might consider adding the following text to the Form, at the end of the penultimate paragraph: "We agree to a one-time extension of this Guarantee for a period not to exceed [six months][one year], in response to the Purchaser's written request for such extension, such request to be presented to us before the expiry of the Guarantee."*

This Guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

*[signature(s) of authorized representative(s) of the bank]*

## Instrument housings



### HYCOS shelter

