

**SPECIFIC PROCUREMENT NOTICE (SPN)**

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| Country | Kosovo |
| Project Name | Threshold Program |
| Procurement Title | Procurement of Information Systems (Design, Supply and Installation) ICT Systems for Public Access to Judicial Information |
| Procurement Ref. Number | BD/CB/2021/014 |
| Type of Procurement | Goods and Services |
| Employer | Millennium Foundation of Kosovo (MFK) |
| Publication Date | 09 September 2021 |
| Amended | 10 September 2021 |
| Submission Deadline | 14 October 2021 at 14:00 pm (Kosovo Time). |

The Millennium Foundation of Kosovo has received financing from the Millennium Challenge Corporation toward the cost of the Transparent and Accountable Governance Project: Government decision-making is often opaque, leading to distrust by the private sector and civil society, and high perceptions of corruption. Kosovo’s judiciary is one the country’s least trusted institutions. This project supports also the implementation of a case management information system to make judicial information publicly available, and intends to apply part of the proceeds toward payments under the contract for Procurement of Information Systems (Design, Supply and Installation) ICT Systems for Public Access to Judicial Information.

MCC’s funding is appropriated by the U.S. Congress and obligated to the compact up-front, with no incremental or partial funding. So, when a contract is signed with an MFK, money is already available to the MFK and, for most contracts, invoices are paid directly to Contractors/Consultants/Suppliers by the US Treasury.

MFK now invites bids from eligible bidders for The Public Access to Judicial Information (PAJI) activity, implemented by the MFK, aims to support the Kosovo Judicial Council (KJC) by building upon assistance provided by USAID and Norway to implement a Case Management Information System (CMIS) and using that system to improve the administration of justice in Kosovo, transparency of the rule of law institutions, as well as but also support the Kosovo Judicial Council, Kosovo Prosecutorial Council and the Ministry of Justice (MoJ) in improved communication and outreach, through the following sub-activities:

* Creating an Online Data Platform for the public to access statistical data generated by the case management information system, as well as enabling disaggregation and analysis of data by meaningful categories, such as gender, region, income level or ethnicity;
* Creating an online Case Tracking Mechanism for authorized public users to access their individual case information, case status and procedural actions within the judicial system.
* Supporting the improvement of judicial decisions and their publication;
* Supporting improvement of communication and outreach by the judiciary and other rule of law institutions to establish and maintain a constructive dialogue over judicial performance.

Bidding will be conducted through the Competitive Bidding procedures as specified in the MCC Program Procurement Guidelines (PPG), and is open to all eligible bidders or consultants as defined in the PPG.

A complete set of bidding documents including any clarifications, notices and/or addendums may be obtained by interested eligible consultants through the following website (Eventual clarifications or any changes to the bidding documents shall be published at the latest 5 days before the submission deadline on the link provided below): <https://millenniumkosovo.org/procurment/procurement-of-information-systems-design-supply-and-installation-ict-systems-for-public-access-to-judicial-information-bd-cb-2021-014>

Please note that only electronic applications submitted via the File Request Link (dropbox link) shall be accepted. Submissions by hard copy or by email are not acceptable and shall culminate in proposal rejection. The File link for submission of proposals is included in the Bidding document.

Bids shall be submitted ONLY to the file request link provided in Bidding documents no later than 14 October 2021 at 14:00 pm (Kosovo Time). Only electronic submission will be permitted. Late applications will be rejected.

Bids will be publicly opened in the presence of the bidders’ designated representatives and anyone who chooses to attend at the link: <https://us02web.zoom.us/j/87845396817> on 14 October 2021 at 14:30 pm (Kosovo Time). All bids will be accompanied by a Bid Security as of US$ 30,000.00 (thirty thousand United States Dollar) or Purchaser’s local currency equivalent.

Contact Information:

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| The address referred to above is: | Str. “Migjeni” no. 21 (ex-Bank of Ljubljana, floor IX), Postal Code:10000 Prishtina, Kosovo |
| Attn: | Arton Çitaku  MFK Procurement Manager  Str. “Migjeni” no. 21 (ex-Bank of Ljubljana, floor IX), Postal Code:10000 Prishtina, Kosovo |
| Tel: | 00 383 38 752 110 |
| E-mail: | [procurement@millenniumkosovo.org](mailto:procurement@millenniumkosovo.org) |
| Website: | <https://millenniumkosovo.org> |

**BIDDING DOCUMENT**

**Issued on: 09 September 2021**

**[Purchaser]**

**On Behalf of:**

**The Government of Kosovo**

**Millennium Foundation Kosovo (MFK)**

**Program**

**Funded by**

**THE UNITED STATES OF AMERICA**

**Through**

**THE MILLENNIUM CHALLENGE CORPORATION**

**for**

**Procurement of Information Systems**

**(Design, Supply and Installation)**

**ICT Systems for Public Access to Judicial Information**

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**BD/CB/2021/014**

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# PART 1. BIDDING PROCEDURES

## Section I. Instructions to Bidders (“ITB”)

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**A. General**

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| **Definitions** | *In Part 1 (Bidding Procedures) of this Bidding Document, the following words and expressions shall have the meanings stated below. These definitions shall not apply to any words or expressions in the sections that make up Part 3 (Contract Documents) of this Bidding Document, in which such words and expressions shall have the meanings stated in GCC Sub-Clauses 1.1 unless otherwise specified.*   1. “Addendum” or “Addenda” means a modification to this Bidding Document issued by the Purchaser. 2. “Associate” means any entity that forms the Bidder or Supplier. A Subcontractor is not an Associate. 3. “Association” or “Joint Venture” means an association of entities that forms the Bidder or Supplier, with or without a legal status distinct from that of its members. 4. “BDS” or “Bid Data Sheet” means the Bid Data Sheet in Section II of this Bidding Document used to reflect specific requirements and/or conditions. 5. “Bid” means a Bid for the provision of the supply and installation of IT Systems submitted by a Bidder in response to this Bidding Document. 6. “Bid Security” means the security a Bidder may be required to furnish as part of its Bid. 7. “Bidder” means any eligible entity or person, including any associate of such eligible entity or person that submits a Bid. 8. “Bidding Document” means this document, including any subsequent amendments prepared by the Purchaser for the selection of the Supplier. 9. “Compact” means the Millennium Challenge Compact **identified in the BDS.** 10. “Compact Development Funding Agreement” or “CDF Agreement” means the Compact Development Funding Agreement **identified in the BDS.** 11. “Competitive Bidding” or “CB” means the competitive bidding procedures set out in the *MCC Program Procurement Guidelines.* 12. “Contract” means the contract proposed to be entered into between the Purchaser and the Supplier, including all of the annexes, and all documents incorporated by reference therein, a form of which is included in Part 3 of this Bidding Document. The words ‘Agreement’ and ‘Contract’ are used interchangeably. 13. “Contract Agreement” means the completed contract to be entered into between the Purchaser and the Supplier substantially in the form of the agreement provided in Section VII. 14. “Contract Price” means the price to be paid for the services set forth in the Contract Agreement. 15. “CPPRS” or “Contractor Past Performance Reporting System” means MCC’s Contractor Past Performance Reporting System maintained and utilized in accordance with Part 2 of *MCC Program Procurement Guidelines.* 16. “days” refers to calendar days. 17. “Force Account” has the definition given the term in the *MCC Program Procurement Guidelines*. 18. “Final Destination” means the place(s) where the Goods are to be delivered, and/or installed, as prescribed in ITB Sub-Clause 15.7. 19. “General Conditions of Contract” or “GCC” means the Conditions of Contract. 20. “Goods” means all of the commodities, software, hardware, communications, equipment raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract. 21. “Government” means the Government **identified in the BDS**. 22. “Government-Owned Enterprise” or “GOE” has the definition given the term in the *MCC Program Procurement Guidelines*. 23. “Information Systems” or “IS” means all the required information technologies, including all information processing and communications-related hardware, software, supplies, and consumable items that the Supplier is required to supply and install under the Contract, plus all associated documentation, and all other materials and goods to be supplied, installed, integrated, and made operational (collectively called “the Goods” in some clauses of the ITB); and the related software development, transportation, insurance, installation, customization, integration, commissioning, training, technical support, maintenance, repair, and other services necessary for proper operation of the Information System to be provided by the selected Bidder and as specified in the Contract. 24. “IFC Performance Standards” means the International Finance Corporation’s Performance Standards on Environmental and Social Sustainability. 25. “Implementing Entity” means the Government affiliate **identified in the BDS** engaged by the MCA Entity MFK for the purposes of Threshold Program Grant Agreement implementation. 26. “Instructions to Bidders” or “ITB” means Section I of this Bidding Document including any amendments, which provides Bidders with all information needed to prepare their Bids. 27. “in writing” means communicated in written form (e.g., by paper, mail, facsimile, e-mail or other electronic means). 28. “Key Personnel” means the Key Personnel specified in Form TECH-2 Key Personnel Capabilities. 29. “Millennium Challenge Account Entity” or “MCA Entity” means the accountable entity designated by the Government to implement a the Compact or Threshold Program, **identified in the BDS**. 30. “Millennium Challenge Corporation” or “MCC” means a United States Government corporation, acting on behalf of the United States Government. 31. “*MCC Counter-Trafficking in Persons Policy*” means the policy identified in ITB Clause 4. 32. “MCC Funding” means the funding MCC has made available to the Government pursuant to the terms of the Threshold Program Grant Agreement. 33. “*MCC Gender Policy*” means the *MCC Gender Policy* and its amendments updated from time to time on the MCC website at <https://www.mcc.gov/> 34. “*MCC Program Procurement Guidelines*” or “MCC PPG” means the *MCC Program Procurement Guidelines* and its amendments posted from time to time on the MCC website at [www.mcc.gov/ppg](http://www.mcc.gov/ppg) 35. “Pre-Bid Conference” means the pre-Bid conference specified in BDS ITB Sub-Clause 8.2, if any. 36. “Performance Security” means the security the Supplier must furnish in accordance with GCC Sub-Clause 13.3. 37. “Project Manager” means the person appointed by the Purchaser to act as the Project Manager for the purposes of the Contract. 38. “Purchaser” means the entity **identified in the BDS** and the party with which the Supplier signs the Contract for the supply of Goods and Related Services. 39. “Related Services” means the services incidental to the supply of the Goods such as, insurance, installation, training and initial maintenance and other similar obligations of the Supplier under the Contract. 40. “SCC” means the Special Conditions of Contract. 41. “Schedule of Requirements” means the documents included in Part 2 of this Bidding Document that explain the technical specifications and other requirements related to the Goods and Related Services. 42. Sexual harassment is defined in the *Guidance Note to MCAs on Sexual Harassment* available at www.mcc.gov. 43. “Site” means the place or places identified in the Technical Specifications where the System is to be installed. 44. “Subcontractor” means any entity to whom a Bidder intends to subcontract any part of the Goods and Related Services. 45. “Supplier” means the entity(ies), which is responsible for providing the Goods and Related Services to the Purchaser under the Contract. 46. “Taxes” has the meaning given to term in the Compact or CDF Agreement or Threshold Program Grant Agreement, as applicable. 47. “Threshold Program Grant Agreement” means the Threshold Program Grant Agreement **identified in the BDS**. 48. “Trafficking in Persons” or “TIP” has the meaning given to the term in the *MCC Program Procurement Guidelines*. |
| 1. **Scope of Bid** | * 1. The Purchaser has issued this Bidding Document for the procurement of supply and installation of the Information Systems, as specified in Section V. Purchaser’s Requirements. The winner will be determined according to Competitive Bidding procedures as set out in the *MCC Program Procurement Guidelines* and in accordance with Section II. Instructions to Bidders – Bid Data Sheet and Section III. Qualification and Evaluation Criteria. The name and identification number of the Contract, and number are **specified in the BDS.**   2. Throughout this Bidding Document, if the context so requires, words indicating the singular also include the plural and vice versa, and the feminine means the masculine and vice versa.   3. The Purchaser will timely provide, at no cost to the Supplier, the inputs and facilities **specified in the BDS**, assist the firm in obtaining licenses and permits needed to carry out the Services, and make available relevant project data and reports. No other inputs will be provided. Therefore, a Bidder shall plan to cover all incurred expenses that may be foreseen to initiate and sustain the Services in a timely manner, including but not limited to office space, communication, insurance, office equipment, travel, etc. not otherwise **specified in the BDS**. |
| 1. **Source of Funds** | * 1. The United States of America, acting through MCC, and the Government have entered into the Threshold Program Grant Agreement. The Government, acting through the MFK, intends to apply a portion of the proceeds of MCC Funding to eligible payments under the Contract. Any payments made under the Contract with MCC Funding will be subject, in all respects, to the terms and conditions of the Threshold Program Grant Agreement and related documents, including restrictions on the use and distribution of MCC Funding. No party other than the Government and the Purchaser shall derive any rights from the Threshold Program Grant Agreement or have any claim to the proceeds of MCC Funding. The Threshold Program Grant Agreement and related documents can be found on the MCC website ([www.mcc.gov](http://www.mcc.gov)) or the website of the Purchaser. |
| 1. **Fraud and Corruption** | * 1. MCC requires that all beneficiaries of MCC Funding, including the MFK and any applicants, Bidders, Suppliers, contractors, Subcontractors, consultants, and sub-consultants under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts. *MCC’s Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations* (MCC’s AFC Policy) is applicable to all procurements and contracts involving MCC Funding and can be found on the MCC website. This Policy requires that companies and entities receiving MCC funds acknowledge notice of MCC’s AFC Policy and certify to the MFK that they have acceptable commitments and procedures in place to address the potential for fraudulent and corrupt practices.  1. For the purposes of these provisions, the terms set forth below are defined as follows, and sometimes referred to collectively in this document as “Fraud and Corruption”:    1. ***“coercion”*** means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party, to improperly influence the actions of a party in connection with the implementation of any contract supported, in whole or in part, with MCC Funding, including such actions taken in connection with a procurement process or the execution of a contract;    2. ***“collusion”*** means a tacit or explicit agreement between two or more parties to engage in coercion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practice, including any such agreement designed to fix, stabilize, or manipulate prices or to otherwise deprive the MFK of the benefits of free and open competition;    3. ***“corruption”*** means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of a public official, MFK staff, MCC staff, consultants, or employees of other entities engaged in work supported, in whole or in part, with MCC Funding, including such work involving taking or reviewing selection decisions, otherwise advancing the selection process or contract execution, or the making of any payment to any third party in connection with or in furtherance of a contract.;    4. ***“fraud”*** means any act or omission, including any misrepresentation, that knowingly or recklessly misleads or attempts to mislead a party in order to obtain a financial or other benefit in connection with the implementation of any contract supported, in whole or in part, with MCC Funding, including any act or omission designed to influence (or attempt to influence) improperly a selection process or the execution of a contract, or to avoid (or attempt to avoid) an obligation;    5. ***“obstruction of investigation into allegations of fraud or corruption”***means any act taken in connection with the implementation of any contract supported, in whole or in part, with MCC Funding: (a) that results in the deliberate destroying, falsifying, altering or concealing of evidence or making false statement(s) to investigators or any official in order to impede an investigation into allegations of coercion, collusion, corruption, fraud, or a prohibited practice; or (b) that threatens, harasses, or intimidates any party to prevent him or her from either disclosing his or her knowledge of matters relevant to an investigation or from pursuing the investigation; or (c) that is intended to impede the conduct of an inspection and/or the exercise of audit rights of MCC and/or the Office of the Inspector General (OIG) responsible for MCC provided under a Compact, a Threshold Program agreement, or related agreements“ ;    6. ***“Prohibited practice”*** means any action that violates Section E (Compliance with Anti-Corruption Legislation), Section F (Compliance with Anti-Money Laundering Legislation), and Section G (Compliance with Terrorist Financing Legislation and Other Restrictions) of the Annex of Additional Provisions that will be made a part of MCC-funded contracts. 2. The Purchaser will reject a Bid (and MCC will deny approval of a proposed Contract award) if it determines that the Bidder recommended for award has, directly or through an agent, engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices in competing for the Contract. 3. MCC and the MFK have the right to sanction a Bidder, including declaring the Bidder ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if at any time either MCC or the MFK determines that the Bidder or Supplier has, directly or through an agent, engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices in competing for, or in executing, such a contract. 4. MCC and the MFK have the right to require that a provision be included in the Contract requiring the selected Supplier to permit the MFK, MCC, or any designee of MCC, to inspect the Supplier’s or any Subcontractor’s accounts, records and other documents relating to the preparation and submission of the Bid or performance of the Contract and to have such accounts, records and other documents audited by auditors appointed by MCC or by the MFK with the approval of MCC. 5. In addition, MCC has the right to cancel any portion of the MCC Funding allocated to the Contract if it determines at any time that any representative of a beneficiary of MCC Funding engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices during the selection process or the execution of any MCC-funded Contract, without the MFK having taken timely and appropriate action satisfactory to MCC to remedy the situation. |
| 1. **Environmental and Social Requirements**   **Trafficking in Persons** | * 1. MCC has a zero-tolerance policy with regard to Trafficking in Persons. Trafficking in Persons (“TIP”) is the crime of using force, fraud and/or coercion to exploit another person. Trafficking in Persons can take the form of domestic servitude, peonage, forced labor, sexual servitude, bonded labor, and the use of child soldiers. This practice deprives people of their human rights and freedoms, increases global health risks, fuels growing networks of organized crime, and can sustain levels of poverty and impede development. MCC is committed to ensuring appropriate steps are taken to prevent, mitigate, and monitor TIP risks in the projects it funds.   2. Section V. Purchaser's Requirements and the Additional Provisions (Annex A of the Contract) of this Bidding Document may set out certain prohibitions, Supplier requirements, remedies and other provisions that will be made a binding part of any Contract that may be entered into. As such, those provisions, if included, should be given careful consideration.   3. Additional information on MCC’s requirements aimed at combating trafficking in persons can be found *MCC Counter-Trafficking in Persons Policy* (“C-TIP Policy”) that can be found on MCC’s website (<https://www.mcc.gov/resources/doc/policy-counter-trafficking-in-persons-policy>). All contracts funded by MCC are required to comply with the C-TIP Policy’s Minimum Compliance Requirements. Contracts for projects categorized by MCC as high-risk for TIP are required to implement a TIP Risk Management Plan (which is to be developed by the MFK and implemented by the corresponding Supplier). |
| **MCC Environmental Guidelines and IFC Performance Standards** | * 1. The Bidders and the Supplier shall ensure that their activities, including any activities carried out by Subcontractors, under the Contract comply with *MCC’s Environmental Guidelines* (as such term is defined in the Compact or related agreement, which are available at http://www.mcc.gov), and are not ‘likely to cause a significant environmental, health, or safety hazard’ as defined in such Environmental Guidelines. Bidders and the Supplier are also required to comply with IFC Performance Standards for the purposes of the Contract. Additional information on the IFC Performance Standards can be found here: <http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards> |
| 1. **Eligible Bidders** | * 1. The eligibility criteria set out in this Bidding Document will apply to the Bidder, including all parties constituting the Bidder, for any part of the Contract, including related services. |
|  | * 1. A Bidder may be a private entity, certain government-owned entities (in accordance with *MCC’s Program Procurement Guidelines* as described in ITB Sub-Clause 5.5), or any combination of such entities supported by a letter of intent to enter into an agreement or under an existing agreement of association in the form of a joint venture or other association.   2. A Bidder, all parties constituting the Bidder, and any Subcontractors and suppliers for any part of the Contract, including related services, may have the nationality of any country, subject to the nationality restrictions specified in this ITB Clause 5. An entity will be deemed to have the nationality of a country if such entity and all its partners, associates, subsidiaries, parents is constituted, incorporated, or registered in, and operates in conformity with, the provisions of the laws of that country.   3. Bidders must also satisfy the eligibility criteria contained in the MCC PPG governing MCC-funded procurements under the Threshold Program Grant Agreement. In the case where a Bidder intends to join with an associate or subcontract part of the Contract, then such associate or Subcontractor shall also be subject to the eligibility criteria set forth in this Bidding Document and the MCC PPG. |
| **Government-Owned Enterprises** | * 1. Government-Owned Enterprises (“GOEs”) are not eligible to compete for MCC-funded contracts for goods or works. This GOE policy applies to Information Systems that will be procured using this Bidding Document. The policy states that the GOEs (a) may not be party to any MCC-funded contract for goods or works procured through an open solicitation process, limited bidding, direct contracting, or sole source selection; and (b) may not be pre-qualified or shortlisted for any MCC-funded contract for goods or works anticipated to be procured through these means. This prohibition does not apply to Government-owned Force Account units owned by the Government of the MFK’s country, or Government-owned educational institutions and research centers, or any statistical, mapping or other technical entities not formed primarily for a commercial or business purpose, or where a waiver is granted by MCC in accordance with Part 7 of *MCC Program Procurement Guidelines*. All Bidders must certify their status as part of their Bid submission. |
| **Joint Venture or Association** | * 1. In the case where a Bidder is, or proposes to be, a joint venture or other association:  1. all members of the joint venture or association must satisfy the legal, financial, litigation and other requirements set out in this Bidding Document; 2. all members of the joint venture or association will be jointly and severally liable for the execution of the Contract; and 3. the joint venture or association will nominate a representative who will have the authority to conduct all business for and on behalf of any and all the members of the joint venture or the association during the bidding process and, in the event the joint venture or association is awarded the Contract, during Contract performance. |
| **Conflict of Interest** | * 1. Bidders and the Supplier shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified, unless the conflict of interest has been mitigated and the mitigation is approved by MCC. The Purchaser requires that Bidders and the Supplier hold the MFK’s interests paramount at all times, strictly avoid conflicts of interest, including conflicts with other assignments or their own corporate interests, and act without any consideration for future work. Without limitation on the generality of the foregoing, a Bidder or Supplier, including all parties constituting the Bidder, or Supplier and any subcontractors for any part of the Contract, including related services, and their respective personnel and affiliates, may be considered to have a conflict of interest and disqualified or terminated if they |
|  | 1. have at least one controlling partner in common with one or more other parties in the procurement process contemplated by this Bidding Document; or 2. have the same legal representative as another Bidder for purposes of this Bid; or 3. have a relationship, directly or through common third parties, that puts them in a position to have access to information about or influence over the Bid of another Bidder, or influence the decisions of the Purchaser regarding the selection process for this procurement; or 4. participate in more than one Bid in this process; participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the party is involved; however, this provision does not limit the inclusion of the same Subcontractor in more than one Bid; or 5. are, or have been associated in the past, with a person or entity, or any of their affiliates, which has been engaged to provide consulting services for the preparation of the specifications, requirements or other documents to be used for the procurement and provision of the Supply and Installation of Information System under the Contract; or 6. are themselves, or have a business or family relationship with, (i) a member of the MFK’s board of directors or staff, (ii) the project’s Implementing Entity’s staff, or (iii) the Procurement Agent, Fiscal Agent, or Auditor (as defined in the Compact or related agreements) hired by the MFK in connection with the Threshold Program Grant Agreement, any of whom is directly or indirectly involved in any part of (A) the preparation of this Bidding Document, (B) the selection process for this procurement, or (C) supervision of the Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to MCC; or 7. any of their affiliates have been or, at present, are engaged by the MFK in the capacity of the Implementing Entity, Procurement Agent, Fiscal Agent, or Auditor under the Threshold Program Grant Agreement; or 8. any of their affiliates have been hired (or are proposed to be hired) by the Purchaser as the Project Manager for the Contract.    1. Bidders and the Supplier that has been engaged by the MFK to provide goods, works or non-consulting services for a project, and any of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a Bidder hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods, works or non-consulting services resulting from or directly related to such consulting services for such preparation or implementation.    2. Bidders and the Supplier have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the MFK, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Bidder or Supplier or the termination of the Contract. |
| **Government Employees** | * 1. The following restrictions shall apply (in each case subject to the limited exception set forth in ITB Sub-Clause 5.10(f) below):  1. No member of the MFK’s board of directors or current employees of the MFK (whether part time, or full time, paid or unpaid, in leave status, etc.) shall be proposed or work as, or on behalf of, any Bidder/Supplier. 2. Except as provided in ITB Sub-Clause 5.10 (d), no current employees of the Government shall work as Personnel under their own ministries, departments or agencies. 3. Recruiting former MFK or Government employees to perform services for their former ministries, departments or agencies is acceptable provided no conflict of interest exists. 4. If a Bidder proposes any Government employee as Personnel in their Bid, such Personnel must have written certification from the Government confirming that: (i) they will be on leave without pay from the time of their official Bid submission and will remain on leave without pay until the end of their assignment with the Bidder/Supplier and they are allowed to work full-time outside of their previous official position; or (ii) they will resign or retire from Government employment on or prior to the Contract award date. Under no circumstances shall any individuals described in (i) and (ii) be responsible for approving the award of this Contract. Such certification shall be provided to the Purchaser by the Bidder as part of its Bid. 5. No employee of any MCC-funded accountable entity in any other country that is responsible for managing or administering any contract, grant, or other agreement between the Bidder and such other MCC-funded accountable entity shall be proposed or work as, or on behalf of, any Bidder or Supplier. 6. In the case where a Bidder seeks to engage the services of any person falling under ITB Sub-Clauses 5.10(a) – 5.10(e) who may have left the MFK (or such other MCC-funded accountable entity, as the case may be) within a period of less than twelve (12) months of the date of this Bidding Document, it must obtain a “no-objection” from the MFK for the inclusion of such a person, prior to the Bidder’s submission of its Bid. The MFK must also obtain a “no-objection” from MCC before replying to the Bidder on any related correspondence. |
| **Ineligibility and Debarment** | * 1. A Bidder or Supplier, all parties constituting the Bidder, and any Subcontractors for any part of the Contract, including related services, and their respective personnel and affiliates, will not be any person or entity under (a) a declaration of ineligibility for engaging in coercion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, o or prohibited practices as contemplated by ITB Sub-Clause 3.1 above, or (b) that has been declared ineligible for participation in a procurement in accordance with the procedures set out in Part 10 of *MCC Program Procurement Guidelines* (Eligibility Verification Procedures) that can be found on MCC’s website. This would also remove from eligibility for participation in procurement any entity that is organized in or has its principal place of business or a significant portion of its operations in any country that is subject to sanctions or restrictions by law or policy of the United States.   2. Bidders or the Supplier, all parties constituting the Bidder or Supplier, and any Subcontractors for any part of the Contract, including related services, and their respective personnel and affiliates not otherwise made ineligible for a reason described in this ITB Sub-Clause 5.10 will nonetheless be excluded if:  1. as a matter of law or official regulation, the Government prohibits commercial relations with the country of the Bidder or Supplier (including any Associates, Subcontractors, and any respective affiliates); or 2. by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Government prohibits any import of goods from the country of the Bidder or Supplier (including any Associates, Subcontractors and any respective affiliates) or any payments to entities in such country; or 3. such Bidder or Supplier, any parties constituting the Bidder or Supplier, any Subcontractor, Associate or their respective personnel or affiliates are otherwise deemed ineligible by MCC pursuant to any policy or guidance that may, from time to time, be in effect as posted on MCC’s website([www.mcc.gov](http://www.mcc.gov)). |
| **Evidence of Continued Eligibility** | * 1. Bidders and the Supplier shall provide such evidence of their continued eligibility in a manner satisfactory to the Purchaser, as the Purchaser shall reasonably request. |
| **Commissions and Gratuities** | * 1. Bidders and the Supplier will furnish information on commissions and gratuities, if any, paid or to be paid relating to this procurement or its Bid and during performance of the Contract if the Bidder is awarded the Contract, as requested in this Bidding Document. |
| 1. **Eligible Goods, Materials, Equipment and Services** | * 1. The nationality of the Bidder is distinct from the country in which the Information System and its goods components are produced or from which the related services are supplied.   2. The Goods and Related Services to be supplied under the Contract may have their origin in any country subject to the same restrictions specified for Bidders and the Supplier in ITB Clause 5 above. At the Purchaser’s request, Bidders will be required to provide evidence of the origin of Goods and Related Services.   3. For purposes of ITB Sub-Clause 6.2, “origin” means the place where the Goods are mined, grown, cultivated, produced, manufactured or processed and from where the services are provided. Goods are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized article results that differs substantially in its basic characteristics, purposes or utility from its underlying components. With respect to Related Services, “origin” means the place from which the Related Services are supplied.   4. Country of origin for major items of plant, materials, goods, and services provided under the Contract must be indicated in the Country of Origin Code form in Section IV. During the Contract implementation, the sources used will be verified by the Purchaser’s Project Manager.   5. An Information System is deemed to be produced in a certain country when, in the territory of that country, through software development, manufacturing, or substantial and major assembly or integration of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components. |

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| **B. Contents of Bidding Document** | |
| 1. **Content of this Bidding Document** | * 1. This Bidding Document consists of Parts 1, 2, and 3, which include all the sections indicated below and should be read in conjunction with any addenda issued in accordance with ITB Clause 9: |
|  | **PART 1 - Bidding Procedures**   * Section I. Instructions to Bidders (“ITB”) * Section II. Bid Data Sheet (“BDS”) * Section III. Qualification and Evaluation Criteria * Section IV. Bid Submission Forms   **PART 2 – Purchaser’s Requirements**   * Section V. Requirements for the Information System   **PART 3 – Contract Documents**   * Section VI. General Conditions of Contract (“GCC”) * Section VII. Particular Conditions of Contract (“PCC”) * Section VIII. Contract Forms and Annexes   1. Unless obtained directly from the Purchaser, the Purchaser is not responsible for the completeness of the Bidding Document, responses to requests for clarification, the Minutes of the pre-Bid Conference (if any), or Addenda to the Bidding Document. In case of any contradiction, documents obtained directly from the Purchaser shall prevail.   2. The Bidder is expected to examine all instructions, forms, terms, specifications, and other information in the Bidding Document. Failure to furnish all information required by the Bidding Document or to submit a Bid not substantially responsive to the Bidding Document in every respect will be at the Bidder’s risk and may result in the rejection of its Bid. |
| 1. **Clarification of this Bidding Document and Pre-Bid Conference** | * 1. A prospective Bidder requiring any clarification of this Bidding Document shall contact the Purchaser in writing, at the Purchaser’s address **indicated in the BDS**. The Purchaser will respond in writing to any request for clarification, provided that such a request is received no later than the date **indicated in the BDS** prior to the deadline for submission of Bids. The Purchaser shall send written copies of the responses, including a description of the inquiry but without identifying its source, to Bidders who have registered or obtained the Bidding Document directly from the Purchaser by the date **specified in the BDS**. The Purchaser will also post a copy of the responses and inquiry descriptions to the Purchaser’s website, if one exists. Should the clarification result in changes to the essential elements of this Bidding Document, the Purchaser shall amend this Bidding Document following the procedure under ITB Clause 9 and Sub-Clause 25.2. |
|  | * 1. The Bidder’s designated representative is invited to attend a pre-Bid Conference, if **provided for in the BDS**. The purpose of the conference will be to clarify issues and to answer questions on any matter that may be raised at that stage. Attending any pre-Bid Conference is strongly advised, but not mandatory. Attending any pre-Bid Conference and/or a site visit shall not be taken into account in the evaluation of Bids. The cost of attending the pre-Bid Conference and/or Site Visit shall be at the Bidder’s own expense.   2. Minutes of the pre-Bid Conference, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the conference, will be posted on the Purchaser’s website if one exists, and shall be transmitted in writing to all Bidders who have registered or obtained the Bidding Document directly from the Purchaser. Any modification to this Bidding Document that may become necessary as a result of the pre-Bid Conference shall be made by the Purchaser exclusively through the issue of an Addendum and not through the minutes of the pre-Bid Conference. |
| **Site Visit** | * 1. If a site visit is organized by the Purchaser, as **specified in BDS** the Bidder may wish to visit and examine the site or sites of the Information System and obtain for itself, at its own responsibility and risk, all information that may be necessary for preparing the Bid and entering into the Contract. The costs of participating in the site visit shall be at the Bidder’s own expense.   2. The Purchaser may organize a site visit or visits concurrently with the pre-Bid conference. Attendance at pre-Bid Conferences and/or site visits is encouraged, but not mandatory.   3. No site visits shall be arranged or scheduled or permitted after the deadline for the submission of the Bids and prior to the award of Contract. |
| 1. **Amendment of this Bidding Document** | * 1. At any time prior to the deadline for submission of Bids, the Purchaser may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, amend this Bidding Document. Later amendments on the same subject modify or replace earlier ones. |
|  | * 1. To give prospective Bidders reasonable time in which to take the amendment into account in preparing their Bids, the Purchaser may, at its discretion, extend the deadline for the submission of Bids, in which case, the Purchaser will notify all Bidders in writing of the extended deadline. |
|  | **C. Preparation of Bids** |
| 1. **Cost of Bidding** | * 1. Except as otherwise **specified in the BDS**, the Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Purchaser shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process. |
| 1. **Language of Bid** | * 1. The Bid prepared by the Bidder and all correspondence and documents related to the Bid exchanged by the Bidder and the Purchaser shall be written in the language(s) **specified in the BDS**. Any printed literature furnished by the Bidder as part of its Bid may be in a language not **specified in the BDS**, as long as such literature is accompanied by a translation of its pertinent passages into the language of the Bid, in which case, for purposes of interpretation of the Bid, the translation shall govern. |
| 1. **Documents Comprising the Bid** | * 1. The Bid shall comprise the duly filled Bid Submission Forms and any other document **required in the BDS**.   2. In addition to the requirements above, Bids submitted by a joint venture or other association shall include a copy of the joint venture/association agreement entered into by all members. Alternatively, a letter of intent to execute a joint venture/association agreement shall be signed by all members and submitted with the Bid, together with a copy of the proposed agreement.   3. If there is a change in the legal structure of the Bidder after the Bid submission, the Bidder is required to immediately inform the Purchaser. However, any change of legal structure shall not be used to satisfy a qualification requirement that was not satisfied as of the deadline of Bid submission. |
| 1. **Letter of Bid and Price Schedules** | * 1. The Letter of Bid and all other forms and schedules **specified in the BDS** ITB Sub-Clause 12.1 shall be prepared using the relevant forms furnished in Section IV. Bid Submission Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested. |
| 1. **Alternative Bids** | * 1. Alternative Bids shall not be considered. |
| 1. **Bid Prices and Discounts** | * 1. The prices and discounts quoted by a Bidder in the Letter of Bid and in the Price Schedules for Goods and Related Services shall conform to the requirements specified below. Discounts are permitted only when bidding for multiple lots and will be considered in the evaluation process as specified in Section III. Qualification and Evaluation Criteria   2. All Goods and Services identified in the Supply and Installation Cost Sub-Table and the Recurrent Cost Sub-Table in Section IV, and all other Goods and Services proposed by the Bidder to fulfill the requirements of the Information System, must be priced separately in the format of the same tables and summarized in the corresponding Cost Summary Tables in the same Section. Prices must be quoted in accordance with the instructions provided in Section IV for the various price tables, in the manner specified below. Recurrent Cost to be provided if stated as ‘required’ **in the BDS**. Omitted items and items against which no price is entered by the Bidder will not be paid for by the Purchaser and shall be deemed covered by the prices of other items in the Supply and Installation Cost Sub-Table and the Recurrent Cost Sub-Table in Section IV.   3. The price to be quoted in the Letter of Bid, in accordance with ITB Sub-Clause 15.1, shall be the total price of the Bid, including any discounts offered.   4. The Bidder shall quote any unconditional discounts and indicate the method for their application in the Letter of Bid. |
|  | * 1. Items omitted altogether from the price tables shall be assumed to be omitted from the Bid and, provided that the Bid is substantially responsive, an adjustment to the Bid price will be made during evaluation as specified in Section III. Qualification and Evaluation Criteria. |
|  | * 1. Unit prices must be quoted at a level of detail in accordance with the Price Tables in Section IV for calculation of any partial deliveries or partial payments under the contract, in accordance with the Implementation Schedule in Section VII, and with GCC Clause 12 and the PCC GCC Clause 12 – Terms and Schedule of Payment. Bidders may be required to provide a breakdown of any composite or lump-sum items included in the Price Tables. |
|  | * 1. The prices for Goods components of the System are to be expressed and shall be defined and governed in accordance with the rules prescribed in the edition of Incoterms **specified in the BDS**, and quoted in the appropriate columns of the Price Tables of Section IV as follows.  1. For Goods manufactured in Purchaser’s country:    1. the price of the Goods quoted EXW (ex-works, ex- factory, ex-warehouse, ex-showroom, or off-the-shelf, as applicable); and    2. the price for inland transportation, insurance, and other local services required to convey the Goods to their Final Destination **specified in the BDS**. 2. For Goods manufactured outside Purchaser’s country, to be imported:    1. the price of the Goods, quoted in CIP to their Final Destination **specified in the BDS**. In quoting the price, a Bidder shall be free to use transportation through carriers registered in any eligible countries. Similarly, a Bidder may obtain insurance services from any eligible source country;    2. the price for inland transportation, insurance, and other local services required to convey the Goods to their Final Destination **specified in the BDS**. 3. For Goods manufactured outside Purchaser’s country, already imported:    1. 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 Taxes already paid in connection with the importation of the Goods; and    2. the price for inland transportation, insurance, and other local services required to convey the Goods to their Final Destination **specified in the BDS**. 4. For Related Services, other than inland transportation and other local services required to convey the goods to their Final Destination, price of any other related services if so specified in the Purchaser’s Requirements in Section VII. |
|  | * 1. The price of Services shall be quoted in total for each service (where appropriate, broken down into unit prices), separated into their local and foreign currency components. Prices must include all taxes, duties, levies and fees whatsoever, except only VAT or other indirect taxes, or stamp duties, that may be assessed and/or apply in the Purchaser’s country on/to the price of the Services invoiced to the Purchaser, if the Contract is awarded. Unless otherwise **specified in the BDS**, the prices must include all costs incidental to the performance of the Services, as incurred by the Supplier, such as travel, subsistence, office support, communications, translation, printing of materials, etc. Costs incidental to the delivery of the Services but incurred by the Purchaser or its staff, or by third parties, must be included in the price only to the extent such obligations are made explicit in these Bidding Documents (as, e.g., a requirement for the Bidder to include the travel and subsistence costs of trainees). |
|  | * 1. GCC Clause 14 sets forth the tax provisions of the Contract. Bidders should review this clause carefully in preparing their Bid. |
|  | * 1. Prices for Recurrent Costs beyond the scope of warranty services to be incurred during the Warranty Period, defined in the PCC GCC Clause 29.10 and prices for Recurrent Costs to be incurred during the Post-Warranty Services Period, defined in the PCC GCC Clause 1.1 (tt), shall be quoted as Service prices on the Recurrent Cost Sub-Table in detail, and on the Recurrent Cost Summary Table in currency totals. Recurrent costs are all-inclusive of the costs of necessary Goods such as spare parts, software license renewals, labor, etc., needed for the continued and proper operation of the System and, if appropriate, of the Bidder’s own allowance for price increases. |
|  | * 1. Unless otherwise **specified in the BDS**, prices quoted by the Bidder shall be fixed during the Bidder’s performance of the Contract and not subject to increases on any account. Bids submitted that are subject to price adjustment will be rejected. |
| 1. **Currencies of Bid and Payment** | * 1. The currency(ies) of the Bid and the currency(ies) of payments shall be as **specified in the BDS**. |
| 1. **Documents Establishing the Eligibility of the Bidder** | * 1. To establish their eligibility in accordance with ITB Clause 5, Bidders shall complete the Bid Submission Form (ELI-1) and the Government-Owned Enterprise Certification Form (ELI-3), included in Section IV. Bid Submission Forms. |
| 1. **Documents Establishing the Eligibility of the Information System** | * 1. To establish the eligibility of the Information System in accordance with ITB Clause 5, Bidders shall complete the country of origin declarations in the Price Schedule Forms, included in Section IV, Bidding Forms.   2. If so **indicated in the BDS**, a Bidder 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. Bidding Forms to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods in the Purchaser’s Country. Alternatively, if so **indicated in the BDS**, the Bidder must be an Original Equipment Manufacturer (OEM) and manufacture or produce the Goods it offers to supply.   3. If so **indicated in the BDS**, in case of a Bidder not doing business within the Purchaser’s Country, the Bidder shall be (if awarded the Contract) represented by an Agent in the country 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 this Agent shall meet the qualification criteria related to the post-delivery period specified in Section III. Evaluation and Qualification Criteria, if any. |
| 1. **Documents Establishing the Conformity of the Information System to this Bidding Document** | * 1. The Bidder shall furnish, as part of its Bid, documents establishing the conformity to the Bidding Document of the Information System that the Bidder proposes to supply and install under the Contract.   2. The documentary evidence of conformity of the Information System to the Bidding Document shall be in the form of written descriptions, literature, diagrams, certifications, and client references, including:  1. the Bidder’s technical response, i.e., a detailed description of the Bidder’s proposed technical solution conforming in all material aspects with the Purchaser’s Requirements (Section VII) and other parts of this Bidding Document, overall as well as in regard to the essential technical and performance characteristics of each component making up the proposed Information System; 2. an item-by-item commentary on the Purchaser’s Requirements, demonstrating the substantial responsiveness of the Information System offered to those requirements. In demonstrating responsiveness, the commentary shall include explicit cross references to the relevant pages in the supporting materials included in the Bid. Whenever a discrepancy arises between the item-by-item commentary and any catalogs, technical specifications, or other preprinted materials submitted with the Bid, the item-by-item commentary shall prevail; 3. Preliminary Project Plan describing, among other things, the methods by which the Bidder will carry out its overall management and coordination responsibilities if awarded the Contract, and the human and other resources the Bidder proposes to use. The Plan should include a detailed Contract Implementation Schedule in bar chart form, showing the estimated duration, sequence, and interrelationship of all key activities needed to complete the Contract. The Preliminary Project Plan must also address any other topics **specified in the BDS**. In addition, the Preliminary Project Plan should state the Bidder’s assessment of what it expects the Purchaser and any other party involved in the implementation of the Information System to provide during implementation and how the Bidder proposes to coordinate the activities of all involved parties; 4. a written confirmation that the Bidder accepts responsibility for the successful integration and inter-operability of all components of the Information System as required by this Bidding Document.    1. For purposes of the commentary to be furnished pursuant to ITB Sub-Clause 19.2 (b), the Bidder shall note that references to brand names or model numbers or national or proprietary standards designated by the Purchaser in its Purchaser’s Requirements are intended to be descriptive and not restrictive. **Except where explicitly prohibited in the BDS** for specific items or standards, the Bidder may substitute alternative brand/model names or standards in its Bid, provided that it demonstrates to the Purchaser’s satisfaction that the use of the substitute(s) will result in the Information System being able to perform substantially equivalent to or better than that specified in the Purchaser’s Requirements. |
| 1. **Documents Establishing the Qualifications of the Bidder** | * 1. The documentary evidence of the Bidder’s qualifications to perform the Contract if its Bid is accepted shall establish, to the Purchaser’s satisfaction, the criteria specified in Section III. Qualification and Evaluation Criteria. By submission of documentary evidence in its Bid, the Bidder must establish to the Purchaser’s satisfaction:  1. that it has the financial, technical, and production capability necessary to perform the Contract, meets the qualification criteria **specified in the BDS**, and has a successful performance history as required in the BDS; 2. For the purposes of establishing a Bidder’s qualifications, and unless stated to the contrary **in the BDS**, the experience and/or resources of any Subcontractors will not contribute to the Bidder’s qualifications; only those of a joint venture or association partner will be considered; 3. that, in the case of a Bidder offering to supply key goods components of the Information System, as **identified in the BDS**, that the Bidder does not itself produce, the Bidder is duly authorized by the producer to supply those components in the Purchaser’s country under the Contract(s) that may result from this bidding; this will be accomplished by including Manufacturer’s Authorizations in the Bid, based on the sample found in Section IV; 4. that, if a Bidder proposes Subcontractors for key services if and as **identified in the BDS**, these Subcontractors have agreed in writing to serve for the Bidder under the Contract(s) that may result from this bidding; and 5. that, in the case of a Bidder not doing business within the Purchaser’s country, the Bidder is or will be (if awarded the Contract) represented by an Agent in that country who is equipped and able to carry out the Bidder’s maintenance, technical support, training, and repair obligations prescribed in the General and Particular Conditions of Contract, and/or Purchaser’s Requirements. An Agent, acceptable to the Purchaser, shall be established prior to contract signature.    1. Bids submitted by a joint venture or association of two or more firms as partners shall also comply with the following requirements: 6. the Bid shall be signed so as to be legally binding on all partners; 7. one of the partners shall be nominated as being in charge, and this nomination shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners; 8. the partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture/association, and the entire execution of the Contract, including payment, shall be done exclusively with the partner in charge; 9. the partner or combination of partners that is responsible for a specific component of the Information System must meet the relevant minimum qualification criteria for that component; 10. a firm may submit a Bid either as a single Bidder on its own, or as partner in one, and only one, joint venture or association. If, as a result of the Bid opening pursuant to ITB Clause 28, this requirement is not met, all Bids involving the firm as a single Bidder or joint venture or association partner will be disqualified; 11. all partners of the joint venture/association shall be liable jointly and severally for the execution of the Contract in accordance with the Contract terms, and a statement to this effect shall be included in the authorization mentioned under ITB Sub-Clause 20.2 (b) above, in the Bid as well as in the Contract (in case of a successful Bid).     1. If a Bidder intends to subcontract major items of supply or services, it shall include in the Bid details on the name and nationality of the proposed Subcontractor for each of those items and shall be responsible for ensuring that any Subcontractor proposed complies with the requirements of ITB Clause 5, and that any Goods or Services components of the Information System to be provided by the Subcontractor comply with the requirements of ITB Clause 6 and the related evidence required under BDS ITB Sub-Clause 12.1.     2. Bidders are free to list more than one Subcontractor against each item within the limits **specified in the BDS**. Quoted rates and prices will be deemed to apply, whichever Subcontractor is appointed, and no adjustment of the rates or prices will be permitted. Subsequent additions and deletions from the list of approved Subcontractors shall be performed in accordance with GCC Clause 20 (as revised in the PCC, if applicable) and Appendix 3 to the Contract Agreement.     3. For the purposes of this Bidding Document, a Subcontractor is any vendor or service provider with whom the Bidder contracts for the supply or execution of any part of the Information System to be provided by the Bidder under the Contract (such as the supply of major hardware, software, or other components of the required Information Technologies specified, or the performance of related Services, e.g., software development, transportation, installation, customization, integration, commissioning, training, technical support, maintenance, repair, etc.).     4. A firm which is a Bidder, whether as a single Bidder or as a partner in a joint venture or association, cannot be a Subcontractor in other Bids, except for the supply of commercially available hardware or software by the firm, as well as purely incidental services such as installation/configuration, routine training, and ongoing maintenance/support. If BDS ITB Sub-Clause 20.1(b) allows the qualification of Subcontractors nominated for certain components to be taken into account in assessing the Bidder’s overall qualifications, any Subcontractor so proposed by any Bidder is automatically disqualified from being a Bidder itself or a partner in a joint venture or association. The same will apply to firms that have provided Subcontractor agreements for certain services pursuant to ITB Sub-Clause 20.1(d). Non-compliance may result in the rejection of all Bids in which the affected firm participates as a Bidder or as a partner in a joint venture or association. As long as in compliance with these provisions, or as long as unaffected by them due to not participating as Bidder or as partner in a joint venture or association, a firm may be proposed as a Subcontractor in any number of Bids. |
| 1. **Period of Validity of Bids** | * 1. Bids shall remain valid, at a minimum, for the period and date **specified in the BDS** after the Bid submission deadline date prescribed by the Purchaser, pursuant to ITB Clause 25. A Bid valid for a shorter period may be rejected by the Purchaser as non-responsive.   2. In exceptional circumstances, prior to expiry of the Bid validity period, the Purchaser may request that the Bidders extend the period of validity of their Bids. The request and the responses shall be made in writing. If a Bid Security is requested, it shall also be extended for twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its Bid, except as provided in ITB Sub-Clause 21.3.   3. If the award is delayed by a period exceeding eighty-four (84) days beyond the expiry of the initial Bid validity, the following conditions shall apply:   4. Rates quoted by Bidders in their Price Schedules shall be adjusted by the factor **specified in the BDS**; and   5. Bid evaluation shall be based on the Bid price without taking into consideration any adjustment applied pursuant to paragraph (a) above. |
| 1. **Bid Security** | * 1. **If so required in the BDS**, the Bidder shall furnish as part of its Bid, a Bid Security in original form and in the amount and currency **specified in the BDS**. The submissions without a Bid Security shall not be considered, if the Bid Security is required in the BDS. |
|  | * 1. The Bid Security shall be in the amount and currencies **specified in the BDS** and shall:  1. at the Bidder’s option, be in the form of either an unconditional bank guarantee substantially in the format of Form of Bid Security (Bank Guarantee) included in Section IV. Bid Forms, or another type of security **specified in the BDS**; 2. be issued by a reputable institution selected by the Bidder and located in any eligible country (as determined in accordance with ITB Clause 5); if the institution issuing the bank guarantee is located outside Purchaser’s country, it shall have a correspondent financial institution located within Purchaser’s country to make it enforceable; 3. be payable promptly upon written demand by the Purchaser in case the conditions listed in ITB Sub-Clause 22.3 are invoked; 4. be submitted in its original form; copies will not be accepted; 5. remain valid for a period of twenty-eight (28) days beyond the original validity period of Bids, or beyond any period of extension subsequently requested under ITB Sub-Clause 25.2.    1. Any Bid not accompanied by a substantially responsive Bid Security (if required) in accordance with ITB Clause 22, shall be rejected by the Purchaser as nonresponsive. The Bid Security may be forfeited: 6. if a Bidder withdraws its Bid during the period of Bid validity specified by the Bidder in the Letter of Bid, except as provided in ITB Sub-Clause 9.3; 7. if the successful Bidder fails within the specified time to: 8. furnish the required Performance Security in accordance with GCC Clause 16 as described in ITB Clause 46; or 9. sign the Contract in accordance with ITB Clause 45.    1. The Bid Security of a Joint Venture or other Association must be in the name of the association that submits the Bid. If the association has not been legally constituted at the time of bidding, the Bid Security shall be in the names of all future partners, or in the name of the designated representative (partner in charge or lead member) as named in the letter of intent or similar document in connection with the formation of the Joint Venture or Association.    2. The procedure for the submission of the Bid Security under electronic submission is provided for in ITB Sub-Clause 24.3. |
| 1. **Format and Signing of Bid** | * 1. Where electronic submission is required pursuant to ITB Sub-Clause 24.1, only one copy each of the Bid shall be submitted. In all instances, this copy shall be construed to be the original. In all cases of electronic submissions, the signatures may be written or electronically signed by any applicable software. If submitting by hard copy if required by ITB Sub-Clause 24.1, a Bidder shall prepare ONE (1) original set of the documents comprising the Bid pursuant to ITB Clause 12 and clearly mark it “Original.” The original shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation **as specified in the BDS** and shall be attached to the Bid. The person or persons signing the Bid shall initial all pages of the Bid where entries and amendments have been made.   2. In addition, if submitting by hard copy if required by ITB Sub-Clause 24.1, the Bidder shall prepare copies of all documents comprising the Bid in the number **specified in the BDS** and clearly mark them “Copy.”.   3. The Bid shall contain no alterations or additions, except those made to comply with the instructions issued by the Purchaser, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Bid. |
|  | * 1. Bidder shall furnish information as described in the Bid Submission Form (ELI-1) Section IV. A Bidder will furnish information regarding commissions or gratuities, if any, paid or to be paid relating to this procurement or its Bid and during performance of the Contract if the Bidder is awarded the Contract, as requested in this Bidding Document.   2. A Bid submitted by a joint venture or other association shall comply with the following requirements:  1. be signed so as to be legally binding on all partners; and 2. be signed by those legally authorized to sign on behalf of the joint venture or association.    1. Bidders shall mark as “CONFIDENTIAL” information in their Bids which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information. |
| **D. Submission and Opening of Bids** | |
| 1. **Sealing and Marking of Bids** | * 1. If **specified in the BDS**, Bidders shall submit their Bids in hard-copy format (by hand, post or courier) as provided for in ITB Sub-Clause 24.2, or via electronic means, as provided for from ITB Sub-Clause 24.3. |
| **Bid Submission (Hard Copy)** | * 1. This ITB Sub-Clause 24.2 refer to Bid submission by **hard copy**.  1. Bidders who submit their Bids by mail or by hand are reminded that distance and customs formalities may require longer than expected delivery times. 2. The authorized representative of the Bidder signing the “Originals” of all documents comprising the Bid shall provide within the Bid an authorization in the form of a written letter demonstrating that the person signing has been duly authorized to sign the “Originals” on behalf of the Bidder. The signed Bid shall be clearly marked “Original”. 3. Copies of the Bid in the number **specified in the BDS** shall be clearly marked “Copy.” It is preferred that all copies required should be made by photocopying the “ORIGINAL” as appropriate. However, the Bidder should note that if copies are made by any other means and discrepancies are found between the original and any of the copies of the relevant documents, then the “ORIGINAL” shall govern. 4. The “ORIGINAL” and each “COPY” of the Bid shall be placed in a sealed envelope/parcel and clearly marked. 5. Each envelope/parcel shall bear the name and address of the Purchaser as stated in the BDS, the name and address of the Bidder (in case they have to be returned unopened, and the identification of the procurement as stated in the BDS). 6. The Purchaser shall not be responsible for misplacement, losing or premature opening if the outer envelope/carton is not sealed and/or marked as stipulated. This circumstance may be cause for Bid rejection. |
| **Bid Submission (Electronic)** | * 1. This ITB Sub-clause 24.3 refer to Bid submission by **electronic means**.  1. The bid submission forms (including the Technical and Financial forms as applicable) should respectively be in the form and format shown in Section V. Bid Forms. 2. If required in ITB Sub-Clause 23.1, the authorized representative of the Bidders signing the Bids shall provide within the Bid an authorization in the form of a written power of attorney demonstrating that the person signing has been duly authorized to sign on behalf of the Bidder, and its Associates, as applicable. 3. Bidders shall be provided with a File Request Link (FRL) **specified in the BDS** upon requesting the Bidding Document which shall be used to submit their Bids. 4. Submissions by hard copy or by email are not acceptable and shall culminate in Bid rejection. The Purchaser shall not be responsible for misplaced or mis-sent Bids submitted not using the FRL. This circumstance may be cause for Bid rejection. 5. The FRL shall expire on the Bid submission deadline, specified in ITB Sub-Clause 25.1. All documents comprising the Bid shall be submitted solely via the File Request Link. The File Request Link can be used more than once to submit additional documents. 6. All submitted documents (whether as standalone files or files in folders) shall be in Microsoft Office or PDF format. The Technical Offer and the Financial Offer shall be submitted in separate files, and shall each not exceed 10GB each. No compressed files or folders are accepted, thus documents submitted in any archived and/or compressed format (compressed by WinZip - including any application of the zip family-, WinRAR, 7z, 7zX, or any other similar formats) shall not be accepted. 7. Bids are not required to be password-protected but may be protected at the Bidder’s discretion. Bidders who choose to password-protect their Bids can do so to protect against inadvertent untimely opening of its Bid, but at their own responsibility for providing the correct password as **specified in the BDS**. If a Bidder fails to provide the correct password that opens the files so its relevant contents can be announced by the deadline provided in the BDS, their Bid shall be rejected. Bidders cannot provide this password via the File Request Link, but should be sent to the email address indicated in the BDS. 8. Bidders should use the following filename format for Bids:   [Bidder’s Name] – Bid Title - Ref# [insert Bidding Document number]   1. Bidders are informed that the capability of their internet bandwidth will determine the speed in which their Bids are uploaded via the File Request Link. Bidders are therefore advised to commence the process of uploading their Bids via the File Request Link in good time before the Bid submission deadline. As noted above, this link shall expire at the Bid submission deadline, and cannot be reopened except under the provision of ITB Sub-Clause 9.3 and ITB Sub-Clause 25.2. 2. For the purposes of electronic submission, the scanned copy of the Bid Security must be submitted by the deadline for submission of Bids in ITB Sub-Clause 25.1. The hard copy of the Bid Security shall be submitted by the date **specified in the BDS**. Failure to submit the hard copy by that date shall result in rejection of the Bid. For the avoidance of doubt, in procurements where electronic submission is not permitted all Bid Securities shall be submitted by the deadline in ITB Sub-Clause 25.1. |
| 1. **Deadline for Submission of Bids** | * 1. Bids must be received by the Purchaser at the address **specified in the BDS** no later than the time and date **stated in the BDS** or any extension of this date in accordance with ITB Sub-Clause 25.2. |
|  | * 1. The Purchaser may, at its discretion, extend this deadline for submission of Bids by amending the Bidding Document in accordance with ITB Clause 9, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended. |
| 1. **Late Bids** | * 1. The Purchaser at its discretion, extend this deadline for submission of Bids by amending the Bidding Document in accordance with ITB Clause 9, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended. |
| 1. **Withdrawal, Substitution, and Modification of Bids** | * 1. A Bidder may withdraw, substitute, or modify its Bid prior to the deadline for the submission of Bids by sending a written notice - through the File Request Link indicated in ITB Sub-Clause 24.3 c) if electronic submission is used - duly signed by an authorized representative, and shall include a copy of the authorization of the person signing in accordance with ITB Sub-Clause 23.1. The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be:  1. submitted in accordance with ITB Clauses 24 and 25 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Bid Withdrawal Notice,” “Bid Substitution Notice,” or “Bid Modification Notice,” and 2. received by the Purchaser prior to the deadline prescribed for submission of Bids, in accordance with ITB Clause 25.    1. Bids requested to be withdrawn in accordance with this ITB Clause shall be returned unopened to the Bidders, at the request and cost of the Bidders. Bids submitted via electronic submission shall not be returned.    2. No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Bids and the expiration of the period of Bid validity specified by the Bidder in the in the Letter of Bid or any extension thereof. |
| 1. **Bid Opening** | * 1. Whether submitted by hard copy or electronically, the Purchaser shall open the Bids in the presence of Bidders’ representatives as well as anyone who chooses to attend at the time and in the place **specified in the BDS**. Any specific opening procedures required if electronic Bidding is permitted, shall be **as specified in the BDS**.   2. Firstly, submissions marked “Withdrawal” shall be opened and read out, while Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 27 shall not be opened. No Bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Bid opening. Next, submissions marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Bid opening. Submissions marked “MODIFICATION” shall then be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening. Only submissions that are opened and read out at Bid opening shall be considered further.   3. All other documents shall be opened one at a time, reading out: the Bidders’ names, the Bid prices, the total amount of each Bid and of any alternative Bid (if requested or permitted in BDS), any discounts, substitutions, or modifications, the presence or absence of Bid Security and such other details as the Purchaser may consider appropriate. No Bid shall be rejected at Bid opening except for the late Bids pursuant to ITB Clause 26. Substitutions and modifications submitted pursuant to ITB Clause 27 that are not opened and read out at Bid opening shall not be considered for further evaluation regardless of the circumstances. Late, withdrawn and substituted Bids shall be returned unopened at the request and cost of the Bidder.   4. The Purchaser shall prepare a record of the Bid opening that shall include, at a minimum: the name of the Bidder, the existence of a signed Bid, and whether there is a withdrawal, substitution, or modification; the Bid price, including any discounts; and the presence or absence of a Bid Security, if one is required. A copy of the record shall be distributed to all Bidders who submitted Bids on time, and posted on the Purchaser’s website, if one exists. |

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| **E. Evaluation of Bids** | | |
| 1. **Confidentiality** | * 1. From the time Bids are opened to the time the Contract is awarded, Bidders may not contact the Purchaser on any matter related to its Bid. Information relating to the examination, clarification, evaluation, and comparison of Bids and recommendations for the award of the Contract shall not be disclosed to the Bidders or any other persons not officially concerned with such process until notification of the bidding results has been issued pursuant to ITB Clause 39. The undue use by any Bidder of confidential information related to the process may result in the rejection of its Bid or may invalidate the entire procurement process.   2. Any attempt or effort by a Bidder to influence the Purchaser in the evaluation of Bids or Contract award decisions may subject the Bidder to the provisions of the Government’s, the Purchaser’s, and MCC’s anti-fraud and corruption policies and the application of other sanctions and remedies to the extent applicable.   3. Notwithstanding the above, from the time of Bid opening to the time of Contract award, if any Bidder wishes to contact the Purchaser on any matter related to the bidding process, it may do so in writing at the address **specified in the BDS**. |
| 1. **Clarification of Bids** | * 1. To assist in the examination and evaluation of the Bids, and qualification of the Bidders, the Purchaser may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder that is not in response to a request by the Purchaser shall not be considered. The Purchaser’s request for clarification and the Bidder’s response shall be in writing. No change in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the evaluation of the Bids, in accordance with ITB Sub-Clause 26.2.   2. If a Bidder does not provide clarifications of its Bid by the date and time set in the Purchaser’s request for clarification, its Bid may be rejected and if so, its Bid Security returned as described in ITB Sub-Clause 47.1. |
| 1. **Deviations, Reservations, and Omissions** | * 1. Prior to the detailed evaluation, the Purchaser will determine whether each Bid is substantially responsive to the Bidding Document. The Purchaser’s determination of Bid responsiveness will be based on the contents of the Bid itself.   During the evaluation of Bids, the following definitions apply:   1. “Deviation” is a departure from the requirements specified in the bidding document; 2. “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and 3. “Omission” is the failure to submit part or all of the information or documentation required in the Bidding Document. |
| 1. **Determination of Responsiveness** | * 1. The Purchaser’s determination of a Bid’s responsiveness is to be based on the contents of the Bid itself, as defined in ITB Sub-Clause 12.   2. A substantially responsive Bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission in accordance with ITB Sub-Clause 31.1. A material deviation, exception, objection, conditionality, or reservation is one that:  1. If accepted, would: 2. affect in any substantial way the scope, quality, or performance of the Information System specified in the Contract; or 3. limit in any substantial way, inconsistent with this Bidding Document, the Purchaser’s rights or the Bidder’s obligations under the proposed Contract;   or   1. if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids    1. The Purchaser shall examine the technical aspects of the Bid submitted in accordance with ITB Clause 17, technical proposal, in particular, to confirm that all requirements of Part II. Purchaser’s Requirements, have been met without any material deviation, reservation or omission. |
| 1. **Nonmaterial Nonconformities** | * 1. Provided that a Bid is substantially responsive, the Purchaser may waive any nonconformities in the Bid that do not constitute a material deviation, reservation or omission.   2. Provided that a Bid is substantially responsive, the Purchaser may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid. |
| 1. **Correction of Arithmetical Errors** | * 1. Provided that a Bid is substantially responsive, the Purchaser shall correct arithmetical errors on the following basis:  1. if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price 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 total price as quoted shall govern and the unit price shall be corrected; 2. 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 3. 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 arithmetical error, in which case the amount in figures shall prevail subject to (a) or (b) above.    1. If a Bidder does not accept the correction of errors, its Bid shall be rejected and its Bid Security shall be returned as described in ITB Sub-Clause 47.1. |
| 1. **Conversion to Single Currency** | * 1. For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as **specified in the BDS**. |
| 1. **Evaluation of Bids** | * 1. The Purchaser’s review of the Bid is to be based on the contents of the Bid itself, as defined in ITB Clause 12, and will involve the following processes as detailed further in Section III. Qualification and Evaluation Criteria.   2. **If specified in the BDS**, the Purchaser’s evaluation of responsive Bids will take into account technical factors, in addition to cost factors. The scores to be given to technical factors and sub factors, and the weights to be assigned for the technical factors and cost are **specified in the BDS**. An Evaluated Bid Score (B) will be calculated for each responsive Bid using the formula, specified in Section III. Evaluation and Qualification Criteria, which permits a comprehensive assessment of the Bid cost and the technical merits of each Bid.   3. Administrative review is conducted to determine whether they have been properly signed, whether required sureties have been furnished, whether any computational errors have been made, whether required sureties have been furnished and are substantially complete (e.g., not missing key parts of the Bid or silent on excessively large portions of the Technical Requirements). The Bidder may be requested to submit additional information or documentation and/or to correct nonmaterial nonconformities in the Bid related to documentation requirements. Failure of the Bidder to comply with the request to respond to a request within the deadline stated in the request may result in rejection of its Bid.   4. Responsiveness determination is conducted to determine the responsiveness of the Bid, as detailed in ITB Clause 33. This process will include a detailed technical review. The Purchaser may request any Bidder to clarify its Bid according to the procedures set out in ITB Clause 28. If a Bid is not substantially responsive to the requirements of this Bidding Document, it shall be rejected and may not subsequently be made responsive by correction of a material deviation, reservation, or omission.   5. Technical Evaluation is conducted to examine the information supplied by the Bidders Pursuant to ITB Clause 12 and ITB Clause 19, and in response to other requirements in the Bidding document, taking into account the following factors:      + 1. overall completeness and compliance with the Technical Requirements; and deviations from the Technical Requirements;  1. suitability of the Information System offered in relation to the conditions prevailing at the site; and the suitability of the implementation and other services proposed, as described in the Preliminary Project Plan included in the Bid; 2. achievement of specified performance criteria by the Information System; 3. compliance with the time schedule called for by the Implementation Schedule and any alternative time schedules offered by Bidders, as evidenced by a milestone schedule provided in the Preliminary Project Plan included in the Bid; 4. type, quantity, quality, and long-term availability of maintenance services and of any critical consumable items necessary for the operation of the Information System; 5. any other relevant technical factors that the Purchaser deems necessary or prudent to take into consideration; 6. any proposed deviations in the Bid to the contractual and technical provisions stipulated in the Bidding Documents.    1. Price review is conducted to review the price forms for arithmetical errors, omissions or clarifications and to rank the Bids from lowest to highest price. The procedures for correcting arithmetical errors are set out in ITB Sub-Clause 34.1. Bid prices shall also be reviewed for price reasonableness as required in ITB Clause 37.    2. After determining the Evaluated Bid Score of each Bid, the Purchaser will rank the Bids from the highest to the lowest. Combined Scoring. The Bid with the highest Evaluated Bid Score (B) among responsive Bids is eligible for Contract award, provided the Bidder was found to be qualified to perform the Contract in accordance with ITB Clause 20 and the price was found to be reasonable.    3. Qualification review shall be conducted to determine if the Bidder satisfies the qualification requirements as described in Section III. Qualification and Evaluation Criteria. The determination shall be based upon an examination of the documentary evidence of the Bidder’s qualifications submitted by the Bidder, pursuant to ITB Clause 20, the Bidder’s record of past performance, a review of references, and any other source at the Purchaser’s discretion. An affirmative determination of qualification shall be a prerequisite for award of the Contract to the Bidder.    4. Unless otherwise **specified in the BDS**, the Purchaser will NOT carry out tests at the time of post-qualification, to determine that the performance or functionality of the Information System offered meets those stated in the Technical Requirements. However, if **so specified in the BDS** the Purchaser may carry out such tests as detailed in the BDS.    5. Bidders shall provide such evidence of their continued qualification to perform the Contract (including any changes in their litigation history) in a manner satisfactory to the Purchaser, as the Purchaser shall reasonably request at any time prior to the award of contract. |
| 1. **Price Reasonableness** | * 1. The Purchaser shall make a determination of price reasonableness as required in the *MCC Program Procurement Guidelines*. If the price reasonableness analysis suggests that a Bid is significantly unbalanced or front loaded, the Purchaser may require the Bidder to produce a detailed price analysis for any or all items of the Price Schedules that demonstrates the internal consistency of prices with the implementation methods and schedule proposed.   2. After the evaluation of the information and detailed price analysis presented by the Bidder, the Purchaser may as appropriate:  1. accept the Bid; or 2. require that the total amount of the Performance Security be increased at the expenses of the Bidder to a level not exceeding the percentage **specified in the BDS**; or 3. reject the Bid.    1. If the Bidder declines to increase the Performance Security as required in ITB Sub-Clause 37.2, its Bid will be rejected and its Bid Security returned as described in ITB Sub-Clause 47.1.    2. A negative determination of price reasonableness (either unreasonably high or unreasonably low) may be a reason for rejection of the Bid at the discretion of the Purchaser. The Bidder shall not be permitted to revise its Bid after this determination. |
| 1. **No Margin of Preference** | * 1. In accordance with the MCC PPG, a margin of preference for domestic Bidders shall not be used. |
| 1. **Past Performance and Reference Check** | * 1. In accordance with the MCC PPG, the Bidder’s performance on earlier contracts will be considered a factor in the Purchaser’s qualification of the Bidder. The Purchaser reserves the right to check the performance references provided by the Bidder or to use any other source at the Purchaser’s discretion. If the Bidder (including any of its associates or joint venture/association members) is or has been a party to an MCC-funded contract (either with MCC directly or with any Millennium Challenge Account Entity, anywhere in the world), whether as a lead contractor, affiliate, associate, subsidiary, subcontractor, or in any other role, the Bidder must identify the contract in its list of references submitted with its Bid using Bidding Form REF1: References of MCC Funded Contracts. Failure to include any such contracts may be used to form a negative determination by the Purchaser on the Bidder’s record of performance in prior contracts. However, the failure to list any contracts because the Bidder (including any of its associates or joint venture/association members) has not been a party to any such contract will not be grounds for a negative determination by the Purchaser on the Bidder’s record of performance in prior contracts. That is, prior performance in connection with an MCC-funded contract is not required. The Purchaser will check the references, including the Bidder’s past performance reports filed in MCC’s Contractor Past Performance Reporting System (“CPPRS”). A negative determination by the Purchaser on the Bidder’s record of performance in prior contracts may be a reason for disqualification of the Bidder at the discretion of the Purchaser. |
| 1. **Purchaser’s Right to Accept Any Bid and to Reject Any or All Bids** | * 1. The Purchaser reserves the right to accept or reject any Bid or to annul the bidding process and reject all Bids at any time prior to Contract award, without thereby incurring any liability to the Bidders. In case of annulment, all Bids submitted and specifically, Bid Securities, shall be promptly returned to the Bidders at the Purchaser’s expense. If all Bids are rejected, the Purchaser shall review the causes justifying the rejection and consider making revisions to the conditions of Contract, design and specifications, scope of the Contract, or a combination of these, before inviting new Bids. The Purchaser reserves the right to cancel the procurement if this is no longer in the interest of the Purchaser. |

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| **F. Award of Contract** | |
| 1. **Award Criteria** | * 1. Subject to ITB Sub-Clause 36.1, the Purchaser will award the Contract to the Bidder whose Bid has been determined to be substantially responsive and received the highest Evaluated Bid Score, provided further that the Bidder has been determined to be qualified to perform the Contract satisfactorily, pursuant to ITB Clause 31. |
| 1. **Purchaser’s Right to Vary Quantities at Time of Award** | * 1. The Purchaser reserves the right at the time of Contract award to increase or decrease, by the percentage(s) **indicated in the BDS**, any of the following:  1. the quantity of individual hardware, Software, related equipment, Materials, products, and other Goods components of the Information System; or 2. the quantity of Installation or other Services to be performed,   from that was originally specified in the Purchaser’s Requirements (as amended by any Addenda issued pursuant to ITB Clause 11), without any change in unit prices or other terms and conditions. |
| 1. **Notification of Evaluation Results to Bidders** | * 1. Prior to the expiration of the period of Bid validity, the Purchaser shall send the Notice of Intent to Award (“NOITA”) to the successful Bidder. NOITA shall include a statement that the Purchaser shall issue a formal Letter of Acceptance and draft Contract Agreement after expiration of the period for filing a Bid challenge and the resolution of any Bid challenges that are submitted. Delivery of the NOITA **shall not constitute the formation of a contract** between the Purchaser and the successful Bidder and no legal or equitable rights will be created through the delivery of the NOITA. |
|  | * 1. At the same time it issues the NOITA, the Purchaser shall also notify, in writing, all other Bidders of the results of the bidding. The Purchaser shall promptly respond in writing to any unsuccessful Bidder who, after receiving notification of the bidding results, makes a written request for a debriefing as provided in the *MCC Program Procurement Guidelines*, or submits a formal Bid challenge. |
| 1. **Bid Challenges** | * 1. Bidders may challenge the results of a procurement only according to the rules established in the Bid Challenge System developed by the Purchaser and approved by MCC. The rules and provisions of the Bid Challenge System are as published on the Purchaser’s website **indicated in the BDS**. |
| 1. **Signing of Contract** | * 1. Upon expiration of the period for timely filing of Bid challenges and the resolution of any Bid challenges that are submitted, the Purchaser shall send the Letter of Acceptance to the successful Bidder.   2. The Letter of Acceptance shall include the Contract Forms for the review and signature of the successful Bidder. The Letter of Acceptance shall specify the sum that the Purchaser will pay the Supplier for the delivery of Information Systems. Until a formal Contract is prepared and executed, the Letter of Acceptance shall constitute a binding Contract between the Purchaser and the Supplier.   3. Within twenty-eight (28) days of issuance from the Purchaser of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer, along with a Performance Security as per ITB Clause 46 and PS-2 Supplier Self-Certification Form included in the completed the Compliance with Sanctions Certification Form included in Section VIII. Contract Form and Annexes.   4. The Letter of Acceptance shall include the Contract Agreement for the review and signature of the successful Bidder. |
| 1. **Performance Security** | * 1. Within twenty-eight (28) days of receipt of the Letter of Acceptance from the Purchaser, the successful Bidder shall furnish the Performance Security in accordance with the GCC Clause 16, using the Performance Security form included in Section VIII. A foreign institution providing a Performance Security shall have a correspondent financial institution located in the Purchaser’s country.   2. Failure of the successful Bidder to submit the above-mentioned performance security or to sign the Contract within twenty-eight (28) days of the receipt of the Letter of Acceptance shall constitute sufficient grounds for the annulment of the award and, if and as applicable, forfeiture of the Bid Security. In that event, the Purchaser may award the Contract to the Bidder with the second highest evaluated Bid score that is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily. |
| 1. **Publication of Award and Return of Bid Securities** | * 1. Upon receipt of the signed Contract Agreement and a valid Performance Security, the Purchaser shall return the Bid Securities of unsuccessful Bidders and shall publish on the Purchaser’s website and in any other places as may be **specified in the BDS,** the results identifying the Bid and the following information:  1. the name of the winning Bidder; 2. the price of the winning Bid and the price of Contract award if different; and 3. the duration and the summary scope of the Contract awarded. |
| 1. **Threshold Program Grant Agreement Conditionalities** | * 1. Bidders are advised to examine and consider carefully the provisions that are set forth in Annex A (Additional Provisions) attached to and made part of the Particular Conditions of the Contract, as these are part of the Government’s and the Purchaser’s obligations under the Threshold Program Grant Agreement and related documents which, under the terms of the Threshold Program Grant Agreement and related documents, are required to be transferred onto any Bidder, Supplier, or Subcontractor who partakes in procurement or subsequent contracts in which MCC Funding is involved. |
| 1. **Inconsistencies with MCC Program Procurement Guidelines** | * 1. The procurement that is the subject of this Bidding Document is being conducted in accordance with and is subject in all respects to *MCC Program Procurement Guidelines* In the event of any conflict between any section or provision of this Bidding Document (including any Addenda that may be issued to this Bidding Document) and *the MCC Program Procurement Guidelines*, the terms and requirements of the *MCC Program Procurement Guidelines* shall prevail, unless MCC has granted a waiver of the guidelines. |
| 1. **Contractor Past Performance Reporting System** | * 1. During the performance of the Contract, the Purchaser shall maintain a performance record of the Contractor in accordance with MCC’s Contractor Past Performance Reporting System as described on MCC’s website. |
| 1. **Adjudicator** | * 1. If so **stated in the BDS**, the Purchaser proposes that the person **named in the BDS** be appointed as Adjudicator under the Contract to assume the role of informal Contract dispute mediator, as described in GCC Clause 6. In this case, a résumé of the named person is **attached to the BDS**. The proposed hourly fee for the Adjudicator is **specified in the BDS**. The expenses that would be considered reimbursable to the Adjudicator are also **specified in the BDS**. If a Bidder does not accept the Adjudicator proposed by the Purchaser, it should state its non-acceptance in its Bid Submission Form and make a counterproposal of an Adjudicator and an hourly fee, attaching a résumé of the alternative. If the successful Bidder and the Adjudicator **nominated in the BDS** happen to be from the same country, and this is not the country of the Purchaser too, the Purchaser reserves the right to cancel the Adjudicator nominated in the BDS and propose a new one. If by the day the Contract is signed, the Purchaser and the successful Bidder have not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed, at the request of either party, by the Appointing Authority specified in the GCC Sub-clause 6.1.4, or if no Appointing Authority is specified there, the Contract will be implemented without an Adjudicator. |

## Section II. Bid Data Sheet (“BDS”)

The following specific information relating to the System to be procured and the procurement procedures that will be used shall complement, supplement, or amend the provisions in the Instructions to Bidders (“ITB”). Whenever there is a conflict, the provisions in the Bid Data Sheet (“BDS”) shall prevail over those in the ITB.

**A. General**

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| **ITB Definitions** | (q) “Government” means the government of **Kosovo.**  (s) “Implementing Entity” *N/A*.  (x) “MFK” means **Millenium Foundation of Kosovo (MFK)**  (ff) “Purchaser” means **Millennium Foundation Kosovo**.  (i) Not Applicable  (vv) “Threshold Program Grant Agreement” means the Threshold Program Grant Agreement between the United States of America, acting through the Millennium Challenge Corporation, and the Government, entered into on **September 12, 2017**, as may be amended from time to time. |
| **ITB 1.1** | Name of this CB procurement is: **Procurement of Information Systems**  **(Design, Supply and Installation) ICT Systems for Public Access to Judicial Information**  Identification numberof this CB procurement is: **BD/CB/2021/014** |
| **ITB 1.2** | The Purchaser will provide the following inputs and facilities:  **“None”** |
| **ITB 6.1 (a)** | Qualification requirements for Bidders:  **1)  Economic and financial capacity of tenderer**   * The annual turnover of the tenderer for each of the last 3 financial years must be at least 1.000.000,00 EUR; * Current ratio (current assets/current liabilities) in the last year for which accounts have been closed must be at least 1. In case of a consortium this criterion must be fulfilled by each member.   **2)   Technical capacity of tenderer**   * The tenderer has delivered supplies under at least two (2) contracts each with the tenderer’s proportion of the budget of at least 600.000,00 EUR in the field of:  1. Case Information Management system solution, including software architecture design, customization and/or development and project management   and   1. Demo version of a previously developed information management system (both front-end and back-end) on the offered platform with similar or higher complexity is available online for verification. Please specify URL and log-in credentials with the submitted offer. |

**B. Contents of Bidding Document**

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| **ITB 8.1** | Clarifications may be requested by using this File Request Link not later than **23 September 2021**, so that responses can be issued to all Bidders not later than **04 October 2021**.  Please submit your clarifications using this File Request Link:  <https://www.dropbox.com/request/3eozgnU53ilHvS4Nkkq9>  **All responses to clarifications requests shall be uploaded in in the website www.millenniumkosovo.org in the same site when you get access to the BD Documents, the link is provided below.**  **A complete set of Biding Document (BD) documents including any clarifications, notices and/or addendums may be obtained by interested eligible consultants through the following website (Eventual clarifications or any changes to the BD document shall be published at the latest 5 days before the submission deadline on the link provided below):**  **https://millenniumkosovo.org/procurment/procurement-of-information-systems-design-supply-and-installation-ict-systems-for-public-access-to-judicial-information-bd-cb-2021-014**  **You are strongly advised to fill in the form below to get further updates on this procurement the form can be found in the link provided below:**  [**https://millenniumkosovo.org/procurment/procurement-of-information-systems-design-supply-and-installation-ict-systems-for-public-access-to-judicial-information-bd-cb-2021-014**](https://millenniumkosovo.org/procurment/procurement-of-information-systems-design-supply-and-installation-ict-systems-for-public-access-to-judicial-information-bd-cb-2021-014) |
| **ITB 8.2** | A pre-Bid Conference will be held at **21 September 2021** (14:30 Kosovo Time) via online Zoom Meeting through the following links**.**  Zoom Meeting Link:  <https://us02web.zoom.us/j/87612297510>  Attendance is strongly advised for all prospective Bidders or their representatives but is not mandatory. |
| **ITB 8.4** | A site visit **shall not** take place |
| **ITB 10.1** | The Purchaser shall not refund the costs associated with the preparation and submission of the Bid. |
| **ITB 11.1** | The Bid shall be submitted in **English language.** |

**C. Preparation of Bids**

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| **ITB 12.1** | The Bid submitted by the Bidder shall comprise:   * 1. Letter of Bid   2. all Bidding Forms in Section IV completed and signed by a person or persons duly authorized to bind the Bidder to the Contract;   3. all Price Schedules in Section IV duly completed in accordance with ITB Clauses 14, 15, and 18 and signed by a person or persons duly authorized to bind the Bidder to the Contract;   4. if required in the BDS, Bid Security furnished in accordance with ITB Clause 17;   5. written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB Sub-Clause 19.2;   6. Bidder’s Eligibility: Documents establishing to the Purchaser’s satisfaction the Bidder’s eligibility to Bid, including but not limited to documentary evidence that the Bidder is legally incorporated in a territory of an eligible source country as defined under ITB Sub-Clause 5.3;   7. Bidder’s Qualifications: Documentary evidence establishing to the Purchaser’s satisfaction, and in accordance with ITB Clause 20, that the Bidder is qualified to perform the Contract if its Bid is accepted.   8. Any Manufacturer’s Authorizations and Subcontractor agreements specified as required in BDS ITB Sub-Clause 20.1 (c);   9. Eligibility of Goods and Services: Documents establishing, to the Purchaser’s satisfaction, that the Goods and Services components of the Information System to be supplied, installed, and/or performed by the Bidder are eligible Goods and Services as defined under ITB Clause 6. If awarded the Contract, the Bidder shall submit for such components of the Information System evidence of eligibility, which shall be confirmed by a certificate of origin issued at the time of shipment;   10. Conformity of the Information System to this Bidding Document: Documentary evidence establishing to the Purchaser’s satisfaction, and in accordance with ITB Clause 18, that the Goods and Services components of the Information System to be supplied, installed, and/or performed by the Bidder conform to this Bidding Document;   11. Proposed Subcontractors: A list of all major items of Goods or Services that the Bidder proposes to purchase or subcontract from others, and the name and nationality of the proposed Subcontractor, including vendors, for each of those items;   12. Intellectual Property: A list of:       1. All Software included in the Bidder’s Bid, assigning each item to one of the software categories defined in GCC Clause 1.1 (ttt), (z), (d), (t), and (lll): System, General Purpose, and Application Software; and Standard and Custom Software;       2. All Custom Materials, as defined in GCC Clause 1.1(s), included in the Bidder’s Bid;       3. All Materials not identified as Custom Materials shall be deemed Standard Materials, as defined in GCC Clause 1.1 (kkk);       4. Re-assignments among the Software and Materials categories, if necessary, will be made during the implementation of the Contract according to GCC Clause 39 (Changes to the System). |
| **ITB 14.1** | Alternative Bids **shall not** be considered. |
| **ITB 15.7** | The Incoterms edition is **Incoterms 2010** |
| **ITB 15.2** | Recurrent cost items are **not** required. |
| **ITB 15.6(a)** | The Final Destination of Goods is: Palace of Justice, Str Nekibe Kelmendi, Prishtinë, 10000, Kosovo. |
| **ITB 15.7 (a) (ii)** | For Goods manufactured in Purchaser’s country the price of the Goods shall be quoted EXWto Palace of Justice, Str Nekibe Kelmendi, Prishtinë, 10000, Kosovo. |
| **ITB 15.7 (b) (ii)** | For foreign goods, prices shall be quoted on a CIP (named place of destination) basis, but excluding all Taxes and Contributions (as the term is defined in the Threshold Program Grant Agreement), which shall be assumed by the Government in accordance with the Threshold Program Grant Agreement and related agreements:   * + 1. The carriage shall include the cost of unloading the goods at destination, as well as payment by the Supplier of other charges payable on the foreign Goods for their transit through any country other than the Purchaser's country.     2. The named place of destination shall be: Palace of Justice, Str Nekibe Kelmendi, Prishtinë, 10000, Kosovo. |
| **ITB 15.7 (c) (ii)** | For Goods manufactured outside Purchaser’s country, already imported, the price for inland transportation, insurance, and other local services required to convey the Goods to Palace of Justice, Str Nekibe Kelmendi, Prishtine, 10000, Kosovo |
| **ITB 15.8** | **“The prices must include all costs incidental to the performance of the Services, as incurred by the Supplier.”** |
| **ITB 15.11** | Prices quoted by the Bidder shall be **fixed** |
| **ITB 16.1** | The currency of the Bid shall be as follows: **United States Dollars (USD)**  The currency of the payment shall be the currencies of the Bid. |
| **ITB 18.3** | Purchaser’s / duly authorized Purchasing Agent’s address:  Att.: MFK Procurement Manager  Kosovo Government Building  Migjeni Str 21, Floor 9  10000 Prishtina, Republic of Kosovo  procurement@millenniumkosovo.org |
| **ITB 19.2 (c)** | In addition to the topics described in ITB Sub-Clause 19.2 (c), the Preliminary Project Plan must address the following topics:   1. **Work Organization and Management Sub-Plan, including management authorities, responsibilities, and contacts, as well as task, time and resource-bound schedules (in GANTT format);** 2. **Open Data Platform software development plan;** 3. **Case Tracking Mechanism software development plan;** 4. **Helpdesk platform deployment plan;** 5. **E-Learning Platform deployment plan;** 6. **Integration, Testing and Rollout Plan;** 7. **Capacity Building and Training Sub-Plan;** 8. **Warranty Defect Repair and Technical Support Service Sub-Plan** |
| **ITB 19.3** | In the interest of effective integration, cost-effective technical support, and reduced re-training and staffing costs, Bidders are required to offer specific brand names and models for the following limited number of specific items: **none** |
| **ITB 20.1 (a)** | Qualification requirements for Bidders:  **1)  Economic and financial capacity of tenderer**   * The annual turnover of the tenderer for each of the last 3 financial years must be at least 1.000.000,00 EUR; * Current ratio (current assets/current liabilities) in the last year for which accounts have been closed must be at least 1. In case of a consortium this criterion must be fulfilled by each member.   **2)   Technical capacity of tenderer**   * The tenderer has delivered supplies under at least two (2) contracts each with the tenderer’s proportion of the budget of at least 600.000,00 EUR in the field of:  1. Case Information Management system solution, including software architecture design, customization and/or development and project management   and   1. Demo version of a previously developed information management system (both front-end and back-end) on the offered platform with similar or higher complexity is available online for verification. Please specify URL and log-in credentials with the submitted offer. |
| **ITB 20.1 (b)** | N/A |
| **ITB 20.1 (c)** | Manufacturer's Authorizations for Information Technologies - except for those technologies which the Bidder itself manufactures - are required for the following types/categories:  **all active equipment and all software (licenses)** |
| **ITB 20.1 (d)** | If the Bidder proposes to use Subcontractors for the provision of certain key services, written agreements by the proposed firms to provide these services in case of contract(s) resulting from this bidding are required for the following types/categories of services:  **“none”** |
| **ITB 20.4** | N/A |
| **ITB 21.1** | Bids shall remain valid 120 days from date of submission. |
| **ITB 22.1** | Bid Security **is** required to be submitted with a Bid.  In addition, the Bidder shall upload a scanned copy of its postal/courier receipt as evidence that the original of the duly completed and signed Bid Security has been dispatched to the Purchaser. The uploaded postal/courier receipt shall clearly show the time, date of dispatch and the correct Purchaser’s address details. |
| **ITB 22.2 and 22.2 (a)** | The Bid Security shall be in the amount of US$ **30,000.00 (thirty thousand United States Dollar)** or Purchaser’s local currency equivalent only.  The Bid Security shall be in the form included in Section IV of an unconditional bank guarantee |
| **ITB 23.1** | The written confirmation of authorization to sign on behalf of the Bidder shall consist of*:* **Name of the authorized person, Position, Address, Telephone number and Email address.** |

**D. Submission and Opening of Bids**

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| **ITB 24.1** | Bids shall be submitted only electronically |
| **ITB 24.3 (c)** | The File Request Link. (FRL) to submit Bids is:  [**https://www.dropbox.com/request/lFfFB1DfZLM3qXpmjalQ**](https://www.dropbox.com/request/lFfFB1DfZLM3qXpmjalQ) |
| **ITB 24.3 (g)** | If a Bidder submits a Bid with password protection, the password for the Bid should be sent no earlier than **13 October 2021** andno later than **13:45 pm (Kosovo Time)** on **14 October 2021** to the following email address: **procurement@millenniumkosovo.org** |
| **ITB 24.3 (k)** | For electronic submission purposes, the hard copy of the Bid Security shall be submitted not later than **18 October 2021 at 16:00 pm (Kosovo Time).** |
| **ITB 25.1** | The deadline for submission of Bids is as follows:  **14 October 2021 at 14:00 pm (Kosovo Time).** |
| **ITB 28.1** | For Bid opening purposes only, the Purchaser’s address is:  Bid Opening **will** be publicly (electronic form)  Bid Opening will be held by web conference using Zoom ([www.zoom.us](http://www.zoom.us)) on **14 October 2021 at 14:30 pm (Kosovo Time).**  Zoom Meeting Link:  <https://us02web.zoom.us/j/87845396817>  The Minutes of Opening of Bid Opening shall be promptly published in MFK Website on the following link: [**https://millenniumkosovo.org/procurment/procurement-of-information-systems-design-supply-and-installation-ict-systems-for-public-access-to-judicial-information-bd-cb-2021-014**](https://millenniumkosovo.org/procurment/procurement-of-information-systems-design-supply-and-installation-ict-systems-for-public-access-to-judicial-information-bd-cb-2021-014) |
| **ITB 28.4** | Bids **will** be opened publicly electronic at time and address as given in ITB Sub-Clause 28.1 above. |

**E. Evaluation of Bids**

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| **ITB 29.3** | All correspondence must be addressed to the Purchaser at: **procurement@millenniumkosovo.org**. |
| **ITB 35.1** | The currency that shall be used for Bid evaluation and comparison is: **USD**. |
| **ITB 33.2** | The total amount of the Performance Security may be increased to a level not exceeding **10%** of the Contract Price. |
| **ITB 36.2** | The Bid evaluation **will** take into account technical factors in addition to cost factors.  The weight of the Price (“X” multiplied by 100 in the Evaluated Bid Score formula) *=* [**30 %**] |
| **ITB 36.2** | (a),(b) The technical evaluation categories and the features to be evaluated within each category are as follows:   1. Preliminary Project Plan (Form TECH-5 ) 2. Functionalities methodology by the proposed solution (Form TECH-7) 3. Hardware Equipment, Software Licenses, Integration and conformity with the requirements of the overall solution (TECH-6) 4. Technical Team Proposed (as per Chapter 8 of the ToR)    1. **KE1. Overall Project Manager**   The minimum requirements for the KE1 are:   1. Qualifications and skills    1. At least Master degree in IT or engineering or in case of undergraduate degree equivalent 5 years of general professional experience above the minimum general professional experience requested below. 2. General professional experience    1. At least 8 (eight) years of professional experience in the field of ICT systems. 3. Specific professional experience    1. Experience as a team leader or project manager in at least 1 (one) project valued over EUR 1M in the last five years, related to design and/or development and/or management of ICT solutions in the area of justice.    2. At least 3 (three) years of experience in implementation of ICT reforms in the judiciary.    3. Experience in implementation of at least one similar complexity project related to implementation and/or development and/or management of ICT solutions in the area of justice sector;    4. Experience in implementation of projects in the area of “E-justice” or further development of the ICT regulatory and institutional framework preferably in Kosovo context will be considered an asset.    5. **KE2. Task 2 Lead Expert**   The minimum requirements for the KE2 are:   1. Qualifications and skills    1. Education at least Master Degree Academic level in Information Communication Technology (ICT) or similar University degree with 3 (three) years of general professional experience above the minimum general professional experience requested below. 2. General professional experience    1. At least 5 (five) years, preferably 5 (five) years of professional working experience in information technology.    2. Team Leader or Project Management experience in justice sector is a strong advantage. 3. Specific professional experience    1. At least 5 (five) years experience as an IT expert in project related to design and/or development and/or management of ICT solutions in the area of justice.    2. **KE3. Task 2 Business Analyst**   The minimum requirements for the KE3 are:   1. Qualifications and skills    1. A level of education which corresponds to completed university studies of at least 4 years attested by a diploma in ICT;    2. A post-graduate diploma in ICT will be considered as an asset;    3. Fluent in written and spoken English;    4. Knowledge of any of the local languages would be an asset. 2. General professional experience    1. At least 5, but preferably 7 years of professional experience, as business analyst, in area of implementation of ICT systems    2. Experience as a key expert in at least 1 international donors’ funded projects in judicial sector;    3. Knowledge of Kosovo judicial context will be an asset. 3. Specific professional experience    1. Experience minimum 3 years with judicial system software analysis and design.    2. Experience with implementation and testing of judicial systems, including design of test plans and user acceptance test cases.    3. Experience of interoperable IT solutions, preferably for the judiciary sector.    4. **KE4. Task 3 Lead Expert**   The minimum requirements for the KE2 are:   1. Qualifications and skills    1. Education at least Master Degree Academic level in Information Communication Technology (ICT) or similar University degree with 3 (three) years of general professional experience above the minimum general professional experience requested below. 2. General professional experience    1. At least 5 (five) years, preferably 5 (five) years of professional working experience in information technology.    2. Team Leader or Project Management experience in the justice sector is a strong advantage. 3. Specific professional experience    1. At least 5 (five) years’ experience as an IT expert in project related to design and/or development and/or management of ICT solutions in the area of justice.    2. **KE5. Task 3 Business Analyst**   The minimum requirements for the KE5 are:   1. Qualifications and skills    1. A level of education which corresponds to completed university studies of at least 4 years attested by a diploma in ICT;    2. A post-graduate diploma in ICT will be considered as an asset;    3. Fluent in written and spoken English;    4. Knowledge of any of the local languages would be an asset. 2. General professional experience    1. At least 5, but preferably 7 years of professional experience, as business analyst, in area of implementation of ICT systems    2. Experience as a key expert in at least 1 international donors’ funded projects in judicial sector;    3. Knowledge of Kosovo judicial context will be an asset. 3. Specific professional experience    1. Experience minimum 3 years with judicial system software analysis and design.    2. Experience with implementation and testing of judicial systems, including design of test plans and user acceptance test cases.    3. Experience of interoperable IT solutions, preferably for the judiciary sector.    4. **KE6. Task 4 Help Desk Expert**   The minimum requirements for the KE6 are:   1. Qualifications and skills    1. University degree in IT, Computer Science, Management.    2. Good planning and organizational skills. 2. Professional experience:    1. Minimum 3 years of professional experience with a Help Desk operations    2. Minimum 3 years of professional experience in working with ticketing system.    3. Current experience in utilizing Help Desk platforms is a strong asset.    4. **KE7. Task 5 e-Learning Systems Expert**   The minimum requirements for the KE7 are:   1. Qualifications and skills    1. University degree in IT, Computer Science, Management, Education, an MSc degree preferred.    2. Good planning and organizational skills;    3. Very good familiarity in using the MS Office application package (Word, Excel, PP Presentation);    4. Excellent reporting capabilities 2. Professional experience:    1. Minimum 10 years of professional experience within education sector    2. Minimum 5 years of professional experience in Training / education sphere, either in management of training activities or as trainer    3. Minimum 5 years of practice in developing / managing E-learning platforms    4. Current experience in utilizing e-Learning platforms for training and evaluation is a strong asset.    5. **KE8. Task 6 System Integration Expert**   The minimum requirements for the KE8 are:   1. Qualifications and skills    1. Education at least Master Degree Academic level in Information Communication Technology (ICT) or similar undergraduate level University degree with 3 (three) years of general professional experience above the minimum general professional experience requested below. 2. General professional experience    1. At least 3 (three) years, preferably 5 (five) years of professional working experience in information technology.    2. Experience in the justice sector is a strong advantage. 3. Specific professional experience    1. At least 3 (three) years of practical proven system integration experience.    2. Experience as an IT expert in projects related to design and/or development and/or management of ICT solutions in the area of justice is a strong advantage. 4. Time Schedule   Time to complete the plant and services from the effective date specified in Article 3 of the Contract  Agreement for determining the time for completion of pre-commissioning activities is:  11 months, no credit will be given for earlier completion.  (c),(e),(f) The evaluation weights for categories and technical features within categories are:   1. Preliminary Project Plan (Form TECH-5 ) – total item score weight is 10 of 100 points 2. Functionalities methodology by the proposed solution (Form TECH-7) – total item score weight is 38 of 100 points 3. Hardware Equipment, Software Licenses, Integration and conformity with the requirements of the overall solution (TECH-6) – total item score weight is 10 of 100 points 4. Technical Team Proposed – total item score weight is 32 of 100 points    1. 0 point if the key expert does not fulfill the minimum requirements    2. 2 point if the key expert fulfills the minimum requirements, but not the optional requirements (considered assets)    3. 4 point if the key expert fulfills the minimum requirements and the optional requirements (considered assets) 5. Time Schedule – total item score weight is 10 of 100 points |
| **ITB 36.9** | As additional pre-award measures, the Information System (or components/parts of it) offered by the Bidder receiving the highest Evaluated Bid Score may be subjected to the following tests and performance benchmarks prior to Contract award: Reference check, **demonstration tests, performance benchmarks, documentation reviews.**  The Purchaser will undertake all its travel and related expenses on itself; the Bidder will be required to arrange for testing facility at its own or at its customer site.  **The Bidder shall bear all costs associated with the preparation, demonstration, benchmark tests** |

**F. Award of Contract**

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| **ITB 38.1** | The Purchaser reserves the right to increase or decrease the quantities of each item by up to 30%. |
| **ITB 40.1** | The Purchaser’s Bid Challenge System is provided on the Purchaser’s website **https://millenniumkosovo.org/** |
| **ITB 47.1** | The results will be published at **https://millenniumkosovo.org/, UNDB Online, dgMarket etc.** |
| **ITB 50.1** | The proposed Adjudicator is: **To Be Determined before contract is signed.**  The proposed hourly fee is: **To Be Determined before the contract is signed.**  The expenses that would be considered reimbursable to the Adjudicator are: **To Be Determined before contract is signed.** |

## Section III. Qualification and Evaluation Criteria

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**Process**

This Section contains all the criteria that the Purchaser shall use to review Bids, post-qualify Bidders and select the winning Bid. No other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms. This review shall be based on the information provided by the Bidder in these forms, response to the technical questions under technical requirement plus the Bidder’s record of past performance, other references and any other sources at the Purchaser’s discretion to confirm and verify the Bidder’s qualifications and representations in its Bid. The Purchaser may conduct the following review in any sequence, as considered appropriate by the Purchaser.

**A. Bid Review**

1. **Administrative Completeness Review**

This review is conducted to determine that the Bid is complete, all required documents are included and all forms are included and are completed. The Bidder may be requested to submit additional information or documentation within a reasonable period of time and/or to correct nonmaterial nonconformities in the Bid related to documentation requirements. Determinations made during this review include:

1. Determine if the Letter of Bid is included and signed as per the requirements of ITB Clause 23 and ITB Clause 24;
2. Determine eligibility of Bidder, in accordance with ITB Clause 5, and eligibility of goods and related services, in accordance with ITB Clause 6;
3. Determine if the Bid and Bid Security are valid as per the provisions of the Bidding Document;
4. Determine if GOE certification is enclosed and completed;
5. Determine if all other required forms are included and completed;
6. **Legal Status**

Each entity forming the Bidder shall attach to Form ELI-1 a copy of its letter of incorporation, or other such document, indicating its legal status. In the event the Bidder is an association of entities, the Bidder shall include any other document showing that it intends to associate, or it has associated with, the other entity or entities that are jointly submitting a Bid. Each member of the association that forms the Bidder must provide the information required in Form ELI-1.

1. **Financial Criteria**

The Bidder shall provide evidence showing that it has the sufficient financial capacity needed for this Contract, as required in Form FIN-1. Each member of the association that forms the Bidder must provide the information required in Form FIN-1.

1. **Litigation Criteria**

The Bidder shall provide accurate information on any current or past litigation or arbitration resulting from contracts completed, terminated, or under execution by the Bidder over the last five (5) years, as indicated in Form CON-1. A consistent history of awards against the Bidder or existence of high value dispute, which may threaten the financial standing of the Bidder, may lead to the rejection of the Bid. Each member of the association that forms the Bidder must provide the information required in Form CON-1.

1. **References and Past Performance Review**

In accordance with ITB Clause 39, the Bidder’s performance on earlier contracts will be considered in determining if the Bidder is qualified for award of the Contract.

In accordance with the MCC PPG, the Bidder’s performance on earlier contracts will be considered a factor in the Purchaser’s qualification of the Bidder. The Purchaser reserves the right to check the performance references provided by the Bidder or to use any other source at the Purchaser’s discretion. If the Bidder (including any of its associates or Joint Venture/Association members) is or has been a party to an MCC-funded contract (either with MCC directly or with any Millennium Challenge Account Entity, anywhere in the world), whether as a lead contractor/Supplier, affiliate, associate, subsidiary, Subcontractor, or in any other role, the Bidder must identify the contract in its list of references submitted with its Bid Submission using Form REF-1: References of MCC Funded Contracts. Failure to include any such contracts may be used to form a negative determination by the Purchaser on the Bidder’s record of performance in prior contracts. However, the failure to list any contracts because the Bidder (including any of its associates or Joint Venture/Association members) has not been a party to any such contract will not be grounds for a negative determination by the Purchaser on the Bidder’s record of performance in prior contracts. That is, prior performance in connection with an MCC-funded contract is not required. The Purchaser will check the references, including the Bidder’s past performance reports filed in MCC’s Contractor Past Performance Reporting System (“CPPRS”). A negative determination by the Purchaser on the Bidder’s record of performance in prior contracts may be a reason for disqualification of the Bidder at the discretion of the Purchaser.

1. **Determination of Responsiveness**

If a Bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Purchaser and may not be subsequently made responsive by correction of the material deviation, reservation, or omission.

However, the Purchaser may request any Bidder to clarify its Bid according to the procedures set out in ITB Clause 30. For purposes of this determination, a substantially responsive Bid is one that meets all the terms, conditions, and specifications of this Bidding Document without material deviations, exceptions, objections, conditionalities, or reservations.

The Purchaser will determine at its own cost and to its satisfaction whether the Bidder (including joint venture/association partners, and any Subcontractors for which BDS ITB Sub-Clause 20.1 (a) permits that their qualifications count towards the required Bidder qualifications) that is selected as having submitted the Bid receiving the highest Bid Score is qualified to perform the Contract satisfactorily, in accordance with ITB Clause 20.

Pursuant to ITB Clauses 6 and 20, and as additionally may be specified in the BDS, the determination will evaluate the Bidder’s financial, technical, design, integration, customization, production, management, and support capabilities and will be based on an examination of the documentary evidence of the Bidder’s qualifications, as well as other information the Purchaser deems necessary and appropriate. This determination may include visits or interviews with the Bidder’s clients referenced in its Bid, site inspections, and any other measures. **If so specified in the BDS,** during the Bid review and qualification the Purchaser may also carry out tests to determine that the performance or functionality of the Information System offered meets those stated in the Purchaser’s Requirements.

An affirmative qualification determination will be a prerequisite for award of the Contract to the Bidder having the highest Evaluated Bid Score. A negative determination will result in rejection of the Bidder’s Bid, in which event the Purchaser will proceed to the next lowest evaluated Bidder to make a similar determination of that Bidder’s capabilities to perform satisfactorily.

Bidders shall provide such evidence of their continued qualification to perform the Contract (including any changes in their litigation history) in a manner satisfactory to the Purchaser, as the Purchaser shall reasonably request at any time prior to the award of contract.

1. **Technical Review for Responsiveness Determination**

Documents Comprising Technical Submission: The Bidder shall furnish a technical submission including a description of Information Technologies, Materials, Other Goods, and Services, Item-by-Item Commentary on the Technical Requirements provided in the Technical Responsiveness Checklist of Section F, Preliminary Project Plan, Confirmation of Responsibility for Integration and Interoperability of Information Technologies and other information as stipulated in Section VII, Purchaser’s Requirements in sufficient detail to demonstrate the adequacy of the Bidder’s Bid to meet the information system and plant and equipment requirements and the completion time.

Assessment of Adequacy of Technical submission: Review of the Bidder’s technical Bid will include an assessment of the Bidder’s preliminary design and technical method and management, and support capabilities for the Contract consistent with the requirements stipulated in Section VII, Purchaser’s Requirements. The review of the technical Bid will also include an assessment of the Bidder’s personnel as called for in Section VII, Purchaser’s Requirements.

1. **Price Review**
2. This review is conducted to determine the Evaluated Bid Price of each Bid. The “Evaluated Bid Price” shall be the Bid price adjusted as follows:
3. The Purchaser’s evaluation of a Bid will be made on the basis of prices quoted in accordance with ITB Clause 15 (Bid Prices).
4. The Evaluated Bid Price does not include the estimated effect of the price adjustment (If any) to rates due to extensions of the Bid validity period in accordance with ITB Sub-Clause 21.3;
5. The Evaluated Bid Price includes adjustment for quantifiable nonmaterial nonconformities in accordance with ITB Sub-Clause 31.1 and ITB Sub-Clause 33.1 based on Purchaser’s own assessment.
6. The Evaluated Bid Price includes adjustment for correction of arithmetical errors, omissions, clarifications, etc., in accordance with ITB Sub-Clause 34.1;

The Evaluated Bid Price “B” shall be calculated based on the factors mentioned above.

1. If, in addition to the price factors, the Purchaser has chosen to give weight to important technical factors (i.e., the price weight, X, is less than 1 in the evaluation), the Total Technical Points assigned to each Bid in the Evaluated Bid Formula will be determined by adding and weighting the scores assigned by an evaluation committee to technical features of the Bid in accordance with the criteria set forth below.
2. The technical features to be evaluated are **specified in the BDS**:
3. Performance, capacity, or functionality features that either exceed levels specified as mandatory in the Purchaser’s Requirements; and/or influence the life-cycle cost and effectiveness of the Information System.
4. Usability features, such as ease of use, ease of administration, or ease of expansion, which influence the life-cycle cost and effectiveness of the Information System.
5. The quality of the Bidder’s Preliminary Project Plan as evidenced by the thoroughness, reasonableness, and responsiveness of: (a) the task and resource schedules, both general and specific, and (b) the proposed arrangements for management and coordination, training, quality assurance, technical support, logistics, problem resolution, and transfer of knowledge, and other such activities as specified by the Purchaser in Section VII (Purchaser’s Requirements) or proposed by the Bidder based on the Bidder’s experience.
6. Feature scores will be grouped into a small number of evaluation categories, generally defined below and specifically **identified in the BDS**, namely:
7. The technical features that reflect how well the Information System meets the Purchaser’s Business Requirements (including quality assurance and risk-containment measures associated with the implementation of the Information System).
8. The technical features that reflect how well the Information System meets the System’s Functional Performance Standards.
9. The technical features that reflect how well the Information System meets the General Technical Requirements for hardware, network and communications, Software, and Services.
10. As **specified in the BDS**, each category will be given a weight and within each category each feature may also be given a weight.
11. During the evaluation process, the evaluation committee will assign each desirable/preferred feature a whole number score from 0 to 4, where 0 means that the feature is absent, and 1 to 4 either represent predefined values for desirable features amenable to an objective way of rating (as is the case for, e.g., extra memory, or extra mass storage capacity, etc., if these extras would be conducive for the utility of the system), or if the feature represents a desirable functionality (e.g., of a software package) or a quality improving the prospects for a successful implementation (such as the strengths of the proposed project staff, the methodology, the elaboration of the project plan, etc., in the Bid), the scoring will be 1 for the feature being present but showing deficiencies; 2 for meeting the requirements; 3 for marginally exceeding the requirements; and 4 for significantly exceeding the requirements.
12. The score for each feature (i) within a category (j) will be combined with the scores of features in the same category as a weighted sum to form the Category Technical Score using the following formula:



where:

*tji* = the technical score for feature “i” in category “j”

*wji* = the weight of feature “i” in category “j”

*k* = the number of scored features in category “j”

and 

1. The Category Technical Scores will be combined in a weighted sum to form the total Technical Bid Score using the following formula:



where:

*Sj* = the Category Technical Score of category “j”

*Wj* = the weight of category “j” as **specified in the BDS**

*n* = the number of categories

and 

The Evaluated Bid Price (C) for each responsive Bid will be determined as the sum of the Adjusted Supply and Installation Costs (P) plus the Recurrent Costs (R);

Where the Adjusted Supply and Installation Costs (P) are determined as:

1. The price of the hardware, Software, related equipment, products, Materials and other Goods offered from within or from outside the Purchaser’s Country, in accordance with ITB Clause 15; plus
2. The total price for all software development, transportation, insurance, installation, customization, integration, Commissioning, testing, training, technical support, repair, and other Services, in accordance with ITB Clause 15;

With adjustments for correction of arithmetical errors, omissions, clarifications, etc., in accordance with ITB Sub-Clause 32.3. After the above adjustments and corrections are made, the

1. Corrections to errors in arithmetic, in accordance with ITB Clause 34.
2. The Recurrent Costs (R) are reduced to net present value and determined using the following formula:



where

*N* = number of years of the Warranty Period, defined in the PCC GCC Clause 29.10

*M* = number of years of the Post-Warranty Services Period, as defined in the PCC GCC Clause 1.1.(tt)

*x* = an index number 1, 2, 3, ... N + M representing each year of the combined Warranty Service and Post-Warranty Service Periods.

*Rx* = total Recurrent Costs for year “*x*,” as recorded in the Recurrent Cost Sub-Table.

*I = discount rate to be used for the Net Present Value calculation, as specified in the BDS.*

The Purchaser will convert the Evaluated Bid Price to a single currency in accordance with ITB Clause 36.

1. **Evaluated Bid Score**

**Unless indicated otherwise in the BDS**, in addition to cost factors. An Evaluated Bid Score (B) will be calculated for each responsive Bid using the following formula, which permits a comprehensive assessment of the Bid price and the technical merits of each Bid:



where

*C* = Evaluated Bid Price

*C low* = the lowest of all Evaluated Bid Prices among responsive Bids

*T* = the total Technical Score awarded to the Bid

*Thigh* = the Technical Score achieved by the Bid that was scored highest among all responsive Bids

*X* = weight for the Price as **specified in the BDS**

The Bid with the highest Evaluated Bid Score (B) among responsive Bids shall be eligible for Contract award, provided the Bidder was found to be qualified to perform the Contract in accordance with ITB Sub-Clause 36.7 and the price was found to be reasonable as per the price reasonable analysis according to ITB Clause 37.

If the price reasonableness analysis suggests that a Bid is significantly unbalanced or front loaded, the Purchaser may require the Bidder to produce a detailed price analysis for any or all items of Schedule of Prices that demonstrates the internal consistency of prices with the implementation methods and schedule proposed.

After such evaluation of the information and detailed price analyses presented by the Bidder, the Purchaser may as appropriate:

1. accept the Bid; or
2. require that the total amount of the Performance Security be increased at the expense of the Bidder to a level not exceeding the percentage **specified in the BDS**; or
3. reject the Bid.

**B. Qualification Review**

This process will be conducted to determine if the Bidder satisfies the qualification requirements as listed in ITB Clause 20 and below. The determination shall be based upon an examination of the documentary evidence of the Bidder’s qualifications submitted by the Bidder as requested in Section IV, Bidding Forms, plus the Bidder’s record of past performance and a review of references and any other source at the Purchaser’s discretion. All qualification requirements shall be considered on a pass/fail basis. An affirmative determination of qualification shall be a prerequisite for award of the Contract to a Bidder.

* 1. **References and Past Performance Review**. In accordance with ITB Clause 39, the Bidder’s performance on earlier contracts has been considered in determining if the Bidder is qualified for award of the Contract. The Purchaser reserves the right to check the performance references provided by the Bidder or to use any other source at the Purchaser’s discretion. If the Bidder (including any of its associates or joint venture/association members) is or has been a party to an MCC-funded contract (either with MCC directly or with any Millennium Challenge Account Entity, anywhere in the world), whether as a lead contractor, affiliate, associate, subsidiary, subcontractor, or in any other role, the Bidder must identify the contract in its lists of references submitted with its Bid using Bidding Form REF-1: References of MCC Funded Contracts. Failure to include any such contracts may be used to form a negative determination by the Purchaser on the Bidder’s record of performance in prior contracts. However, the failure to list any contracts because the Bidder (including any of its associates or joint venture/association members) has not been a party to any such contract will not be grounds for a negative determination by the Purchaser on the Bidder’s record of performance in prior contracts. That is, prior performance in connection with an MCC-funded contract is not required. The Purchaser will check the references, including the Bidder’s past performance reports filed in MCC’s Contractor Past Performance Reporting System.

The Employer reserves the right to contact the Forms REF-1 and REF-2 References as well as other sources to check references and past performance.

To be considered for Contract award, Bidders must have submitted Bids:

1. for which detailed Bid evaluation as per ITB Clause 32 confirms that the Bids are commercially and technically responsive, and include the hardware, Software, related equipment, products, materials, and other Goods and Services components of the Information System in, substantially, the full required quantities for the entire Information System;
2. that offer Information Technologies that are proven to perform up to the standards promised in the Bid by having successfully passed the performance, benchmark, and/or functionality tests the Purchaser may require, pursuant to ITB Sub-Clause 36.8.

**C. Price Reasonableness Determination**

Price Review also includes a determination of price reasonableness as required in ITB Clause 37. The Purchaser reserves the right to seek clarification; however, the clarification will not be used to change the Bid price.

**2.0. Qualification**

**Documents Establishing the Qualifications of the Bidder**

The Bidder shall provide the information requested in the corresponding information sheets included in Section IV. Bid Submission Forms, to establish that the Bidder meets the requirements established below.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Factor** | **Eligibility** | | | | | |
|  | **Requirement** | **Bidder** | | | | **Documentation Required** |
| **Single Entity** | **Joint Venture or Association** | | |
| **All members combined** | **Each Member** | **At least one member** |
| **1. Nationality** | Nationality in accordance with ITB 5.3. | Must meet requirement | Existing or intended Joint Venture or other association must meet requirement | Must meet requirement | N/A | Forms ELI-1, with attachments |
| **2. Conflict of Interest** | No conflicts of interests as described in ITB 5.6. | Must meet requirement | Existing or intended Joint Venture or other association must meet requirement | Must meet requirement | N / A | Letter of Bid |
| **3. Ineligibility** | Not having been declared ineligible based on any of the criteria set forth in ITB 5. | Must meet requirement | Existing or intended Joint Venture or other association must meet requirement | Must meet requirement | N/A | Letter of Bid |
| **4. Government-Owned Enterprise** | Compliance with conditions of ITB 5.5 | Must meet requirement | Existing or intended Joint Venture or other association must meet requirement | Must meet requirement | N/A | Form ELI-2 |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Factor** | **Historical Contract Non-Performance** | | | | | |
|  | **Requirement** | **Bidder** | | | | **Documentation Required** |
| **Single Entity** | **Joint Venture or Association** | | |
| **All members combined** | **Each member** | **At least one member** |
| **5. History of non-performing contracts** | Non-performance of a contract (including contracts terminated for cause) did not occur within the last five (5) years prior to the deadline for Bid submission, determined using all information on fully settled proceedings, litigation, arbitrations, actions, claims, investigations or disputes. A fully settled proceeding, litigation, arbitration, action, claim, investigation or dispute is one that has been resolved in accordance with the dispute resolution mechanism under the respective contract, and where all appeal instances available to the Bidder have been exhausted. | Must meet requirement by itself, including as member of past or existing Joint Venture or other association (not mandatory if in the past was as a member of a Joint Venture or other association with less than 20% role in the contract). | N/A | Must meet requirement by itself or as member of past or existing Joint Venture, or other association (not mandatory if in the past was as a member of a Joint Venture or other association with less than 20% role in the contract). | N/A | Form CON-1 |
| **6. Failure to Sign a Contract** | Failure to sign a contract after receiving a notice of award has not occurred in the past five years. Any deviation should be explained in the enclosed Contract Non-Performance form. | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Form CON-1 |
| **7. Pending Litigation** | All pending proceedings, litigation, arbitrations, actions, claims, investigations or disputes, in total, shall not represent more than ten percent (10%) of the Bidder’s net worth. | Must meet requirement by itself, including as member of past or existing Joint Venture or other association (not mandatory if in the past was as a member of a Joint Venture or other association with less than 20% role in the contract). | N/A | Must meet requirement by itself or as member of past or existing Joint Venture, or other association (not mandatory if in the past was as a member of a Joint Venture or other association with less than 20% role in the contract). | N/A | Form CON-1 |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Factor** | **Financial Situation[[1]](#footnote-1)** | | | | | |
| **Sub-Factor** | **Criteria** | | | | | **Documentation Required** |
| **Requirement** | **Bidder** | | | |
| **Single Entity** | **Joint Venture or Association** | | |
| **All members combined** | **Each member** | **At least one member** |
| **8. Historical Financial Performance** | Submission of audited financial statements, in accordance with International Financial Reporting Standards (IFRS) and International Accounting Standards (IAS) as promulgated by the International Federation of Accountants (IFAC) or National Accounting Standards based IAS, for the last three (3) years to demonstrate the current soundness of the Bidder’s financial position and its prospective long term profitability. | Must meet requirement | N/A | Must meet requirement | N/A | Form FIN-1 with attachments |
| **9. Annual Average Turnover** | 1. Minimum average annual turnover of **1,000,000.00 USD** , calculated as total certified payments received for contracts in progress or completed, within the last three (3) years. Values to determine annual management of Information Systems turnover are to be demonstrated in the audited financial statements (income statements) of the last three (3) years and are to be considered to be indicative. | Must meet requirement | Must meet requirement | Must meet at least twenty-five percent (25%) of the requirement | Must meet at least fifty-five percent (55%) of the requirement | Form FIN-2 |
| **10. Financial Resources** | The Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:  (i) the following cash-flow requirement:250,000.00 USD  and  (ii) the overall cash flow requirements for this Contract and its current commitments. | Must meet requirement | Must meet requirement | Must meet at least twenty-five percent (25%) of the requirement | Must meet at least fifty-five percent (55%) of the requirement | Form FIN-3 and FIN-4 |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Factor** | **Experience** | | | | | |
| **Sub-Factor** | **Criteria** | | | | | **Documentation Required** |
| **Requirement** | **Bidder** | | | |
| **Single Entity** | **Joint Venture or Association** | | |
| **All members combined** | **Each member** | **At least one member** |
| **11. General Experience** | Experience under contracts in the role of Supplier, Subcontractor, for at least the last five (5) years prior to the Bid submission deadline, and with activity in at least nine (9) months in each year. | Must meet requirement | N/A | N/A | Must meet requirement | Form EXP-1 |
| **12. Similar Experience** | Participation as Supplier, or Subcontractor, in at least 2 contracts within the last 5years, each with a value of at least 600,000.00 USD that have been successfully and substantially completed and that are similar to the proposed Purchaser’s Requirements. The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in Section VII, Purchaser’s Requirements. | Must meet requirement | N/A | N/A | Must meet requirement | Form EXP-2 |
| **13. Specific Experience in Key Activities** | For the above or other contracts executed during the period stipulated in 4.4.2 above, a minimum experience in the following key activities:   1. Case Information Management system solution, including software architecture design, customization and/or development and project management   and   1. Demo version of a previously developed information management system (both front-end and back-end) on the offered platform with similar or higher complexity is available online for verification. Please specify URL and log-in credentials with the submitted offer. | Must meet requirement | Must meet requirement | N/A | Must meet requirement | Form EXP-3 |
| **14. Environmental and Social Management Experience** | Sufficient experience managing environmental and social impacts in similar projects in the last five (5) years prior to the Bid submission deadline. | N/A | N/A | N/A | N/A | EXP-4 |
| **15. Health and Safety Management Experience** | Sufficient experience managing health and safety impacts in similar projects in the last five (5) years prior to the Bid submission deadline. | N/A | N/A | N/A | N/A | EXP-5 |

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**Letter of Bid**

Invitation for Bid No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Contract: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

To: The Purchaser/Procurement Agent

Address:

Ladies and Gentlemen:

We, the undersigned, declare and certify that:

1. We have examined and we have no reservations to the Bidding Document, including addenda thereto issued in accordance with the Instructions to Bidders.
2. In accordance with the Conditions of Contract, Technical Specifications, Drawings, and Price Schedules and Addenda Nos. **[insert Addenda Nos.]**for the supply and installation of the above-named information system, we offer to supply, install, achieve Operational Acceptance of, and support the Information System under the above-named Contract in full conformity with the said Bidding Document for the sum of **[insert amount in numbers and words].**
3. We undertake, if our Bid is accepted, to commence work on the Information System and to achieve Installation and Operational Acceptance within the respective times stated in the Bidding Document.
4. We undertake, if our Bid is accepted, and if these Bidding Document so require, to provide an advance payment security and a performance security in the form, in the amounts, and within the times specified in the Bidding Document.
5. We undertake, if our Bid is accepted, to commence work on the Information System and to achieve Installation and Operational Acceptance within the respective times stated in the Bidding Document
6. We hereby certify that the Software offered in this Bid and to be supplied under the Contract (i) either is owned by us, or (ii) if not owned by us, is covered by a valid license from the proprietor of the Software.
7. Our Bid shall be valid for a period of **[insert number in numbers and words]** days from the date fixed for the Bid submission deadline in accordance with the Bidding Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
8. Unless and until a formal Contract is prepared and executed, this Bid, together with your written acceptance thereof in the form of a signed Letter of Acceptance delivered by you to us, shall constitute a binding contract between us.
9. We understand that you are not bound to accept the lowest or any Bid you may receive.
10. We comply with the requirements of ITB Clause 5 of the Bidding Document, as applicable.
11. Any Subcontractors do or will comply with the requirements of ITB Clause 5 of the Bidding Document, as applicable.
12. Weare not participating, as a Bidder or as a Subcontractor, in more than one Bid in this bidding process in accordance with ITB Sub-Clause 5.6 (d).
13. We have taken steps to ensure that no person acting for us or on our behalf has engaged in any corrupt or fraudulent practices described in ITB Clause 3.
14. Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to Contract execution if we are awarded the Contract, are listed below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Name and address of agent |  | Amount and currency |  | Purpose of commission or gratuity |
|  |  |  |  |  |
|  |  |  |  |  |
| (if none, state “none”) | | | | |

1. We have taken steps to ensure that no person acting for us or on our behalf will engage in bribery.
2. We are not engaged in, facilitating, or allowing any of the prohibited activities described in the MCC Counter-Trafficking in Persons Policy and will not engage in, facilitate, or allow any such prohibited activities for the duration of the Contract. Further, we hereby provide our assurance that the prohibited activities described in the MCC Counter-Trafficking in Persons Policy will not be tolerated on the part of our employees, any Subcontractor, or their respective employees. Finally, we acknowledge that engaging in such activities is cause for suspension or termination of employment or of the Contract.
3. We understand and accept without condition that, in accordance with ITB Sub-Clause 36.1 any challenge or protest to the process or results of this procurement may be brought only through the Purchaser’s Bid Challenge System (“BCS”).
4. We acknowledge that our digital/digitized signature is valid and legally binding.

Dated this day of 20

Signature In the capacity of

Duly authorized to sign Bids for and on behalf of

**[in block letters or typed]**

Address:

Witness:

Address:

Occupation:

**Annexes:**

1. Power of Attorney demonstrating that the person signing has been duly authorized to sign the Technical Offer on behalf of the Bidder;
2. Letter(s) of Incorporation (or other documents indicating legal status); and
3. Joint Venture/Association Agreements (if applicable, but without showing any Financial Offer information).

**Form of Bid Security (Bank Guarantee)**

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
[insert:* ***Bank’s Name, and Address of Issuing Branch or Office****]*

**Beneficiary:** *[insert:* ***Name and Address of Purchaser****]*

**Date:** *[insert:* ***date****]*

**BID GUARANTEE No.:** *[insert:* ***Bid Guarantee Number****]*

We have been informed that **[insert name of the Bidder]** (hereinafter called "the Bidder") has submitted to you its Bid dated (hereinafter called "the Bid") for the execution of **[insert name of contract]** under Invitation for Bids No. **[insert Bidding Document number]**.

Furthermore, we understand that, according to your conditions, Bids must be supported by a Bid guarantee.

At the request of the Bidder, we **[insert name of Bank]**hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of **[insert amount in figures]** (**[insert amount in words]**) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the Bid conditions, because the Bidder:

1. has withdrawn its Bid after the Bid submission deadline, but during the period of Bid validity specified by the Bidder in the Letter of Bid; or
2. having been notified of the acceptance of its Bid by the Employer during the period of Bid validity, (i) fails or refuses to execute the Contract, or (ii) fails or refuses to furnish the performance security, in accordance with the terms of the Letter of Acceptance and other applicable Conditions of Contract.

This guarantee will expire: (a) if the Bidder is the successful Bidder, upon our receipt of copies of the Contract signed by the Bidder and the performance security issued to you upon the instruction of the Bidder; or (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy of your notification that the successful Bidder has signed the Contract and furnished the required performance security; or (ii) twenty-eight (28) days after the expiration of the Bidder’s Bid validity period.

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

[***Issuing Bank to delete whichever is not applicable***]. We confirm that [we are a financial institution legally authorized to provide this guarantee in the Employer’s country] **[OR]** [we are a financial institution located outside the Employer’s country but have a correspondent financial institution located in the Employer’s country that will ensure the enforceability of this guarantee. The name of our correspondent bank and contact information is as follows: **[provide name, address, phone number, and email address]**.

This guarantee is subject to the Uniform Rules for Demand Guarantees, 2010 Revision, ICC Publication No. 758, except as may otherwise be stated above.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*[Signature(s)]*

|  |
| --- |
| In the capacity of: |
| **[Print Name]** |
| duly authorized to sign the Bid Security for and on behalf of  **[Insert name, address of financial institution]** |
| Dated on  **[Insert Date]** |

**A. Bidder Qualification Forms**

To establish its qualifications to perform the Contract in accordance with the qualification requirements set out in Section III, Bid Review, Evaluation Criteria and Bidder Qualification Requirements, the Bidder shall provide the information requested in the following forms.

**Form ELI-1: Bidder Information Sheet**

Each Bidder must fill in this form.

|  |  |
| --- | --- |
| **Bidder’s legal name** |  |
| **In case of Joint Venture or other Association, legal name of each partner** |  |
| **Bidder’s country of constitution** |  |
| **Bidder’s year of constitution** |  |
| **Bidder’s legal address in country of constitution** |  |
| **Bidder’s authorized representative**  (name, address, telephone numbers, fax numbers, e-mail address) |  |
| **Bidder’s in-country agent (if the Bidder is not doing business within the Purchaser’s country)**  (name, address, telephone numbers, fax numbers, e-mail address) |  |
| **Attached are copies of the following original documents.**   * 1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITB 5.2. * 2. Authorization to represent the firm or Joint Venture or Association named in above, in accordance with ITB 6.2 * 3. In case of Joint Venture or other Association, letter of intent to form Joint Venture or other Association or Joint Venture/Association agreement, in accordance with ITB 6.2 * 4. Government-Owned Enterprise Certification Form [**ELI-3**] | |

**Form ELI-2: Joint Venture/Association/Subcontractor Information Sheet**

Each member of a Joint Venture/Association making up a Bidder and each known Subcontractor must fill in this form.

|  |  |
| --- | --- |
| **Joint Venture /Association/Subcontractor Information** | |
| **Bidder’s legal name** |  |
| **Joint Venture/ Association Partner’s or Subcontractor’s legal name** |  |
| **Joint Venture/ Association Partner’s or Subcontractor’s country of constitution** |  |
| **Joint Venture/ Association Partner’s or Subcontractor’s year of constitution** |  |
| **Joint Venture/ Association Partner’s or Subcontractor’s legal address in country of constitution** |  |
| **Joint Venture/ Association Partner’s or Subcontractor’s authorized representative information**  **(name, address, telephone numbers, fax numbers, e-mail address)** |  |
| **List of major goods and/or services that the member is proposed to provide** |  |
| **Attached are copies of the following original documents:**   * 1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITB 5. * 2. Authorization to represent the firm named above, in accordance with ITB 26.2 * 3. Government-Owned Enterprise Certification Form [**ELI-3**]. | |

**Form ELI-3: Government-Owned Enterprise Certification Form**

Government-Owned Enterprises are not eligible to compete for MCC-funded contracts for goods or works. Accordingly, GOEs (i) may not be party to any MCC-funded contract for goods or works procured through an open solicitation process, limited bidding, direct contracting, or sole source selection; and (ii) may not be pre-qualified or shortlisted for any MCC-funded contract for goods or works anticipated to be procured through these means.

This prohibition does not apply to Government-owned Force Account units owned by the Government of the Purchaser’s Country, or Government-owned educational institutions and research centers, or any statistical, mapping or other technical entities not formed primarily for a commercial or business purpose, or where a waiver is granted by MCC in accordance with Part 7 of *MCC Program Procurement Guidelines*. The full policy is available for your review on the Compact Procurement Guidelines page at the MCC Website ([www.mcc.gov/ppg](http://www.mcc.gov/ppg)). As part of the eligibility verification for this procurement, **please fill in the form below to indicate the status of your entity**. The Certification Form shall be furnished with the Proposal REGARDLESS OF THE STATUS OF YOUR ENTITY.

For purposes of this form, the term “Government” means one or more governments, including any agency, instrumentality, subdivision or other unit of government at any level of jurisdiction (national or sub-national).

**CERTIFICATION**

**Full Legal Name of Bidder**:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Full Legal Name of Bidder in Language and Script of Country of Formation** (if different from above):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Address of Principal Place of Business or Chief Executive Office of Bidder**:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Full Name of Three (3) Highest Ranking Officials of Bidder** (for any Bidder that is an entity):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Full Legal Name(s) of Parent Entity or Entities of Bidder** (if applicable; if Bidder has no parent, please so state):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Full Legal Name(s) of Parent Entity or Entities of Bidder in Language and Script of Country of Formation** (if applicable and if different from above):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Address(es) of Principal Place of Business or Chief Executive Office of Parent Entity or Entities of Bidder** (if applicable):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Does a Government own a majority or controlling interest (whether by value or voting interest) of your shares or other ownership interest (whether directly or indirectly and whether through fiduciaries, agents or other means)? Yes □ No □
2. If your answer to question 1 was yes, are you a Government-owned:
   1. Force Account unit Yes □ No □
   2. Educational institution Yes □ No □
   3. Research Center Yes □ No □
   4. Statistical entity Yes □ No □
   5. Mapping entity Yes □ No □
   6. Other technical entities not formed primarily for a commercial or business purpose Yes □ No □
3. Regardless of how you answered question 1, please answer the following:
4. Do you receive any subsidy or payment (including any form of subsidized credit) or any other form of assistance (financial or otherwise) from a Government?

Yes □ No □

If yes, describe: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Has a Government granted to you any special or exclusive legal or economic rights or benefits that may alter the competitiveness of your goods, works or services or otherwise influence your business decisions? Yes □ No □

If yes, describe: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Does a Government have the ability to direct or decide any of the following with respect to you:
2. any reorganization, merger, or dissolution of you or the formation or acquisition of any subsidiary or other affiliate by you Yes □ No □
3. any sale, lease, mortgage, pledge, or other transfer of any of your principal assets, whether tangible or intangible and whether or not in the ordinary course of business Yes □ No □
4. the closing, relocation, or substantial alteration of the production, operational, or other material activities of your business

Yes □ No □

1. your execution, termination, or non-fulfillment of material contracts Yes □ No □
2. the appointment or dismissal of your managers, directors, officers or senior personnel or otherwise participate in the management or control of your business Yes □ No □
3. Have you ever been Government-owned or controlled? Yes □ No □
4. If your answer to question 4 was yes, please answer the following questions
5. How long were you Government-owned? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
6. When were you privatized? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
7. Do you receive any subsidy or payment (including any form of subsidized credit) or any other form of assistance (financial or otherwise) from a Government? Yes □ No □

If yes, describe: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Even though not majority or controlling, does a Government continue to hold any ownership interest or decision making authority in you or your affairs?   
    Yes □ No □

If yes, describe: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Do you send any funds to a Government other than taxes and fees in the ordinary course of your business in percentages and amounts equivalent to other non-Government-owned enterprises in your country that are engaged in the same sector or industry? Yes □ No □

If yes, describe: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Participants are advised that:

1. Prior to announcing the winning Bidder or any list of pre-qualified Bidders for this procurement, the MCA EntityMFK will verify the eligibility of such Bidder(s) with MCC. MCC will maintain a database (internally, through subscription services, or both) of known GOEs and each winning or pre-qualified Bidder subject to this provision will be compared against the database and subject to such further due diligence as MCC may determine necessary under the circumstances.
2. Any misrepresentation by any entity submitting a Bid for this procurement may be deemed a “fraudulent practice” for purposes of the *MCC Program Procurement Guidelines* and any other applicable MCC policy or guidance, including MCC’s Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations.
3. Any entity that is determined by MCC to have organized itself, subcontracted any part of its MCC-funded contract, or otherwise associated itself with any other entity for the purpose of, or with the actual or potential effect of, avoiding or otherwise subverting the provisions of the *MCC Program Procurement Guidelines* may be deemed to be a GOE for all purposes of those Guidelines.
4. Any credible accusation that any entity submitting a Bid for this procurement is a GOE ineligible to submit a Bid in accordance with the *MCC Program Procurement Guidelines* will be subject to review in a Bid challenge in accordance with those Guidelines and the MFK’s Bid Challenge System.

I hereby certify that the information provided above is true and correct in all material respects and understand that any material misstatement, misrepresentation or failure to provide the information requested in this certification may be deemed a “fraudulent practice” for purposes of the MCC Program Procurement Guidelines and other applicable MCC policy or guidance, including MCC’s Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations.

**Authorized Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_**

**Printed Name of Signatory: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Form CON-1: History of Non-Performance and Litigation**

|  |
| --- |
| Name of Bidder or partner of a Joint Venture or Association |

The following table shall be filled in for the Bidder and for each member of a Joint Venture or other Association that is a party to the Bidder.

Bidder’s Legal Name: **[insert full name**]

Date: **[insert day, month, year]**

Bidder’s Party’s Legal Name: **[insert full name]**

Page **[insert page number]** of **[insert total number]** pages

|  |  |  |  |
| --- | --- | --- | --- |
| **Non-Performing Contracts in accordance with Section III, Bid Review, Evaluation Criteria and Bidder Qualification Requirements** | | | |
| ◻ Contract non-performance did not occur during the five years prior to the deadline for Bid submission in accordance with **Section III, Bid Review, Evaluation Criteria and Bidder Qualification Requirements)**, Sub-Factor 4.2.1.  **OR**  ◻ Contract(s) not performed during the five years prior to the deadline for Bid submission in accordance with **Section III, Bid Review, Evaluation Criteria and Bidder Qualification Requirements)**, Sub-Factor 4.2.1. | | | |
| **Year** | **Non performed portion of contract** | **Contract Identification** | **Total Contract Amount (current value, US$ equivalent)** |
| **[insert year]** | **[insert amount and percentage]** | Contract identification: **[indicate complete contract name, number, and any other identification]**  Name of institution: **[insert full name]**  Address of institution: **[insert street/city/country]**  Reason(s) for non-performance: **[indicate main reason(s)]** | **[insert amount]** |

|  |
| --- |
| **Failure to Sign a Contract, in accordance with Section III, Bid Review, Evaluation Criteria and Bidder Qualification Requirements** |
| No failure to sign a contract in accordance with Sub-Factor 4.2.2 of **Section III, Bid Review, Evaluation Criteria and Bidder Qualification Requirements**  OR   * Failure to sign a contract in accordance with Sub-Factor 4.2.2 of **Section III, Bid Review, Evaluation Criteria and Bidder Qualification Requirements** |
| Failure to Sign Contract  In the event of failure to sign a contract, clarify/explain your situation according to Sub-Factor 4.2.2 of Section III, Bid Review, Evaluation Criteria and Bidder Qualification Requirements |

|  |  |  |  |
| --- | --- | --- | --- |
| **Year** | **Claim as Percentage of Total Assets** | **Contract Identification** | **Total Contract Amount (current value, US$ equivalent)** |
| **[insert year]** | **[insert percentage]** | Contract identification: **[indicate complete contract name, number, and any other identification]**  Name of institution: **[insert full name]**  Address of institution: **[insert street/city/country]**  Matter in dispute: **[indicate main issues in dispute]** | **[insert amount]** |

|  |  |  |
| --- | --- | --- |
| **Current and Past Proceedings, Litigation, Arbitration, Actions, Claims, Investigations and Disputes the process or outcome of which the Employer could reasonably interpret may impact or have the potential to impact the financial or operational condition of the Bidder in a manner that may adversely affect the Bidder’s ability to satisfy any of its obligations under the Contract**  **in accordance with Section III, Bid Review, Evaluation Criteria and Bidder Qualification Requirements**  (each member of a Joint Venture/Association making up a Bidder must complete this table) | | |
| The Bidder, or a related company or entity, is currently, or within the past five (5) years has been, involved in any proceeding, litigation, arbitration, action, claim, investigation or dispute the process or outcome of which the Purchaser could reasonably interpret may impact or have the potential to impact the financial condition of the Bidder in a manner that may adversely affect the Bidder’s ability to satisfy any of its obligations under the Contract: | | |
| ◻ No  **OR** ◻ Yes  **If Yes, Describe:** | | |
| **Year:** | **Matter in Dispute:** | **Value of Award (Actual or Potential) Against Bidder in US$ Equivalent:** |  |  |

**Form CON-2: Compliance with Sanctions Certification Form**

In satisfaction of Clause G of the Additional Provisions at Annex A of the Contract, this form is to be completed by the Bidder upon submission of the Bid and, if selected, by the Supplier initially, within 28 days of receipt of Letter of Acceptance and Contract Agreement, and subsequently thereafter on the last business day prior to the last day of each quarter (March 31, June 30, September 30, December 31) after the signature of an MCC-Funded Contract[[2]](#footnote-2), for the duration of the Contract.

The form is to be submitted to the MFK Procurement Manager at the time of Bid submission, and to the MCA Entity Fiscal Agent thereafter *procurement@millenniumkosovo.org and info@bakertillyks.com* with a copy to MCC at [sanctionscompliance@mcc.gov](mailto:sanctionscompliance@mcc.gov).

For the avoidance of doubt, pursuant to the *MCC Program Procurement Guidelines*, reporting the provision of material support or resources (as defined below) to an individual or entity on the enumerated lists will not necessarily result in the disqualification of a Bidder or cancellation of the Contract. However, **failure** to report such provision, or any similar material misrepresentation, whether intentional or without due diligence, would be grounds for disqualifying the Bidder or canceling the Contract, and may subject such Bidder or Supplier to criminal, civil, or administrative remedies as appropriate under U.S. law.

**Instructions for completing this form are provided below.**

**Full Legal Name of Bidder/ Supplier: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Full Name and Number of Contract: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**MCA Entity with which Contract Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

|  |
| --- |
| ALL BIDDERS/SUPPLIERS TO CHECK THE APPLICABLE BOX BELOW:   * All eligibility verifications have been completed in accordance with **Annex A “Additional Provisions,” Paragraph G “Compliance with Terrorist Financing Legislation and Other Restrictions”,** and the Bidder/Supplier hereby certifies as follows:   + No adverse or negative results were obtained from such eligibility verifications; and   + To the best of its current knowledge, the Bidder/Supplier has not provided, at any time within the previous ten years or currently, any material support or resources (including without limitation, any MCC Funding[[3]](#footnote-3)), directly or indirectly to, or knowingly permitted any funding (including without limitation any MCC Funding) to be transferred to, any individual, corporation or other entity that the Bidder or Supplier knew, or had reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities on the enumerated lists described below (including the Bidder or Supplier itself).   **OR**   * All eligibility verifications have been completed in accordance with  **Annex A “Additional Provisions,” Paragraph G “Compliance with Terrorist Financing Legislation and Other Restrictions,”** and the Bidder/Supplier hereby certifies that the following adverse or negative results were obtained from such eligibility verification (information to be provided for each result in accordance with the instructions included with this form): * Name of individual, corporation or other entity: * Eligibility verification source(s) where listed ineligible: * Position (if individual), or goods or services provided (if corporation or other entity): * Estimated value of work performed as of certification date: * A description of, and the circumstances under which such support was provided: |

I hereby certify that the information provided above is true and correct in all material respects and understand that any material misstatement, misrepresentation or failure to provide the information requested in this certification may be deemed to be “fraud” for purposes of the ITB or Contract, the *MCC Program Procurement Guidelines*, and other applicable MCC policy or guidance, including MCC’s Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations.

**Authorized Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Printed Name of Signatory: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**INSTRUCTIONS FOR COMPLETING THE COMPLIANCE WITH SANCTIONS CERTIFICATION FORM:**

The Bidder/Supplier shall perform the following procedures to verify the eligibility of firms, key personnel, subcontractors, vendors, suppliers, and grantees, in accordance with **Annex A “Additional Provisions,” Paragraph G “Compliance with Terrorist Financing Legislation and Other Restrictions,”** which is copied below for convenience.

Based on the results of these eligibility verifications, the Bidder/Supplier shall provide the applicable certification in the attached certification form. Note that for the purposes of this certification, Bidders/Suppliers are only required to submit detailed back-up documentation about the eligibility verifications together with their certification form if the Bidder/Supplier identifies adverse or negative results. If not, Bidders/Suppliers are free to mark the certification form accordingly and submit it to the appropriate recipient (although the Bidder/Supplier must maintain records per the instructions below).

The Bidder/Supplier shall verify that any individual, corporation, or other entity that has access to or is (or would be) a recipient of MCC Funding, including Bidder/Supplier staff, consultants, Subcontractors, vendors, suppliers, and grantees, is not listed on any of the following (or, in the case of #8 below, is not a national of, or associated in, any country appearing on such list):

1. System for Award Management (SAM) Excluded Parties List - <https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>
2. World Bank Debarred List - <https://www.worldbank.org/debarr>
3. US Treasury, Office of Foreign Assets Control, Specially Designated Nationals (SDN) List - <https://sanctionssearch.ofac.treas.gov/>
4. US Department of Commerce, Bureau of Industry and Security, Denied Persons List - <https://www.bis.doc.gov/index.php/the-denied-persons-list>
5. US State Department, Directorate of Defense Trade Controls, AECA Debarred List - <https://www.pmddtc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=c22d1833dbb8d300d0a370131f9619f0>
6. US State Department, Foreign Terrorist Organizations (FTO) List - <https://www.state.gov/foreign-terrorist-organizations/>
7. US State Department, Executive Order 13224 - <https://www.state.gov/executive-order-13224/>
8. US State Sponsors of Terrorism List - <https://www.state.gov/state-sponsors-of-terrorism/>

In addition to these lists, before providing any material support or resources to an individual or entity, the Bidder/Supplier will also consider all information about that individual or entity of which it is aware and all public information that is reasonably available to it or of which it should be aware.

Documentation of the process takes two forms. The Bidder/Supplier should prepare a table listing each staff member, consultant, subcontractor, vendor, supplier, and grantee working on the contract, such as the form provided below.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | Date Checked | | | | | | |  |
| Name | 1 | 2 | 3 | 4 | 5 | 6 | 7 | Eligible (Y/N) |
| SAM Excluded Parties List | World Bank Debarred List | SDN List | Denied Persons List | AECA Debarred List | FTO List | Executive Order 13224 |
| Bidder/Supplier (the firm itself) |  |  |  |  |  |  |  |  |
| Staff Member #1 |  |  |  |  |  |  |  |  |
| Staff Member #2 |  |  |  |  |  |  |  |  |
| Consultant #1 |  |  |  |  |  |  |  |  |
| Consultant #2 |  |  |  |  |  |  |  |  |
| Sub-Contractor #1 |  |  |  |  |  |  |  |  |
| Sub-Contractor #2 |  |  |  |  |  |  |  |  |
| Vendor #1 |  |  |  |  |  |  |  |  |
| Supplier #1 |  |  |  |  |  |  |  |  |
| Grantee #1 |  |  |  |  |  |  |  |  |

The Bidder/Supplier should list the date on which the search was conducted using each eligibility verification source, and whether the staff member, consultant, subcontractor, vendor, supplier, or grantee was determined to be eligible – that is, did not show up on any of the eligibility verification sources.

In addition, 1. SAM Excluded Parties List, 3. SDN List, and 5. AECA Debarred List are searchable databases that return a positive or negative search results page upon submission of a name to be searched, in order to document the eligibility, the Bidder/Supplier should print out and retain for each staff member, consultant, subcontractor, vendor, supplier, or grantee the search results page for each eligibility verification source, which should read, *“Has Active Exclusion? No”* or *“No records found.”* (in the case of SAM Excluded Parties List), *“Your search has not returned any results.”* (in the case of SDN List), or *“No records in Statutorily Debarred Parties using that filter”* or *“No records in Admin Debarred Parties using that filter”* (in the case of AECA Debarred List). In the case of 2. World Bank Debarred List, Table 1: Debarred & Cross-Debarred Firms & Individuals will display a blank field that indicates no matching records have been found. For 4. Denied Persons List, 6. FTO List, and 7 Executive Order 13224, there is no searchable database provided so the Consultant will review each static list and confirm it does not name the firms or individuals identified in the table above.

If an adverse record(s) has/have been found for one or more individuals or entities, including for the Bidder/Supplier itself, the Bidder/Supplier must conduct additional research to determine whether the finding is a “false positive” (such as an individual whose name matches the name of an individual listed on a sanctions list, but is a different person). If it is a false positive, the Bidder/Supplier will mark the staff member, consultant, subcontractor, vendor, supplier, or grantee as eligible, and retain the research confirming that eligibility.

If any of the Bidder’s/Supplier’s personnel, consultants, subcontractors, vendors, suppliers, or grantees are found to be ineligible at this stage, the MCA Entity will determine whether it is possible under the circumstances to allow the Bidder/Supplier to make a substitution. This determination will be made on a case by case basis and will require approval by MCC regardless of the estimated value of the proposed contract.

In addition, in accordance with *MCC Program Procurement Guidelines* P1.A.1.9(d), the Bidder/Supplier must ensure that MCC Funding is not used for goods or services from a country, or from a firm that is organized in or has its principal place of business or a significant portion of its operations in a country, that is subject to country-based sanctions or other restrictions under the law of the United States, including U.S. designated State Sponsors of Terrorism (<https://www.state.gov/state-sponsors-of-terrorism/>).

All of these documents must be retained by the Bidder/Supplier as part of the overall record of the Contract for the duration of the Contract, and for the further period after the contract expiration that is required for document retention under the Contract (typically five years after the expiration date of the Compact Program or Threshold Program). Access to these documents must be provided to the MCA Entity, MCC, or their designees in accordance with the access provisions of the Contract, And to the USAID Office of Inspector General (responsible for oversight of MCC operations), upon request.

**Annex A “Additional Provisions,” Paragraph G “Compliance with Terrorist Financing Legislation and Other Restrictions”**

1. The Contract Party, to the best of its current knowledge, did not provide, within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide material support or resources (as defined below) directly or indirectly to, or knowingly permit any funding (including without limitation MCC Funding) to be transferred to, any individual, corporation or other entity that such Party knows, or has reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities (i) on the master list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury’s Office of Foreign Assets Control, which list is available at [www.treas.gov/offices/enforcement/ofac](http://www.treas.gov/offices/enforcement/ofac), (ii) on the consolidated list of individuals and entities maintained by the “1267 Committee” of the United Nations Security Council, (iii) on the list maintained on [www.sam.gov](http://www.sam.gov), or (iv) on such other list as the MFK may request from time to time.

For purposes of this provision:

1. “Material support and resources” includes currency, monetary instruments or other financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.
2. “Training" means instruction or teaching designed to impart a specific skill, as opposed to general knowledge.
3. “Expert advice or assistance" means advice or assistance derived from scientific, technical, or other specialized knowledge
4. The Contract Party shall ensure that its activities under this Agreement comply with all applicable U.S. laws, regulations and executive orders regarding money laundering, terrorist financing, U.S. sanctions laws, restrictive trade practices, boycotts, and all other economic sanctions promulgated from time to time by means of statute, executive order, regulation or as administered by the Office of Foreign Assets Control of the United States Treasury Department or any successor governmental authority, including, 18 U.S.C. Section 1956, 18 U.S.C. Section 1957, 18 U.S.C. Section 2339A, 18 U.S.C. Section 2339B, 18 U.S.C. Section 2339C, 18 U.S.C. Section 981, 18 U.S.C. Section 982, Executive Order 13224, 15 C.F.R. Part 760, and those economic sanctions programs enumerated at 31 C.F.R. Parts 500 through 598 and shall ensure that its activities under the Contract comply with any policies and procedures for monitoring operations to ensure compliance, as may be established from time to time by MCC, the MCA Entity, the Fiscal Agent, or the Bank, as may be applicable. The Contract Party shall verify, or cause to be verified, appropriately any individual, corporation or other entity with access to or recipient of funds, which verification shall be conducted in accordance with the procedures set out in Part 10 of the MCC Program Procurement Guidelines (Eligibility Verification Procedures) that can be found on MCC’s website at www.mcc.gov. The Contract Party shall (A) conduct the monitoring referred to in this paragraph on at least a quarterly basis, or such other reasonable period as the MCA Entity or MCC may request from time to time and (B) deliver a report of such periodic monitoring to the MCA Entity with a copy to MCC.
5. Other restrictions on the Contract Party shall apply as set forth in Section 5.4(b) of the Compact with respect to drug trafficking, terrorism, sex trafficking, prostitution, fraud, felony, any misconduct injurious to MCC or the MCA Entity, any activity contrary to the national security interests of the United States or any other activity that materially and adversely affects the ability of the Government or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of the Compact or any Supplemental Agreement or that materially and adversely affects the Program Assets or any Permitted Account.

**Form FIN-1: Financial Situation**

Each Bidder or member of a Joint Venture/Association making up a Bidder must fill in this form.

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Financial Data for Previous Three (3) Years [US$ Equivalent]** | | |
|  | **Year 1:** | **Year 2:** | **Year 3:** |

**Information from Balance Sheet**

|  |  |  |  |
| --- | --- | --- | --- |
| **Total Assets** |  |  |  |
| **Total Liabilities** |  |  |  |
| **Net Worth** |  |  |  |
| **Current Assets** |  |  |  |
| **Current Liabilities** |  |  |  |

**Information from Income Statement**

|  |  |  |  |
| --- | --- | --- | --- |
| **Total Revenues** |  |  |  |
| **Profits Before Taxes** |  |  |  |
| **Profits After Taxes** |  |  |  |

|  |
| --- |
| * Attached are copies of financial statements (balance sheets including all related notes and income statements) for the last three (3) years, as indicated above, complying with the following conditions. * All such documents reflect the financial situation of the Bidder or member of a Joint Venture or other Association, and not sister or parent companies. * Historic financial statements must be audited by a certified accountant. * Historic financial statements must be complete, including all notes to the financial statements. * Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted). |

\*Bidders to fill this table. The Purchaser will verify during the review process**.**

**Form FIN-2: Average Annual Management of Information Systems Turnover**

Each Bidder or member of a Joint Venture/Association making up a Bidder must fill in this form.

|  |  |  |  |
| --- | --- | --- | --- |
| **Annual Turnover Data for the Last Three (3) Years (Management of Information Systems only)** | | | |
| **Year** | **Amount**  **Currency** | **Exchange**  **Rate** | **US$**  **Equivalent** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
| **Average Annual Management of Information Systems Turnover** | | |  |

The information supplied should be the annual management of Information Systems turnover of the Bidder or each member of a Joint Venture/Association making up a Bidder in terms of the amounts billed to clients for each year for work in progress or completed, converted to USD at the rate of exchange at the end of the period reported. This form may be included for Subcontractors only if BDS ITB Sub-Clause 6.1 (a) explicitly permits experience and resources of (certain) Subcontractors to contribute to the Bidder’s qualifications.

**Form FIN-3: Financial Resources**

Each Bidder or member of a Joint Venture/Association making up a Bidder must fill in this form, specifying proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total cash flow demands of the subject Contract or contracts as indicated in **Section III, Bid Review, Evaluation Criteria and Bidder Qualification Requirements**.

|  |  |  |
| --- | --- | --- |
| **No.** | **Source of Financing** | **Amount (USD equivalent)** |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
| 4 |  |  |

**Form FIN-4: Current Contract Commitments / Projects in Progress**

Each Bidder and each member of a Joint Venture/Association making up a Bidder should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Name of Contract** | **Employer, contact address/tel/fax** | **Value of outstanding work (current USD equivalent)** | **Estimated completion date** | **Average monthly invoicing over last six months (USD/month)** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

**Form EXP-1: General Information Systems Experience Record**

Each Bidder or member of a Joint Venture/Association making up a Bidder must fill in this form.

Use a separate page for each partner of a Joint Venture/Association, and number these pages. Bidders should not enclose testimonials, certificates, and publicity material with their applications; they will not be taken into account in the evaluation of qualifications.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **General Information Systems Experience Record** | | | | |
| **Name of Bidder or partner of a Joint Venture or Association** | | | | |
| **Starting**  **Month**  **Year** | **Ending**  **Month**  **Year** | **Years** | **Contract Identification and Name**  **Name , address, telephone number, fax number, and e-mail of Purchaser**  **Brief Description of the Contract Executed by the Bidder/Member of a Joint Venture/Association making up the Bidder** | **Role of Bidder/Member of a Joint Venture/Association making up the Bidder** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

**Form EXP-2: Similar Information Systems Experience Record**

Bidder is requested to list contracts of a similar nature, complexity, and requiring similar information technology and methodologies to the contract or contracts for which this Bidding Document is issued, and which the Bidder has undertaken during the period, and of the number, specified in BDS ITB Sub-Clause 6.1 (a). The contract value should be based on the payment currencies of the contracts converted into U.S. dollars, at the date of substantial completion, or for ongoing contracts at the time of award.

Each partner of a Joint Venture or Association should separately provide details of its own relevant contracts.

Use a separate sheet for each contract.

|  |  |  |
| --- | --- | --- |
| Name of Bidder or partner of a Joint Venture/Association | | |
| 1. | Number of contract |  |
|  | Name of contract | |
|  | Country | |
| 2. | Name of Purchaser | |
| 3. | Purchaser address, telephone number, fax number, and e-mail | |
| 4. | Nature of Information Systems and special features relevant to the contract for which this Bidding Document is issued | |
| 5. | Contract role (check one)  • Prime Supplier • Management Contractor • Subcontractor • Partner in a Joint Venture/Association | |
| 6. | Amount of the total contract/subcontract/partner share (in specified currencies at completion, or at date of award for current contracts)  Currency Currency | |
| 7. | Equivalent amount US$  Total contract: $\_\_\_\_\_\_\_; Subcontract: $\_\_\_\_\_\_\_; Partner share: $\_\_\_\_\_\_\_; | |
| 8. | Date of award/completion | |
| 9. | Contract was completed \_\_\_\_\_ months ahead/behind original schedule (if behind, provide explanation). | |
| 10. | Contract was completed US$ \_\_\_\_\_\_\_\_\_ equivalent under/over original contract amount (if over, provide explanation). | |
| 11. | Special contractual/technical requirements. | |
| 12. | Indicate the approximate percent of total contract value (and US$ amount) of Information System undertaken by subcontract, if any, and the nature of such Information System. | |

**Form EXP-3: Specific Experience in Key Activities**

Fill in one (1) form per contract.

|  |  |  |  |
| --- | --- | --- | --- |
| **Contract with Specific Key Activities** | | | |
| **Contract No . . . . . . of . . . . . .** | **Contract Identification** |  | |
| **Award Date** |  | **Completion Date** |  |
| **Role in Contract** | * **Contractor** | * **Management Contractor** | * **Subcontractor** |
| **Total Contract Amount** | **US$** | | |
| **If member of a Joint Venture or other Association, or a Subcontractor, specify participation of total contract amount** | **Percent of Total** | **Amount** | |
| **Employer’s Name**  **Address**  **Telephone Number**  **Fax Number**  **E-mail** |  | | |
| **Description of the key activities in accordance with the Specific Experience** | | | |
|  |  | | |

**Form EXP-4: Environmental and Social Management Experience**

**Fill in one (1) Form per contract.**

|  |  |  |  |
| --- | --- | --- | --- |
| **Contract with Environmental and Social Management Experience** | | | |
| **Contract No . . . . . . of . . . . . .** | **Contract Identification** |  | |
| **Award Date** |  | **Completion Date** |  |
| **Role in Contract** | * **Contractor** | * **Management Contractor** | * **Subcontractor** |
| **Total Contract Amount** | **US$** | | |
| **If member of a Joint Venture or other Association, or a Subcontractor, specify participation of total contract amount** | **Percent of Total:\_\_%** | **Amount** | |
| **Employer’s Name**  **Address**  **Telephone Number**  **Fax Number**  **E-mail** |  | | |
| **Description of the Environmental and Social Management Experience** | | | |
|  |  | | |

**Form EXP-5: Health and Safety Management Experience**

Fill in one (1) Form per contract.

|  |  |  |  |
| --- | --- | --- | --- |
| **Contract with Health and Safety Management Experience** | | | |
| **Contract No . . . . . . of . . . . . .** | **Contract Identification** |  | |
| **Award Date** |  | **Completion Date** |  | |
| **Role in Contract** | * **Contractor** | * **Management Contractor** | * **Subcontractor** | |
| **Total Contract Amount** | **US$** | | |
| **If member of a Joint Venture or other Association, or a Subcontractor, specify participation of total contract amount** | **Percent of Total:\_\_%** | **Amount** | |
| **Employer’s Name**  **Address**  **Telephone Number**  **Fax Number**  **E-mail** |  | | |
| **Description of the Health and Safety Management Experience** | | | |
|  |  | | |

**Form REF-1: References of MCC Funded Contracts**

Each Applicant or member of a Joint Venture/Association making up an Applicant must fill in this form and include information about any and all MCC-funded contracts (either with MCC directly or with any Millennium Challenge Account Entity, anywhere in the world) to which the Applicant or member of a Joint Venture/Association making up an Applicant is or has been a party whether as a lead contractor, affiliate, associate, subsidiary, Subcontractor, or in any other role.

|  |  |  |  |
| --- | --- | --- | --- |
| **Contracts with MCC** | | | |
| Contract Name and Number | Role in Contract | Total Contract Amount | Purchaser Name and Address |
|  |  | x |  |
|  |  |  |  |
|  |  |  |  |
| **Contracts with an MCA-Entity** | | | |
| Contract Name and Number | Role in Contract | Total Contract Amount | Purchaser Name and Address |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**Form REF-2: References for Contracts Not Funded by MCC**

Each Bidder or member of a Joint Venture/Association making up a Bidder must provide contact information for at least three (3) references that can provide substantial input about:

1. The type of work performed
2. Confirm the quality of the work experience listed in the following Forms as submitted as part of the Bidder’s qualification documents:

EXP-1: General Information Systems Experience

EXP-2: Similar Information Systems Experience

EXP-3: Specific Experience in Key Activities

EXP-4: Environmental and Social (E&S) Management Experience

EXP-5: Health and Safety (H&S) Management Experience

The Employer reserves the right, at its sole discretion, to contact other sources as well as to check references and past performance. For each reference, list a contact individual, their title, address, facsimile, phone and e-mail address**.**

**[Maximum 5 pages]**

**B. Technical Bid Forms**

To establish its qualifications to perform the Contract in accordance with the qualification requirements set out in Section III, Bid Review, Evaluation Criteria and Bidder Qualification Requirements, the Bidder shall provide the information requested in the following forms.

**Form TECH-1 Technical Capabilities**

|  |
| --- |
| **Name of Bidder** |

The Bidder shall provide adequate information to demonstrate clearly that it has the technical capability to meet the requirements for the Information System. With this form, the Bidder should summarize important certifications, proprietary methodologies, and/or specialized technologies which the Bidder proposes to utilize in the execution of the Contract or Contracts.

The Bidder must provide detailed descriptions of the essential technical, performance, or other relevant characteristics of all key Information Technologies, Materials, other Goods, and Services offered in the Bid (e.g., version, release, and model numbers). Without providing sufficient clear detail, Bidders run the risk of their Bids being declared non-responsive.

In addition, the Bidder shall provide information on:

1. Organizational chart showing lines of communications as well as communications plan for managing communications with key stakeholders.
2. Plans for subcontracting any parts of the Good and Related Services to be carried out by specialized Subcontractors.
3. Quality management system, describing the basis and operation of the proposed quality management system, including testing, management reviews, procedural audits, checking, procedures for monitoring, reporting and dealing with nonconformities, corrective actions, and feedback.

**Form TECH-2 Key Personnel Capabilities**

For specific positions essential to contract management and implementation (and/or those specified in this Bidding Document, if any), Bidders should provide the names of at least two candidates qualified to meet the specified requirements stated for each position. The data on their experience should be supplied on separate sheets using one Form TECH-3 for each candidate.

Bidders may propose alternative management and implementation arrangements requiring different Key Professional Personnel, whose experience records should be provided.

|  |  |  |  |
| --- | --- | --- | --- |
| **Name of Bidder** | | | |
|  | **Title of position** | **Name of prime candidate** | **Name of alternate candidate** |
| **1** | **[Project Manager]** |  |  |
| **2** | **[Solution Architect]** |  |  |
| **3** | **[Subject Matter Expert]** |  |  |
|  | Etc…. |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**Form TECH-3 CVs of Key Personnel**

|  |  |  |
| --- | --- | --- |
| Name of Bidder | | |
| Position | | Candidate  •Prime •Alternate |
| Candidate information | Name of candidate | Date of birth |
|  | Professional qualifications | |
|  |  | |
| Present employment | Name of Employer | |
|  | Address of Employer | |
|  |  | |
|  | Telephone | Contact (manager / personnel officer) |
|  | Job title of candidate | Years with present Employer |
| From | To | Company/Project/Position/Relevant technical and management experience |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

Summarize professional experience over the last ten years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

Please note that, during Contract negotiations, the Purchaser will not consider substitution of any Key Personnel unless both parties agree that undue delay in the selection process makes such substitution unavoidable or for reasons such as death or medical incapacity of one of the Key Personnel. Notwithstanding the above, the substitution of Key Personnel at the negotiations may be considered if due solely to circumstances outside the reasonable control of and not foreseeable by the Supplier, including but not limited to death or medical incapacity, and or if so requested by the Purchaser as a result of the Bid review process. In such a case, the Bidder shall offer a substitute Key Personnel within the period of time specified by the Purchaser who shall have equivalent or better qualifications and experience than the original candidate.

**Form TECH-4 Manufacturer’s Authorization**

Invitation for Bids Title and No.:

To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WHEREAS \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ who are official producers of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and having production facilities at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ do hereby authorize \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter, the “Bidder”) to submit a Bid and subsequently negotiate and sign a Contract with you for resale of the following Products produced by us:

We hereby confirm that, in case the bidding results in a Contract between you and the Bidder, the above-listed products will come with our full standard warranty.

Name In the capacity of

Signed

Duly authorized to sign the authorization for and on behalf of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_.

Note**: This authorization should be written on the letterhead of the Manufacturer and be signed by a person with the proper authority to sign documents that are binding on the Manufacturer.**

**Form TECH-5 Preliminary Project Plan**

1. The Bidder must prepare a Preliminary Project Plan describing, among other things, the methods and human and material resources that the Bidder proposes to employ in the design, management, coordination, and execution of all its responsibilities, if awarded the Contract, as well as the estimated duration and completion date for each major activity. The Preliminary Project Plan must also address the topics and points of emphasis specified in   
   *[state:* ***“PCC Clause 19”*** *including any additional items stated in the Bid Data Sheet for ITB Clause 19.2 (b)].* The Preliminary Project Plan should also state the Bidder’s assessment of the major responsibilities of the Purchaser and any other involved third parties in System supply and installation, as well as the Bidder’s proposed means for coordinating activities by each of the involved parties to avoid delays or interference.

In addition to the topics and points of emphasis, the Preliminary Project Plan MUST address

**Form TECH-6 Confirmation of Responsibility for Integration and Interoperability of Information Technologies**

The Bidder must submit a written confirmation that, if awarded the Contract, it shall accept responsibility for successful integration and interoperability of all the proposed Information Technologies included in the System, as further specified in the Bidding Document.

**Form TECH-7 Item-by-Item Commentary on the Technical Requirements**

1. The Bidder must provide an item-by-item commentary on the Purchaser’s Technical Requirements, demonstrating the substantial responsiveness of the overall design of the System and the individual Information Technologies, Goods, and Services offered to those Requirements, see ITB Clause 19.2 (b).
2. In demonstrating the responsiveness of its Bid, the Bidder is required to use the Technical Responsiveness Checklist provided in Section F of the Technical Requirements. Failure to do so, the Bidder’s Technical Bid will be declared technically non-responsive. Among other things, the checklist should contain explicit cross references to the relevant pages in the Bidder’s Technical Bid.
3. The following Form is provided to help the Bidder organize and consistently present its Technical Bid. For each of the following Technical Requirements, the Bidder must describe how its Technical Bid responds to each Requirement. In addition, the Bidder must provide cross references to the relevant supporting information, if any, included in the Bid. The cross reference should identify the relevant document(s), page number(s), and paragraph(s). The Technical Responsiveness Checklist does not supersede the rest of the Technical Requirements (or any other part of this Bidding Document). If a requirement is not mentioned in the Checklist that does not relieve the Bidder from the responsibility of including supporting evidence of compliance with that other requirement in its Technical Bid. One- or two-word responses (e.g. “Yes,” “No,” “Will comply,” etc.) are normally not sufficient to confirm technical responsiveness with Technical Requirements.

|  |  |  |
| --- | --- | --- |
| Tech. Require. No. 1 | Technical Requirement:  *[insert:*  ***abbreviated description of Requirement***] | *[specify:* ***Mandatory or Preferred]*** |
| Bidder’s technical reasons supporting compliance: | | |
| Bidder’s cross references to supporting information in Technical Bid: | | |
| Tech. Require. No. 2 | Technical Requirement:  *[insert:* ***abbreviated description of Requirement****]* | *[specify:* ***Mandatory or Preferred****]* |
| Bidder’s technical reasons supporting compliance: | | |
| Bidder’s cross references to supporting information in Technical Bid: | | |

**From TECH-8 Proposed Subcontractors**

|  |  |  |  |
| --- | --- | --- | --- |
|  | Item | Proposed Subcontractor | Place of Registration & Qualifications |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
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**Form TECH-9 Software List**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | (select one per item) | | | (select one per item) | |
| Software Item | System Software | General-Purpose Software | Application Software | Standard Software | Custom Software |
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**Form TECH-10 List of Custom Materials**

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| --- |
| Custom Materials |
| *[insert* ***Title and description****]* |
| *[insert* ***Title and description****]* |
| *[insert* ***Title and description****]* |
| *[insert* ***Title and description****]* |
| *[insert* ***Title and description****]* |
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| *[insert* ***Title and description****]* |

**C. Price Schedule Forms**

**Grand Summary Price Table**

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | *[insert:* ***Currency****]*  Price | *[insert:* ***Currency****]* Price |
|  |  |  |  |
| 1. | Supply and Installation Costs (from Supply and Installation Cost Summary Table) |  |  |
| 2. | Recurrent Costs (from Recurrent Cost Summary Table) |  |  |
|  |  |  |  |
| 3. | Grand Totals (to Bid Submission Form) |  |  |

|  |  |
| --- | --- |
| Name of Bidder: |  |
| Authorized Signature of Bidder: |  |

**Supply and Installation Cost Summary Table**

Costs MUST reflect prices and rates quoted in accordance with ITB Clauses 14 and 15.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Line Item No.** | **Subsystem / Item** | **Supply and Installation Cost Sub-Table No.** | **Supply & Installation Prices** | | |
| **Locally supplied items** | **Items supplied from outside the Purchaser’s Country** | |
|  |  |  | *[insert:* ***Currency****]*Price | *[insert:* ***Currency****]*Price | *[insert:* ***Currency****]*Price |
|  |  |  |  |  |  |
| 1. | Hardware and Licenses | 1 |  |  |  |
| 2. | ODP System | -- |  |  |  |
| 3. | CTM System | -- |  |  |  |
| 4. | Help Desk | -- |  |  |  |
| 5. | e-Learning | -- |  |  |  |
| 6. | Integration | -- |  |  |  |
| 7. | Capacity Building | -- |  |  |  |
| SUBTOTALS | | | |  |  |
| TOTAL (To Grand Summary Table) | | | |  |  |

**Note:** “- -“ indicates not applicable. “ “ “ indicates repetition of table entry above.

Refer to the relevant Supply and Installation Cost Sub-Table for the specific components that constitute each Subsystem or line item in this summary table.

|  |  |
| --- | --- |
| Name of Bidder: |  |
| Authorized Signature of Bidder: |  |

**Recurrent Cost Summary Table**

Costs MUST reflect prices and rates quoted in accordance with ITB Clauses 14 and 15.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Line Item No. | Subsystem / Item | Recurrent Cost Sub-Table No. | *insert:* ***Currency****]*Price | *insert:* ***Currency****]* Price |
|  |  |  |  |  |
| z |  |  |  |  |
| z.1 |  |  |  |  |
| z.2 |  |  |  |  |
|  |  |  |  |  |
|  | Subtotals (to Grand Summary Table) | |  |  |

**Note:** Refer to the relevant Recurrent Cost Sub-Tables for the specific components that constitute the Subsystem or line item in this summary table.

|  |  |
| --- | --- |
| Name of Bidder: |  |
| Authorized Signature of Bidder: |  |

**Supply and Installation Cost Sub-Table *[insert: identifying number]***

Prices, rates, and subtotals MUST be quoted in accordance with ITB Clauses 14 and 15. Unit prices for the same item appearing several times in the table must be identical in amount and currency.

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  | **Unit Prices / Rates** | | | **Total Prices** | | |
|  |  |  |  | **Supplied Locally** | **Supplied from outside the Purchaser’s Country** | | **Supplied Locally** | **Supplied from outside the Purchaser’s Country** | |
| **Component  No.** | **Component Description** | **Country of Origin Code** | **Quantity** | *insert:* ***Currency***  *USD* | *insert:* ***Currency****]* | *insert:* ***Currency****]* | *insert:* ***Currency****]* | *insert:* ***Currency****]* | *insert:* ***Currency****]* |
| 1.1 | Server (including Licenses) |  | 10 |  |  |  |  |  |  |
| 1.2 | Storage System |  | 3 |  |  |  |  |  |  |
| 1.3 | Backup Solution |  | 1 |  |  |  |  |  |  |
| 1.4 | Backup Storage |  | 1 |  |  |  |  |  |  |
| 1.5 | Backup Tape Library |  | 1 |  |  |  |  |  |  |
| 1.6 | Server and Storage Network Switch |  | 2 |  |  |  |  |  |  |
| 1.7 | Management Network Switch |  | 1 |  |  |  |  |  |  |
| 1.8 | Rack (42U) |  | 3 |  |  |  |  |  |  |
| 1.9 | Server Rack UPS (8kVA) |  | 3 |  |  |  |  |  |  |
| 1.10 | Monitoring and Auditing Software |  | 1 |  |  |  |  |  |  |

**Note:** - - indicates not applicable.

|  |  |
| --- | --- |
| Name of Bidder: |  |
| Authorized Signature of Bidder: |  |

**Recurrent Cost Sub-Table [insert: identifying number]**

Costs MUST reflect prices and rates quoted in accordance with ITB Clauses 14 and 15. Unit prices for the same item appearing several times in the table must be identical in amount and currency.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Component  No.** | **Component** | Maximum all-inclusive costs (for costs in *[insert:* ***currency****]*) | | | | | | |
| Y1 | Y2 | Y3 | Y4 | ... | Yn | Sub-total for *[insert:* ***currency****]* |
| 1. |  |  |  |  |  |  |  |  |
| 2. |  |  |  |  |  |  |  |  |
|  | Annual Subtotals: |  |  |  |  |  |  | - - |
| Cumulative Subtotal (to *[insert:* ***currency****]* entry for *[insert:* ***line item****]* in the Recurrent Cost Summary Table) | | | | | | | |  |

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| --- | --- |
| Name of Bidder: |  |
| Authorized Signature of Bidder: |  |

**Country of Origin Code Table**

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| --- | --- | --- | --- | --- | --- | --- | --- |
| Country of Origin | Country Code |  | Country of Origin | Country Code |  | Country of Origin | Country Code |
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# PART 2. PURCHASER’S REQUIREMENTS

## Section V. Requirements of the Information System

**(including Technical Requirements, Implementation Schedule, System Inventory Tables, Background and Informational Materials)**

**Terms of Reference (ToR)**

**Millennium Foundation of Kosovo**

**On Behalf of:**

**The Government of Kosovo**

**Millennium Challenge Account Entity Program**

**Funded by**

**THE UNITED STATES OF AMERICA**

**Through**

**THE MILLENNIUM CHALLENGE CORPORATION**

Project name:

**Public Access to Judicial Information**

# ACRONYMS AND ABBREVIATIONS

CEPEJ Commission Européenne pour l’Efficacité de la Justice (European Commission for the Efficiency of Justice)

CMIS Case Management Information System

CoE Council of Europe

CTP Case Tracking Mechanism

GoK Government of Kosovo

GoN Government of Norway

IT Information Technology

ITSM Information Technology Service Management

ICT Information and Communication Technology

KJC Kosovo Judicial Council

KPC Kosovo Prosecutorial Council

MCC Millennium Challenge Corporation

MFK Millennium Foundation Kosovo

MoJ Ministry of Justice

ODP Open Data Platform

OLAP Online Analytical Processing

RoL Rule of Law

SOP Standard Operating Procedure

TA Technical Assistance

TAGP Transparent and Accountable Governance Project

THP Threshold Program

USAID U.S. Agency for International Development

1. **INTRODUCTION AND PROJECT OVERVIEW**

The United States of America, acting through the Millennium Challenge Corporation (MCC), and the Government of Kosovo have entered into a Millennium Challenge Threshold program agreement in 2012 for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in Kosovo in the amount of approximately 49 million USD. The Kosovo Threshold Program is a four-year program (2017-2021) and addresses two key constraints to Kosovo’s economic growth: an unreliable supply of electricity; and real and perceived weakness in rule of law, government accountability and transparency. The two key programs designed to address the two binding constraints are Reliable Energy Landscape Project (RELP) and Transparent and Accountable Governance Project (TAGP). The Public Access to Judicial Information activity is one of the three activities of TAGP.

The Government of Kosovo has established Millennium Foundation Kosovo (MFK) as a foundation in accordance with the Law on Freedom of Association in Non-Governmental Organizations to implement the Threshold Program and to exercise and perform the Government’s right and obligation to oversee, manage and implement the Program, including without limitation, managing the implementation of the Projects, allocating resources and managing procurements. MFK, as the Contracting Agency for this project, is responsible to procure the services of a company or consortium to implement the activities listed below. MFK is the focal point to engage and coordinate with the judicial institutions, the Government of Kosovo and other stakeholders in the field of Rule of Law and institutions of the Justice Sector in Kosovo.

The Public Access to Judicial Information (PAJI) activity, implemented by the Millennium Foundation of Kosovo, aims to support the Kosovo Judicial Council (KJC) by building upon assistance provided by USAID and Norway to implement a Case Management Information System (CMIS) and using that system to improve the administration of justice in Kosovo, transparency of the rule of law institutions, as well as but also support the Kosovo Judicial Council, Kosovo Prosecutorial Council and the Ministry of Justice (MoJ) in improved communication and outreach, through the following sub-activities:

* Creating an *Online Data Platform* for the public to access statistical data generated by the case management information system, as well as enabling disaggregation and analysis of data by meaningful categories, such as gender, region, income level or ethnicity;
* Creating an online *Case Tracking Mechanism* for authorized public users to access their individual case information, case status and procedural actions within the judicial system.
* Supporting the improvement of judicial decisions and their publication;
* Supporting improvement of communication and outreach by the judiciary and other rule of law institutions to establish and maintain a constructive dialogue over judicial performance.

In the current state, the data generated through CMIS on court cases and cases that are under investigation is only internally available, specifically only for the users of the system that comprise of court and prosecution staff. While such data is useful for the public, the information is not made available, distributed or exchanged with external parties. This problem is recognized by both, KJC and KPC, as well as the Ministry of Justice, and is perceived as key to ensuring transparency and increasing public trust in the justice system.

**Timing:** The project is expected to be completed by 30 September 2022, unless otherwise agreed upon by both parties.

**Project locations:** The project will be implemented in the offices of the Kosovo Judicial Council.

**Project Beneficiaries:** Kosovo Judicial Council**.**

1. **RULE OF LAW IN KOSOVO**

Some progress has been made in the rule of law, including in the investigation and prosecution of some high-level corruption cases and the roll-out of the electronic case-management system has advanced (EC, Kosovo Country Report, 2019). The administration of justice remains slow and inefficient, and rule of law institutions need sustained efforts to build up their capacities. The civil society, the private sector, and the general public continue to demand greater transparency, efficiency, and accountability. In addition, prosecutors lack professionalism as they are inadequately trained and e-justice tools remain underdeveloped (EC, 2019). The judicial system still faces challenges to improve data-based decision-making, making the judicial data publicly available, and ensuring a more proactive communication with the public, which would ultimately build greater public trust in the justice system.

Furthermore, deficiencies in enforcement legislation and the rule of law have not only impeded economic development, but have disproportionately impacted vulnerable and marginalized groups, in particular women and minorities. Examples include exclusion of women from property and inheritance rights and gender-based violence.

International stakeholders (USAID, European Union Office in Kosovo, Council of Europe, and Norwegian Embassy) for years now have invested in improving efficiency and transparency in the sector. One of the most important projects, Case Management Information System (CMIS), entailing the digitization of the judiciary, enhancing transparency and accountability of judges, and improving the overall efficiency and quality of justice in Kosovo.

The Public Access to Judicial Information (PAJI) activity, implemented by MFK, builds upon the ongoing efforts of the CMIS project and aims to take it a step further in providing access to citizens to their cases. This project will also address problems caused by unequal access to justice; and unequal access to judicial information and timely procedural data for victims and victim's families.

1. **PUBLIC ACCESS TO JUDICIAL INFORMATION**

The PAJI Activity has 6 key components and related deliverables:

1. Assessment: Includes carrying out a needs assessment to identify the legal and situational context of this project ( with the two main installations consisting of the Case Tracking Mechanism and Online Data Platform, see below); as well as a comprehensive technical assessment of the necessary software and hardware, IT infrastructure tools, internet auditing, security and training needs Training themes and potential participants from civil society, media and private sector organizations in order to successfully complete all of the components of the PAJI Activity.
2. Management and Coordination: Ensuring collaborative management and coordination with key stakeholders and donors.
3. Case Tracking Mechanism: Includes new software, interventions, development in the CMIS as necessary to enable provision of the real time data for CTM, and extranet features, IT infrastructure tools, internet security, and interface to back office systems in the current CMIS to allow for access to individual case information through a vetted authentication procedure.
4. Online Data Platform: Includes new software and extranet features, interventions, development in the CMIS as necessary to enable provision of the real time data and regular statistical reports of courts and judges for CTM, IT infrastructure tools, internet security, and easy to use interface to back office systems and the current CMIS to allow for real-time judicial data reporting service through an Online Data Platform.
5. Technical Assistance for Communications, Outreach, and Behavior Change to Justice Sector Institutions, Media, Civil Society, and the Private Sector: Includes designing and delivering trainings and workshops, evaluating pre and post learning, assessing on the job application, organizing events in support of better communications, data-oriented policy formulations, and decision-making, outreach, and behavior change among stakeholders.
6. ICT capacity building in the KJC and KPC: provide ICT training for ICT staff in the KJC and KPC for daily administration and maintenance of the ICT in use in KJC and KPC, training for ICT auditing, security, log analyses. Based on the best ITSM best practices, prepare ICT policies and standard operation procures (SOP) for the use of the ICT infrastructure.
7. Information and Communication Technology (ICT): Includes providing the appropriate design, testing, deployment and support/user documentation for all developed and supplied tools for the Open Data Platform and Individual Case Tracking Mechanism.

The current source of electronic format data in the judiciary (courts and prosecutors) is the CMIS system maintained in the data center of KJC/KPC and the source code is in the ownership of KJC/KPC. There is an allocated budget for maintenance of the CMIS for the next three years. The KJC has signed a MoU taking over the responsibility to grant Access to the CMIS database, including source code, as to enable the new contractor to implement the Hardware and Software installations.

1. **Technical Description of the CMIS**

The Case Management Information System is based on a Client/Server Representational state transfer (REST) architecture, where the server is centralized within the Palace of Justice and maintained by the KJC and KPC IT Departments.

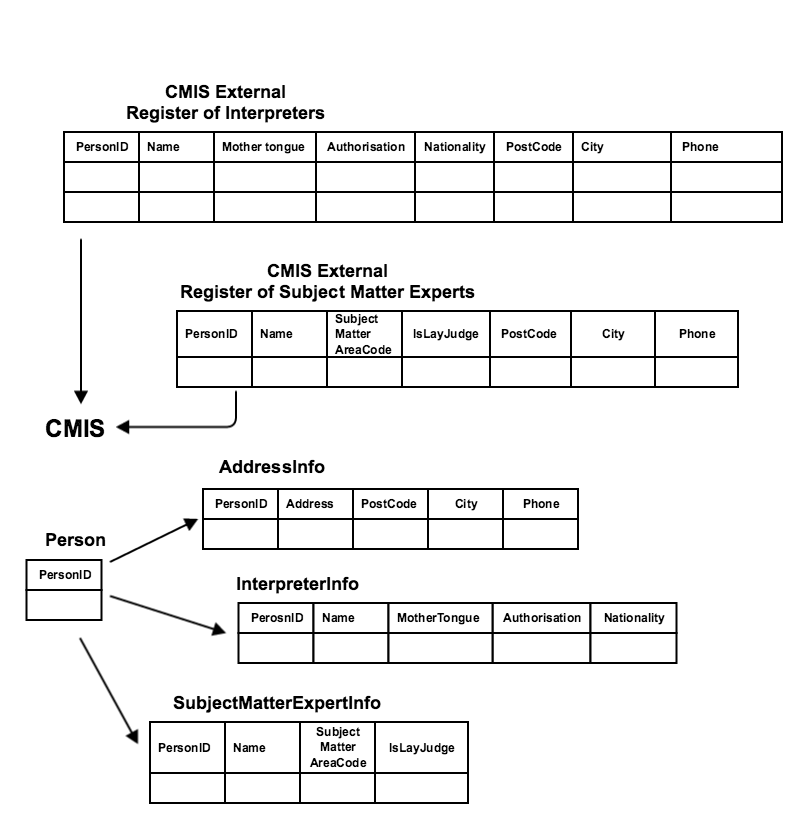
The CMIS system contains Application Server based on Microsoft technologies (.NET framework) with a Document Scanning Interface through a dedicated application. Document Management System is integrated in the CMIS. Security-wise system is installed on internal systems and outside access is not possible save through Virtual Private Networking (VPN). Synchronization with Active Directories is implemented to ensure single sign-on (SSO). Another layer of security is added as a FrameSolutions Organization Model where the user needs to be defined in a certain role to get access to the system.

The current CMIS architecture is scalable both horizontally (more servers) and vertically (more powerful servers). The network capacity needed for interchange of structured data in general is governed by the rule that no court with more than 10 users should have less than 20 Mbit/s network connection to the central server.

The data model of the CMIS contains the following domain objects with attributes:

1. Case:
   1. Case category (case type)
   2. Case Number
   3. Case Status
   4. Case Ownership
   5. Case Theme
2. Splitting a Case
3. Joining Cases
4. Relationships between Cases
5. Case Protection
6. Activity history

Registries for physical and legal are available in the CMIS. These registries are the only places where the information is expected to be correct at all times. Additional registries are available or linked for different structures within the judiciary such as register for judges, register for interpreters, register for lawyers etc. The following diagram illustrates the link between registers.



The roles and number of users per role of the CMIS are:

The total number of current users of the CMIS (as of 01.04.2021) is 907.

The number of users disaggregated per role are:

* Prosecutor 427
* Legal Officer 138
* Clerk 131
* Reception Clerk 99
* Legal secretary 92
* Professional Associate 64
* Dispatch officer 23
* Archivist 22
* Translator 21
* Chief Prosecutor 16
* Administrator 11
* Senior Clerk 10
* Office 9
* Head of dispatch 9
* Accountant 8
* Statistics officer 7
* IT Officer 7
* Legal Expert 6
* Assistant to the Chief Prosecutor 2
* Registrar 1
* Administrators 1

The following data categories are currently entered in the CMIS:

* Personal No
* First Name
* Last Name
* Birthday
* Place of birth
* Gender
* Citizenship
* Nick Name
* Language
* City
* Settlement
* Zip code
* Address
* Mobile Number
* Phone Number
* Email
* Father first name
* Father last name
* Mother first name
* Mother last name
* Mother middle name
* Marital status
* Kids
* Alive status
* Economic status – Parties’ economic status: High/Medium/Low
* Occupation
* Criminal records

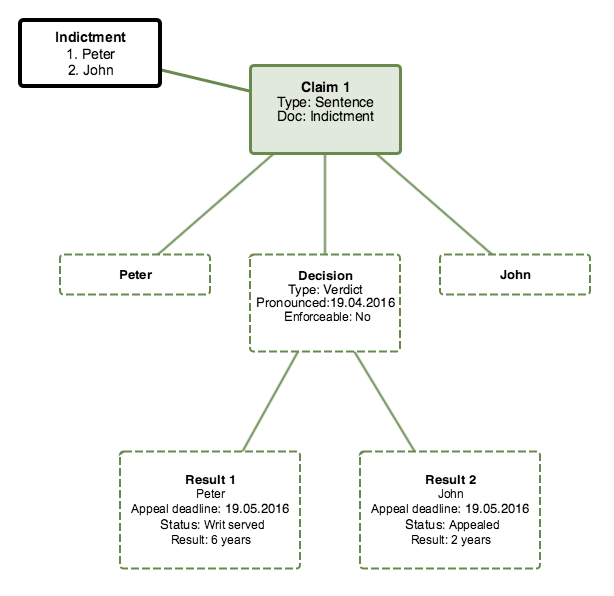
For Legal entities the following data categories are the available fields in the CMIS:

* Business Name
* Business Type
* BRN
* Fiscal No.
* Constitution Date
* Business Status
* Reason for Inactivity
* Business Owners
* Business Representatives
* Contact information
  + Email
  + Fax
  + Mobile Number
  + Phone number
* Address
  + City
  + Settlement
  + Zip code
  + Address

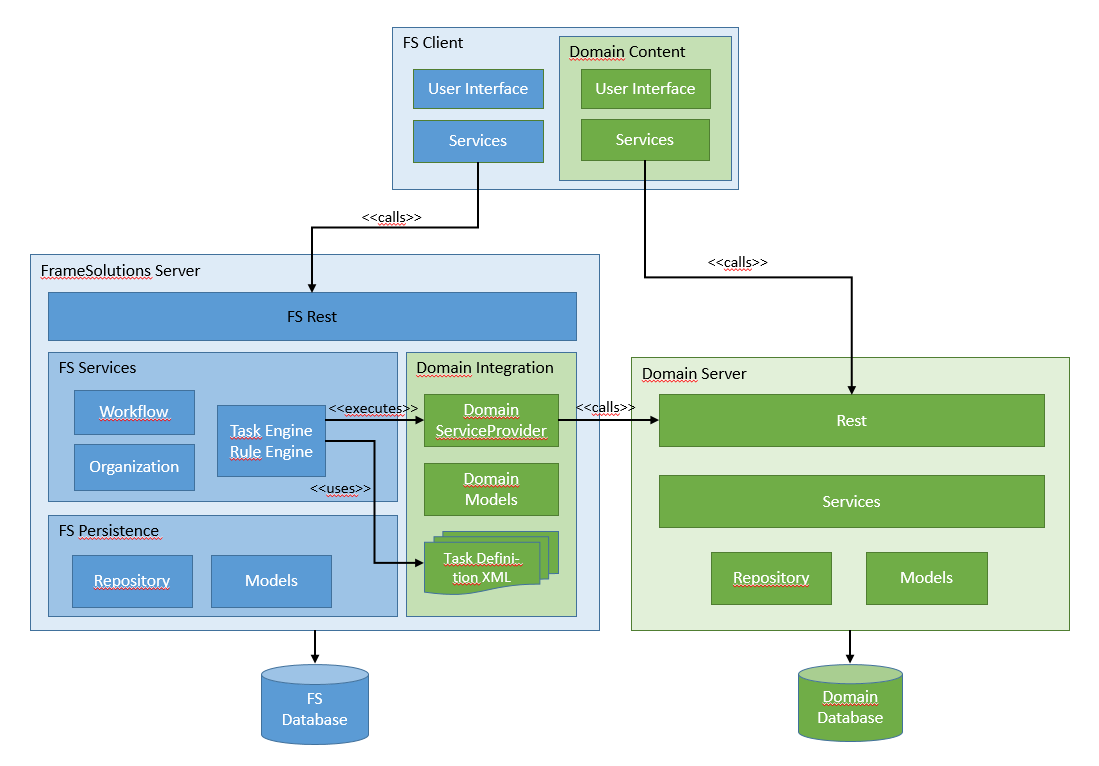
The CMIS data model also includes the following categories:

* Case Party
* Attorney/Lawyer
* Lay Judge
* Claims
* Decisions
* Results
* Hearing
* Fees
* Schedule
* Documents

Following diagram displays the relationship between some of the categories:



The Workflows in the CMIS are resolved using a FrameSolutions layer according to the following architecture, with tasks, worklists, processes, rules, exceptions, organization and roles.



1. **PROJECT GOVERNANCE**

For the implementation of the tasks under this ToR an organized management structure to facilitate the implementation and functioning of the implementation through periodic steering committee reviews, status updates, preparing risk registers and facilitating issue resolutions. The key actors in the project governance and their relationship are presented in the following diagram.

Diagram

Description automatically generated

**MFK PMO**

The MFK Project Management Office is the representative body of MFK for the practical implementation of the PAJI activity.

The MFK PMO is led by the PAJI Project Manager.

In regard to this ToR the MFK PMO is the chief decision maker.

**PAJI Consultant**

The PAJI Consultant is a contracted company to assist the MFK PMO with specific tasks during the implementation of the PAJI activity.

These tasks include:

* Technical Assistance to the MKF PMO.
* Project Management activities during the implementation of interventions under this ToR.
* Supervision of the Contractor with Quality Assurance reviews.
* Deliverables, progress and test validation.
* Training and Capacity Building activities development (to be performed by the Contractor) and quality assurance.

The PAJI Consultant consists of a team of experts and back-office support. The expert team includes:

* Team Leader,
* Legal Expert,
* Technical Expert (IT) and
* Capacity Building and communication Expert.

The PAJI Consultant will have a supervisory role and can conduct Quality Assurance Reviews at any time of project implementation, including verification of progress claims made by the Contractor.

**Beneficiaries**

Beneficiaries of this ToR procurement are the citizens of Kosovo, represented through the judicial institutions and representatives of the public sector organizations. Within the PAJI project they are all called Stakeholders.

The responsible for allowing access to the

More specifically the KJC and KPC are the Beneficiaries for the delivery of the hardware and software deliveries under this ToR and are responsible for granting all necessary access to the Contractor for implementing the accepted solutions.

**Contractor**

The Contractor is responsible for delivery of all outputs under this ToR, delivering to the Beneficiaries, reporting to the MFK PMO and under supervision and in cooperation with the PAJI Consultant.

1. **SCOPE OF WORK**

This procurement comprises the development, implementation, testing and rollout of fully integrated hardware and software solutions for the Online Data Platform (ODP) and the Case Tracking Mechanism (CTM) and related sustainability support systems, namely the Help Desk and e-Learning platform.

In terms of time scope the solution delivery is limited to less than 11 months from the start and dictates early release of the initial working models of the solutions.

* 1. **Development of the Online Data Platform and the Case Tracking Mechanism**

**Objective:**

The primary objective of this project is the expansion of the functionalities of the CMIS with successful development, implementation and rollout of complete solutions including software development, hardware supply and integration of the Online Data Platform and the Case Tracking Mechanism and related sustainability platforms in a secure and timely manner without any significant disruption to existing systems and operations.

**Purpose:**

The purpose of this project is to advance the PAJI goals to improve the administration of justice in Kosovo and the transparency of the rule of law institutions by providing the citizens of Kosovo with online access to relevant judicial information.

**The broad scope of work to be performed by the Consultant:**

Due to contractual factors, the modus of delivery and individual outputs are monitored and verified by an already existing contractor.

Managerial oversight is provided by a Project Management Unit (PMU), comprising of several different stakeholders, including an already existing contractor.

Proposal should address and offer solution to how effective monitoring and third-party verification of outputs can be conducted in the most time-efficient manner, ensuring information sharing, access to evidence of outputs, and coordination.

Following is the broad scope of work to be addressed by this proposal.

1. Prepare a detailed system architecture document and system requirements specifications for the ODP and CTM using as basis the existing assessment of the existing systems, infrastructure, data models, data exchange protocols, security standards and other related components.
2. Design and develop the software for the ODP and CTM solutions that will use the data exchange mechanisms and protocols to retrieve information from the CMIS. Implement development needed within the CMIS to ensure necessary data for ODP and CTM, develop data exchange layers (APIs) in order to ensure full system to system data communication (without any manual user interventions).
3. Deliver, install and test the hardware necessary for the uninterrupted and secure operation of the ODP and CTM solutions and the supporting systems according to the ISO/IEC 27001 standards information security management including physical secure areas and equipment security in close cooperation with KJC and KPC.
4. Deliver, install and test all necessary infrastructure components required to guarantee business continuity of the ODP and CTM solutions.
5. Integrate the developed software on the hardware platform and infrastructure.
6. Integrate the ODP and CTM output interfaces with the existing KJC website for public access.
7. Provide, install and test a help desk and e-learning platforms for sustainable user support and institutional knowledge management.
8. Roll-out the solutions and provide support during the transition period.
9. Warranty the solutions for a period of minimum 3 (three), preferably 5 (five), years including both the manufacturer and integration guarantees.
10. Train the beneficiary institution’s relevant users in all aspects of the provided ODP and CTM solutions including system maintenance (hardware and software levels), helpdesk and e-learning solutions management, ODP and CTM solutions usage and administration including training of key-users (or training of trainers) for the ODP and CTM. Training should be provided by professional and authorized companies for training needed for the software and hardware technology that will be used. Based on the best ITSM (IT Service Management) best practices ICT policies and standard operation procedures (SOP) should be prepared for the use of the new ICT infrastructure.
    1. **System overview and technical specifications**

The high-level overview of the overall system is shown in the diagram below.

Chart, radar chart

Description automatically generated

The CMIS is the primary source of information for the ODP and CTM. At present there are no other sources of information, however the ODP and CTM should be capable of exchanging information with other systems/registers in the future.

**Online Data Platform** **(ODP)**

The purpose of the OPD is to allow for analytical public view in the operations of the judiciary by presenting regular statistical reports for the work of courts and judges and allow for analysis of all non-personal and non-protected data from the CMIS to the Kosovo public.

The ODP will collect all non-personal metadata categories available in the CMIS and make them available to the public in two manners:

1. through an analytical reporting and visualization engine and
2. through an OLAP standard system interface available online.

The analytical reporting and visualization engine will be accessible through the KJC website and will allow the public users to create reports and visual graphs with the data categories from the CMIS metadata, in effect creating answers to their questions. Predefined reports in the analytical reporting and visualization engine will be available to the public as links for easy access to most demanded information.

These categories of data will include all non-personal and non-protected metadata available in the CMIS and would allow the public users to create reports like:

1. Report on the number of citizen requests submitted, and the number answered/addressed.
2. Report on the number of incoming and resolved cases.
3. Report on the number of cases resolved by each judge.
4. Report on how long it takes to resolve a specific kind of case from the moment the case is filed until the final verdict.
5. Report on the number of certain cases (I.e discrimination, hate crime, domestic violence).
6. Regular statistical reports of each court and individual judge.
7. Report on daily schedule (number) of Session hearings for each courtroom (i.e.session type, case type,number of parties involved, etc.)
8. Any other relevant reports as they become necessary.

If the data categories needed for the reports is not available in the CMIS it is expected that the KJC/KPC will add the necessary data categories within the CMIS so that future reporting on the identified questions is possible. The current data categories available in the CMIS are listed in the description of the CMIS above.

The above-mentioned reports are listed as minimum and as examples of requests by the public representatives, the ODP analytical reporting and visualization engine will allow for custom report generation on all available CMIS data categories. And the users of the ODP must be able to dynamically create and save report queries on questions asked by the public.

For this purpose, it is necessary to remove all personal information from the CMIS metadata by preparing cleanup scripts on the CMIS incoming data which will remove all personal and protected information.

Besides the enabling of the required functionalities for the ODP system operation, creation of a user-friendly UI/UX design and attention to detail on how the ODP will be used from the web interface is very important. The final users of the system will be the citizens of Kosovo and the interface should allow for all groups of citizens including marginalized groups to be able to access and use the system with relative ease and get quickly to the information required.

When developing the integration options between the ODP and CMIS special consideration will be placed on the security of the data contained in the CMIS and no personal or protected information will be managed by the ODP at any given moment. The ODP admin requirements should be defined which will be used to create users that will have access to the API with specific definition of the fields that will be displayed to ODP. The APIs that will allow access to the ODP data should be developed accompanied with detailed technical documentation and specifications for the APIs (swagger, redoc etc.).

The ODP analytical reporting and visualization engine will allow for export of the reports and visualization data in various formats including as minimum PDF, XLS, ODS, XML, JSON.

Attention should be placed on the multiple language interface and reporting methods, with tips for the users that might help them when working with content that might be language dependent. Ease of use for the analytical engine and clear and understandable presentation of the results (tables and graphs) with options for printing or exporting to an electronic file format.

The ODP will produce metadata relating to its own usage and allow the institutions KJC/KPC to produce indicators and statistical reports on the user access and services usage of the OCP.

**Case Tracking Mechanism (CTM)**

The purpose of the CTM is to keep Kosovo's citizens continuously informed on all public information relating to the cases within the CMIS.

The CTM will retrieve all case related metadata from the CMIS which is publicly available and make it accessible to Kosovo's citizens through online channels, namely the KJC website. The CTM will improve on the currently only way to search the online database is by the CMIS case number by allowing the public to search the cases additionally by at least the following parameters:

• Personal ID for citizens,

• Business registration number,

• Lawyer license number,

• Place of living (e.g. Village) in combination with First and Last name.

Once the searched case is found the CTM will present in a clear and language dependent manner all publicly available information about that case including schedule of hearings.

The CTM will allow the public to subscribe to a specific case and alert the persons by e-mail notifications whenever any new update relating to the subscribed case happens.

Besides the enabling of the required functionalities for the CTM system operation, creation of a user-friendly UI/UX design and attention to detail on how the CTM will be used from the web interface is very important. The final users of the system will be the citizens of Kosovo and the interface should allow for all groups of citizens including marginalized groups to be able to access and use the system with relative ease and get quickly to the information required.

Attention should be placed on the multiple language interface and searching methods, with tips for the users that might help them when searching for a content that might be language dependent. Ease of use for the searching engine and clear and understandable presentation of the search results with options for printing or exporting to an electronic file format.

The CTM will produce metadata relating to its own usage and allow the institutions KJC/KPC to produce indicators and statistical reports on the user access and services usage of the CTM.

**System Architecture**

The following diagram shows the general OPD and CTM system architecture.

Diagram

Description automatically generated

Both solutions i.e. ODP and CTM should be based on independent architectures and both systems should be developed on high-availability load-balanced virtualized platforms. The solutions should be presented in the proposal by the contractor.

The solutions will have set up a database, application servers and administration sites for the management of system users.

**Hardware and Infrastructure**

The following hardware and infrastructure equipment will be supplied, delivered, installed and tested for supporting the system architecture. If any items are not included in the list below and are necessary for the completeness of the offered solution, they should be included in the proposal and provided by the Contractor.

**ODP Rack**

1 x Physical Server for Application server

1 x Physical Server for Database Server

1 x Physical Server redundancy Application server

1 x Physical Server redundancy of Database Server

1 x Storage System

1 x Server and storage Network Switch

1 x Network Switch

1 x UPS

**CTM Rack**

1 x Physical Server for Application server

1 x Physical Server for Database Server

1 x Physical Server redundancy Application server

1 x Physical Server redundancy of Database Server

1 x Server and storage Network Switch

1 x Network Switch

1 x Network Switch

1 x UPS

**Backup, Help Desk, e-Learning Rack**

2 x Physical Servers

1 x Storage System

1 x Backup Solution

1 x Backup Storage

1 x Backup Tape Library

1 x Management Network Switch

1 x UPS

1x Monitoring and Auditing Software

Itemized table of hardware specifications is presented below as minimum guideline for the offered solution. **All servers need to have the adequate latest operating system supporting hosting of multiple virtual servers.**

|  |  |  |
| --- | --- | --- |
| Item | Minimum Technical Specifications | Minimum estimated quantity |
| Item 1. Server | |  | | --- | | Rack based server, maximum 1U height, with integrated 24-bit RAMDAC.  **PROCESSOR**  2 x physical CPU (Intel® C621 series chipset): minimum 28 cores with hardware multithreading technology, 64-bit, processor with release date after 01 January 2020; Pass mark score of minimum 35900;  **MEMORY**  Minimum 32 slots for registered DIMMs (RDIMMs) or load-reduced DIMMs (LR DIMMs) and  support for Intel® Optane™ Persistent Memory Modules (PMEMs)Minimum 512GB DDR4 3200 MHz  **CONTROLLER**  HW RAID controller with support for SAS/SATA  Minimum 2GB cache  RAID levels supported: 1, 10, 5, 6, 50, 60  **HARD DRIVE BAYS**  Minimum 10 x Hard Drive Bays, hot-swap  **INSTALLED DRIVES**  Minimum 4x 960GB, SSD, Factory configured in RAID 6, hot-swap  **INTERFACES**  One flexible modular LAN on motherboard (mLOM) slot that can accommodate various interface cards  **ETHERNET ADAPTER**  2 x 10Gb RJ-45 Ethernet ports  **NETWORK ADAPTERS**  4 x 10/25G unified ports, configurable between Ethernet and Fiber Channel SAN traffic  **INFINIBAND**  The InfiniBand architecture is supported by the PCI slots.  **POWER SUPPLY AND FANS**  2 power supply units of 1000W or more, with Platinum efficiency  **FANS**  Eight hot-swappable fans for front-to-rear cooling  **USB PORTS**  minimum 2 rear USB 3.0 ports  **FAULT MANAGEMENT**  Analysis that will provide information for fault of Power supplies, fans, disk drives, processors, and memory  OUT OF BAND MANAGEMENT  1 Gigabit Ethernet port for out-of-band management, advanced configuration and power interface (ACPI) 4.0 support. Minimum 2D graphic hardware acceleration with DDR4 memory and a dedicated video memory.  **SECURITY FEATURES**  1 x FIPS 140-2 Compliant Trusted Platform Module 2.0  **ACCESSORIES**  Sliding Rails With Cable Management Arm  Front Panel Cover  **OS COMPATIBILITY**  Microsoft Windows Server  Red Hat Enterprise Linux (RHEL)  SUSE Linux Enterprise Server (SLES)  VMware  **OPERATING SYSTEM, APPLICATION and DATABASE**  Operating system, application and database engines delivered with server will be dependent on offered solution. All servers should be installed with virtualization software and include all licenses in order to support backup and restore of virtual machines. Virtual machines should have all needed licenses, including OS, Database engine, Application servers etc... Number and type of licenses for virtual machines will depend on offered solution and should be included in the offer.  **INSTALLATION AND CONFIGURATION**  Full delivery, installation and configuration with testing  **TRAINING**  Training of staff for management and maintenance | | Rack based NVMe all-flash storage solution, compatible with offered infrastructure.  **HARDWARE**   * Must have redundant controllers, power supplies and fans (no single point of failure), with the ability to replace all those components non-disruptively. * Must be offered with a minimum of two storage controllers in a redundant *active/active* configuration with at least 128GB controller-based memory. * Supports non-disruptive controller upgrade to a newer generation. * Solution must support online firmware updates to controllers, disk modules, and ALL associated elements without unmounting/idling the file system. * All flash system that supports both NVMe and SCSI SSD drives. * With two controllers, must support at least 48 NVMe drives. * Supports scale-out to 12 controllers/nodes in a single system/cluster for the same protocol (i.e. cannot be shared like 4 FC node and 4 NAS node), where the whole cluster needs to be a single logical system. * Supports scale out to 24 controllers/nodes in a single system/cluster for NAS only environments, where the whole cluster needs to be a single logical system. * Support for large NAS pools/file systems (20PB, 400 billion files/inodes)s * The process of adding new drives and disk shelves needs to be done in-line and non-disruptively. * Must include support for FC, iSCSI, NFS, pNFS, CIFS, NVMeOF and S3 protocols. * System must have:   + At least 4-port 32Gbps FC (with included SFP+ modules if needed) for host connectivity   + At least 4-port 10Gb Ethernet BASE-T for host connectivity * All supported protocols must be served without an external appliance. * System must be a unified solution, and support both SAN and NAS protocols at the same time, from the same host interfaces. * Offer must include the following physical capacity:   + At least 16x 3.8TB SSD or bigger drives * Double disk failure protection to be set with flexibility (4+2 up to 18+2 or 26+2) and which does not affect performance – max 10-15% RAID penalty. * Supports option for triple disk failure protection. * Capability to mix SSD sizes within a system/controller and mix SSD sizes within a single storage/capacity pool. * Supports thin provisioning on all protocols and for all available capacity. * Supports inline elimination of zero blocks, inline data compression and inline data deduplication on all protocols (+all media types, SSD and hard drives). * Supports built-in data-at-rest encryption of select data (encryption software to be included) and supports both system level and external key managers for encryption. * Supports snapshot without performance degradation (even when 100s or 1000s of snaps created). License for maximum number of snapshots must be included. * Supports instantaneous restores of files and LUNs from snapshots. * Supports copy-less recoveries of complete volumes from snapshot copies. * Supports creation of thin clones from snapshots, volumes directly and from other clones. * Support QoS to avoid the noisy neighborhood effect (set on LUN/Volume or tenant level) and on all protocols in the system. * Support for adaptive QoS (growing a volume to grow the performance limits). * Supports secure multitenancy to isolate tenant network, data and management. * Must support the following operating systems: Windows® 2000, Windows Server® 2003, Windows Server 2008, Windows Server 2012, Windows Server 2016, Linux®, Oracle® Solaris, AIX, HP-UX, Mac® OS, VMware®, ESX. * Must support GUI and CLI based software management and monitoring tools, implemented on the controllers themselves. * Must be offered with at least 3 years of software and hardware warranty. * Warranty must include SSD wearing (replace under warranty even up to 6 years). * Both hardware and software that comprise the system, as well as their complete service support offering must be offered exclusively from the same vendor. * Vendor must have proprietary ownership of the software included in the system, as to avoid possible problems with future capabilities and functionalities. * Cloud integration with solutions from the same vendor, in all major cloud providers (AWS, Azure, Google Cloud Platform). * Supports phone home feature to improve support experience. * Supports multifactor authentication. * Supports Active Directory based authentication for the storage management. * Supports RBAC (role-based access control) to define multiple type of administrators. * Supports storage performance monitoring including storing historical data for long term access (at least 1 year). * Support tiering of cold data to object storage (cloud and on-premises). * Supports creation of cache volumes that caches active read datasets within a cluster and at remote sites.   **INSTALLATION AND CONFIGURATION**  Full delivery, installation and configuration within item 7 with testing  **TRAINING**  Training of staff for management and maintenance of the offered system | | 10 |
| Item 2. Storage System | Rack based NVMe all-flash storage solution, compatible with offered infrastructure.  **HARDWARE**   * Must have redundant controllers, power supplies and fans (no single point of failure), with the ability to replace all those components non-disruptively. * Must be offered with a minimum of two storage controllers in a redundant *active/active* configuration with at least 128GB controller-based memory. * Supports non-disruptive controller upgrade to a newer generation. * Solution must support online firmware updates to controllers, disk modules, and ALL associated elements without unmounting/idling the file system. * All flash system that supports both NVMe and SCSI SSD drives. * With two controllers, must support at least 48 NVMe drives. * Supports scale-out to 12 controllers/nodes in a single system/cluster for the same protocol (i.e. cannot be shared like 4 FC node and 4 NAS node), where the whole cluster needs to be a single logical system. * Supports scale out to 24 controllers/nodes in a single system/cluster for NAS only environments, where the whole cluster needs to be a single logical system. * Support for large NAS pools/file systems (20PB, 400 billion files/inodes)s * The process of adding new drives and disk shelves needs to be done in-line and non-disruptively. * Must include support for FC, iSCSI, NFS, pNFS, CIFS, NVMeOF and S3 protocols. * System must have:   + At least 4-port 32Gbps FC (with included SFP+ modules if needed) for host connectivity   + At least 4-port 10Gb Ethernet BASE-T for host connectivity * All supported protocols must be served without an external appliance. * System must be a unified solution, and support both SAN and NAS protocols at the same time, from the same host interfaces. * Offer must include the following physical capacity:   + At least 16x 3.8TB SSD or bigger drives * Double disk failure protection to be set with flexibility (4+2 up to 18+2 or 26+2) and which does not affect performance – max 10-15% RAID penalty. * Supports option for triple disk failure protection. * Capability to mix SSD sizes within a system/controller and mix SSD sizes within a single storage/capacity pool. * Supports thin provisioning on all protocols and for all available capacity. * Supports inline elimination of zero blocks, inline data compression and inline data deduplication on all protocols (+all media types, SSD and hard drives). * Supports built-in data-at-rest encryption of select data (encryption software to be included) and supports both system level and external key managers for encryption. * Supports snapshot without performance degradation (even when 100s or 1000s of snaps created). License for maximum number of snapshots must be included. * Supports instantaneous restores of files and LUNs from snapshots. * Supports copy-less recoveries of complete volumes from snapshot copies. * Supports creation of thin clones from snapshots, volumes directly and from other clones. * Support QoS to avoid the noisy neighborhood effect (set on LUN/Volume or tenant level) and on all protocols in the system. * Support for adaptive QoS (growing a volume to grow the performance limits). * Supports secure multitenancy to isolate tenant network, data and management. * Must support the following operating systems: Windows® 2000, Windows Server® 2003, Windows Server 2008, Windows Server 2012, Windows Server 2016, Linux®, Oracle® Solaris, AIX, HP-UX, Mac® OS, VMware®, ESX. * Must support GUI and CLI based software management and monitoring tools, implemented on the controllers themselves. * Must be offered with at least 3 years of software and hardware warranty. * Warranty must include SSD wearing (replace under warranty even up to 6 years). * Both hardware and software that comprise the system, as well as their complete service support offering must be offered exclusively from the same vendor. * Vendor must have proprietary ownership of the software included in the system, as to avoid possible problems with future capabilities and functionalities. * Cloud integration with solutions from the same vendor, in all major cloud providers (AWS, Azure, Google Cloud Platform). * Supports phone home feature to improve support experience. * Supports multifactor authentication. * Supports Active Directory based authentication for the storage management. * Supports RBAC (role based access control) to define multiple type of administrators. * Supports storage performance monitoring including storing historical data for long term access (at least 1 year). * Support tiering of cold data to object storage (cloud and on-premises). * Supports creation of cache volumes that caches active read datasets within a cluster and at remote sites.   **INSTALLATION AND CONFIGURATION**  Full delivery, installation and configuration within item 7 with testing  **TRAINING**  Training of staff for management and maintenance of the offered system | 3 |
| Item 3. Backup Solution | Solution type: Centralized Backup and Recovery software for virtual, physical and cloud IT environments  -              Whole disk, deduplication and compression  -              Directly from file-based storage  -              Recovery verification  -              Backup from Storage  -              Backup to Storage and Tape  -              Backup task automation  -              Backup agents for Windows Server 2008 R2, Server 2012, Server 2016, Sever 2019, Linux  -              Natural support for tape backup  -              Backup VMWare and Hyper-V environments  Recovery features:  -              Entire virtual machines, virtual disks, file level recovery  -              Recovery for Active Directory, Exchange, MS IIS, MSSQL Server, PostgreSQL Server  -              Replication recovery  -              Restoring data from server, backup set, backup job or storage device  Management, monitoring and reporting:  -              Creating, managing and deleting backup jobs  -              24 x 7 real time monitoring and alerting for the backup infrastructure  -              Multi-tenant backup reporting and monitoring  -              Backup and replication reports  Include installation and configuration of centralized solution and possible backup agents  Training of staff for management and maintenance of the offered system | 1 |
| Item 4. Backup Storage | * Desire is to move warm and cold data from production storage to modern software defined architecture (SDS) and release all this data from production storage. * Offer must include complete costs for 3 years (HW, licences, support, subscriptions.) * Solution must be from a single vendor (HW and SW). * Solution must be based on advanced SDS technologies and must have the capacity of minimum 192 TB capacity. * System must include all needed backup SW to backup 40TB of data. * System must include 80TB for archival purposes. * Archival must be established on backup appliance and must use backup data. * SDS system must be placed on at least 4 nodes to ensure erasure coding (EC) to protect any individual disk, ram, processor or node failure. * Each node must have at least 4 x 10Gbe SFP+ connectivity * Cluster must have minimum 512GB RAM and 12TB PCI-e Flash used for fast backup and restore. * Multiprotocol access to same data to support applications across all major enterprise operating systems (NFS, CIFS, SMB) * Object storage support with S3 compatible REST API for easy integration with existing services * Upgrades must be non-disruptive; scalability must be to at least 5PB. * System must support global deduplication (Prime-DR-Cloud) with strict consistency. If data is changed on prime site, automated changes in DR and Cloud is required. * System must support limitless fully hydrated snapshots and writable snapshot clones for fast restores. * Data compression must be at least 2x. * RPO of 100 VM must be very fast (less than 5 min) from backup. Near-instant RTOs * System must have built-in, granular and secure replication services for geo redundancy. * Object metadata must be indexed to enable search across all objects in a cluster (ie. File in backup copy). * QoS policies must be provided to optimize performance for different types of workloads. * System must support data-at rest and data-in-flight encryption based on 256-bit AES. Platform must be FIPS-2 compliant. * Long term retention of data support must be supported. WORM functionality. * System must support cloud integration to have capabilities to archive into public cloud for long term retention. Utilize cloud tiering for transparent capacity expansion into the cloud. Replicate into the cloud for disaster recovery. * System must be capable to detect, prevent and respond to ransomware attacks based on backup data. * System must have built in antivirus protection that will monitor data in backup copy. | 1 |
| Item 5. Backup Tape Library | **FORMAT OF HOUSING**  Rack mountable independent unit, maximum 3U height  **DRIVES**  Minimum 2 x LTO-7 FC Half-Height tape drives included  Expandable to 20 x LTO Ultrium tape drives  **CONNECTIVITY**  Fiber Channel 8 Gb/sec  To be connected to Server from item 1 using most appropriate technology and usable from virtualized environment  **CAPACITY**  Minimum 40x LTO cartridge slots available  Minimum 2 x removable magazines  Minimum 5 x cartridge removal slots  Expandable to 275 LTO Ultrium tape slots  **ADDITIONAL MEDIA CARTRIGES**  Minimum 25 x LTO-7 Tape Cartridges included  Minimum 1 x LTO Cleaning Cartridge  **POWER SUPPLY**  Minimum 2 power supply units with redundancy  **INSTALLATION AND CONFIGURATION**  Full delivery, installation and configuration of complete solution with testing  **TRAINING**  Training of staff for management and maintenance of the offered system | 1 |
| Item 6. Server and storage Network Switch | **NUMBER OF PORTS**  1U rack mountable unified switch for LAN and SAN (NPV) traffic, with a minimum of 53x line-rate, low-latency, lossless 10/25/40/50/100 Gigabit Ethernet, Fiber Channel over Ethernet (FCoE) or Fiber Channel ports, out of which:   * Minimum 6 x QSFP28 40/100-Gbps ports * Minimum 48 x 10/25-Gbps Ethernet ports or 8/16/32-Gbps Fiber Channel ports   **SWITCHING CAPACITY**  Minimum 3.6 Tbps  **FORWARDING CAPACITY**  Minimum 1.2 billion packets per second (bpps)  **LATENCY**  Under 1 microseconds  **POWER SUPPLY**  Redundant power supply and fans  **CLASS OF SERVICE**  802.1p priority based  Enhanced transmission selection (802.1Qaz)  **STANDARDS**   1. IEEE 802.3bm: 100-Gigabit Ethernet 2. IEEE 802.3bg: 40-Gigabit Ethernet 3. IEEE 802.3by: 25-Gigabit Ethernet 4. IEEE 802.3ae: 10-Gigabit Ethernet 5. PFC (per priority pause frame support) 6. Data Center Bridging Exchange (DCBX) Protocol 7. IEEE 802.1Qaz: bandwidth management 8. Rapid Per-VLAN Spanning Tree Plus RPVST+ 9. VLAN 10. Port-based VLAN 11. 16 x hardware queues per port 12. 802.1Q Tagged VLAN   Number of MAC addresses:  Minimum 32k  **INTEGRATION**  EtherChannel hashing based on Layer 2, 3, and 4 information  **MANAGEMENT**  CLI based management interface  SSH management  Minimum of 32 GB system memory  Included centralized management of FC, FCoE and Ethernet interfaces for all unified ports / servers.  **INSTALLATION AND CONFIGURATION**  Included appropriate SFP modules and/or cables for connectivity to all servers with a minimum of 2 x 25-Gigabit interfaces per server  Included appropriate SFP modules and/or cables for connectivity to all storage systems with a minimum of 4 x 16-Gigabit FC interfaces per storage  Full delivery, installation and configuration with testing  **TRAINING**  Training of staff for management and maintenance of the offered system | 2 |
| Item 7. Network Switch | **NUMBER OF PORTS**  1U rack mountable FC switch which provides high-speed Fibre Channel connectivity for SAN (NPIV capable) traffic, with a Fiber Channel ports, out of which:   * Minimum 24 x 4/8/16/32-Gbps Fiber Channel ports * License upgrade in 8-port increments up to 48 ports   **PERFORMANCE**  Port speed: 4-, 8-, 16-, and 32-Gbps autosensing with 32 Gbps of dedicated bandwidth per port  Aggregate bandwidth of 1.5-Tbps end-to-end full duplex  Buffer credits: Up to 8300 for a group of 16 ports, with a default of 500 buffer credits per port and a maximum of 8270 buffer credits for a single port in the group  Port groups: 3 port groups of 16 ports each  Port channel: Up to 16 load-balanced physical links grouped in one port channel  **SECURITY**  VSAN fabric isolation  Intelligent packet inspection at port level  Hardware zoning by Access Control Lists (ACLs)  Fibre Channel Security Protocol (FC-SP) switch-to-switch authentication  FC-SP host-to-switch authentication  Role-based access control (RBAC) using RADIUS, TACACS+, or Lightweight Directory Access Protocol (LDAP) authentication, authorization, and accounting (AAA) functions  Secure FTP (SFTP)  **POWER SUPPLY**  Redundant power supply and fans  **STANDARDS** (minimum)   1. Fibre Channel classes of service: Class 2, Class 3, and Class F 2. Fibre Channel standard port types: E, F, and B 3. Fibre Channel enhanced port types: SD, ST, and TE 4. FC-NVMe 5. In-band management using IP over Fibre Channel (RFC 2625) 6. IPv6, IPv4, and Address Resolution Protocol (ARP) over Fibre Channel (RFC 4338) 7. Extensive IETF-standards-based TCP/IP, Simple Network Management Protocol Version 3 (SNMPv3), and Remote Monitoring (RMON) MIBs   **MANAGEMENT**  Management access through 2 out-of-band Ethernet ports  ◦ mgmt0: 10/100/1000BASE-T port  ◦ mgmt1: 1/10G SFP+ port #  RS-232 serial console port  USB power-on auto-provision port  CLI based management interface  SSH management  Included centralized management of FC interfaces for all ports.  **INSTALLATION AND CONFIGURATION**  Included appropriate SFP modules and/or cables for connectivity to NPV FC switch with a minimum of 2 x 32-Gbps Fiber Channel port per switch.  Included appropriate SFP modules and/or cables for connectivity to Storage with a minimum of 4 x 32-Gbps Fiber Channel port per each Storage device. | 2 |
| Item 8. Management Network Switch | **NUMBER OF PORTS**  1U rack mountable switch for LAN traffic with a minimum of 54x Ethernet ports out of which:   * Minimum 48x RJ-45 100/1000 Mbps ports * Minimum 4x 25Gbps SFP28 ports * Minimum 2x 100Gbps QSFP28 ports   **SWITCHING CAPACITY**  Minimum 0.6 Tbps  **FORWARDING CAPACITY**  Minimum 515 million packets per second (mpps)  **POWER SUPPLY**  Redundant power supply and fans  **HIGH AVAILABILITY**  64-way Equal-Cost Multipath (ECMP) routing  Forwarding of Multiprotocol Label Switching (MPLS) packets  **STANDARDS**   1. 802.3ab 1000BASE-T Gigabit Ethernet 2. BGP 3. Open Shortest Path First (OSPF) 4. Enhanced Interior Gateway Routing Protocol (EIGRP) 5. Routing Information Protocol Version 2 (RIPv2) 6. Border Gateway Protocol (BGP) Ethernet Virtual Private Network (EVPN) control   Number of MAC addresses: Minimum 97k  Number of port channels: Minimum 512  Number of Network Address Translation (NAT) entries: Minimum 1000  Number of Hot-Standby Router Protocol (HSRP) groups: Minimum 485  **MANAGEMENT**  CLI based management interface  SSH management  Minimum of 8 GB system memory  Minimum of 16 GB SSD capacity  Minimum 1x RS-232 serial port  **INSTALLATION AND CONFIGURATION**  Full delivery, installation and configuration with testing  **TRAINING**  Training of staff for management and maintenance of the offered system | 1 |
| Item 9. Rack (42U) | **CAPACITY**  Min 42U  Minimum depth 1000 mm  **STANDARD EQUIPMENT**  a. Minimum Rack casters kit,  b. Side panels,  c. Front door,  d. Adjustable vertical mounting rails,  e. Roof,  f. Keys,  g. Split perforated rear door  **ADDITIONAL FEATURES**  a. Adjustable depth,  b. Integrated cable management,  c. Roof fans installed  **PDU**  minimum 3 x Rack PDU with 12 Output Connector(s)  **INSTALLATION AND CONFIGURATION**  Full delivery, installation and configuration with testing | 3 |
| Item 10. Server Rack UPS (8kVA) | **TYPE OF UPS**  Rack Mountable, maximum 6U base, include rack mounting kit  Optional external runtime battery modules  **OUTPUT POWER CAPACITY**  8000VA/7200W  **INPUT VOLTAGE TOLERANCE**  200 - 250 VAC  **COMPLIANCE STANDARDS**  IEC 61000-4-2, IEC 62040-1-1, IEC 61000-4-11, IEC 60950-1, **OUTPUT CONNECTORS**  Minimum (6) IEC 320 C19  Minimum (2) IEC 32A  **BATTERY RUNTIME**  Included minimum runtime of 12 minutes at 100% load  **BATTERY TYPE**  Sealed lead acid battery, maintenance-free, valve regulated  **TYPICAL RECHARGE TIME**  4 hours to 90%  **INTERFACE PORTS**  Minimum RS232, USB port, 1GbE network card  **CONTROL PANEL**  LCD status display  **INSTALLATION AND CONFIGURATION**  Full delivery, installation and configuration with testing | 3 |
| Item 11. Monitoring and Auditing Software | Tools for monitoring, log analyses and Auditing Software for Active Directory Windows Server, IIS, SQL storage (web, DB) CMIS, ODP, CTM:  *Active Directory and Group Policy*  -It must enable reports on Active Directory and Group Policy changes  -It must provide time-specific information on AD and Group Policy configurations, including group membership across multiple domains and effective permissions.  -It must provide Logon auditing.  -It must support for both trusted and non-trusted domains  *Windows Server*  -It must enable reports on all changes made to server configuration — hardware and software, services, applications, network settings, registry settings, DNS, file shares etc.  -It must provide information on audit log clearance, changes to local audit policy, Windows service failures, system shutdowns and time changes.  ∙ It must provide time-specific information on Windows Server configurations, including OS name and version, antivirus status, file shares, local users and groups, services, and installed programs.  ∙ It must provide reports on privileged user session start and end times with optional video recording of the session itself.  Additional Features:  -It must operate without agents, so it never degrades system performance or causes downtime.  -It should not use any undocumented methods to collect data from your systems, since such methods can result in denial of support from Microsoft or other core vendors  -It must consolidate audit data from multiple sources (event logs, configuration snapshots, change history records, etc.) to get the most reliable audit data without gaps.  - It must capture and deliver full details about changes and access attempts, including when and where the change or access attempt was made, who made it, and what exactly was changed or accessed.  -It should utilize a scalable two-tiered storage system. This storage should keep a complete audit trail for min 10 years without performance degradation and ensures easy access to it throughout the whole retention period.  -It must include predefined audit reports and dashboards that deliver detailed information about changes, access and configurations in a human-readable format and allow users to filter, sort and export the audit data.  -It must enable users to easily build custom reports based on their specific requirements, including cross-system reports  -It must Automatically deliver reports to specified recipients by email or saves them to a file share on a specified schedule (daily, weekly, etc.).  -It must show the current configuration settings or settings from any moment in the past, including effective permissions by user or by object, Group Policy settings and Windows Server configuration details  -It must notify staff about suspicious behavior or events that could turn into security incidents, including activity that exceeds the normal baseline (threshold-based alerts), by email or SMS message.  -It must enable users to identify and assess risks in four key areas: users and computers, permissions, data and infrastructure.  -It should improve detection of malicious actors in the IT environment by delivering an aggregated trail of anomalous user activity with the associated risk scores.  -It must provide key details about each user account involved in an incident, including the name of the user, their department and manager’s name, whether the account is enabled, and the AD groups it is a member of.  -It must enable users to automate response to common and anticipated incidents by creating scripts that run each time the corresponding alert is triggered.  -It should automatically remind AD users to change their passwords before they expire.  -It should automatically detect and deactivate inactive user and computer accounts based on custom criteria.  *Management, Usage and Integration:*  -It should support multiple servers from a single installation, each with its own configuration settings  -It should support auditing of multiple systems and applications, including systems integrated through a RESTful API, in a unified way, including through cross-system dashboard and reports.  -It should include all functionalities in a single platform, eliminating the need to run multiple tools  -It should provide with the possibility to be integrated with security, compliance and IT automation tools and business applications to centralize auditing and reporting or facilitate IT workflows like change management and service desk  -It should provide with the possibility to Protect existing investments in third-party SIEM platforms by offering integration with them bringing more context to their output data and reducing the volume of input data.  The software and all the necessary licenses must have at least 5 years warranty and support. | 1 |

**Data Security of ODP and CTM**

The solutions should allow for secure API and admin sites with SSL. SSL Certificates with minimum 3 years and up to 5 (five) validity that are issued by a verified Certificate Authority should be provided by the Contractor. The ODP and CTM should be configured to work exclusively using secure protocols.

Both ODP and CTM should be developed using API’s from which they will be collecting the data. No direct access to the database should be done from the CTM and ODP application.

API’s should be able to be accessed using Tokens (JWT or other) to Authenticate and authorize access to its endpoints.

CTM and ODP Admin sites should be able to create users that have access rights to their API’s. Same technologies that will be used by the apps should be implemented if the API’s are accessed directly.

**Business Continuity and Backup**

The introduced OPD and CTM system architecture should allow for improving the current technology-assisted Business Continuity capabilities.

To ensure business continuity, hardware solution should ensure redundancy for the CMIS, ODP and CTM.

Both the ODP and CTM solutions should have redundancy servers and load balancers to handle traffic by the public or in case of failure of one of the servers.

For the redundant server of the CMIS additional server is needed. The capacity of the redundant server of the CMIS must be with the capacity and compatible with the current server of the CMIS that is in production.

To reduce the risk of service failure and data loss a Backup Solution should be set up independently of the ODM and CTP, possibly in a remote location with good connectivity to the main data center. The Backup Solution will be set to perform daily backups on virtual machine level of the ODP and CTM systems.

The Contractor should prepare backup procedures to make sure the backups are regular and complete and train the KJC/KPC staff in maintaining the backup procedures.

The Backup Solution should send notifications to admins if the backup fails and send notifications to admins when the backup is completed successfully.

The Backup Solution should also be used for the Help Desk and e-Learning platforms.

**Help Desk**

Help Desk platform needs to be supplied, installed, tested and user trained to support the Help Desk personnel in dealing and tracking the user issues (ticketing system), as well as serve as a knowledge database of past issues and solutions.

The Help Desk platform will support the management the process when resolving issues that the users will encounter while using the ODP and CTM systems. These issues may be of technical, logical or other nature. The Help Desk staff should be able to identify the issue and give the adequate solution to the user.

The following diagram shows the expected complexity of the Help Desk system.

Diagram

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Issues of technical nature are mostly related to:

• the application’s non-functioning due to hardware or network failure,

• local user hardware, application or operating system problems,

• local network problems,

• and similar technical problems.

Issues of logical nature include:

• the user is unable to perform actions in an application,

• the application behaves differently from the user expectation,

• and similar logical issues that may come up during the usage of the applications.

The Help Desk should be able to channel the user’s issue to the correct party that will be able to solve it.

For technical issues the Help Desk staff should contact the relevant KJC or KPC IT department, for logical issues the Help Desk should seek solution from the KJC (at same or higher level). The Help Desk is only responsible for managing the solution of technical and logical issues.

Help Desk operating procedures should be drafted to support the KJC/KPC staff operating the Help desk platform.

**e-Learning Platform**

The Contractor will develop an e-learning platform for ensuring sustainability of training programs and the dissemination of relevant materials on continuous basis, with the view of informing and educating the public and other interested stakeholders on ODP/CTM related issues.

All produced training materials during the project will be uploaded on the e-learning platform and made available to the users.

It will be also considered that the e-learning platform will open new possibilities of training in the justice field for national trainers/lecturers, as well for other stakeholders with interest in the ODP and CTM systems.

The Contractor will provide any required support towards the successful operation of the e-learning platform, including but not limited to:

* Provision of support for technical questions related to the uploading of content
* Provision of support in developing and using the manuals for the platform
* Provision of support in order KJC/KPC to respond to any questions raised by potential users/target groups of the platform

The Contractor will only produce the training materials in relation the the ODP, CTM, Help Desk and e-learning platform.

**Warranty**

The contractor will provide a one contact point warranty for the solutions for a period of minimum of 3 years and preferably 5 (five) years from the day of acceptance including both the manufacturer and integration guarantees. The warranty includes maintenance, licenses, security certificates and all other recurring costs during the warranty period offered.

Service level of the warranty is expected to be a Next Business Day warranty that indicates service and support with coverage five days a week, eight hours a day, with an average Next Business Day (24 hour) response time. This coverage is available when the normal hours of product operation are between 9:00am and 5:00pm local European Time, Monday-Friday (excluding holidays).

All hardware equipment will have supporting manufacturers authorization form containing the original manufacturer’s warranty, origin and guarantee that the equipment is brand new (and not refurbished or used).

1. **TASKS**

The following tasks with the corresponding deliverables will be performed by the Contractor. In the proposal a detailed work plan for the task should be presented.

Due to time limitation (less than 10 months for final software delivery) and parallel ongoing activities related to the outputs of this assignment it is required that the proposed software development methodology will be in line with the AGILE approach and that the initial working model is released early in the process.

**Task 1: Kick-off, Hardware Delivery and Establishment of System Environments**

Immediately after the signing of the contract a Kick-off and planning meeting will be held with briefing about the road map and key phases of ODP and CTM implementation, with focus on resources and time per each phase of implementation.

The progress of the implementation will be evaluated by MFK in regular time periods of one month, at which the Contractor needs to provide all information regarding the progress of the implementation, always keeping in mind the end date of the project set for the 30th of September, 2022.

During Task 1 the Contractor will perform activities related to:

* Make all necessary administrative and practical arrangements with KJC/KPC for the delivery, installation and testing of the hardware equipment, software licenses, backup solution and any related infrastructure items for full functioning of the offered solutions.
* Establishment of the system environments for development, testing and production of the ODP and CTM solutions.
* Establishment of the system environments for the Help Desk and e-Learning Platforms.
* Closely coordinate with the MFK team on the progress of the activities.

Any eventual delays in the Task 1 due to administrative or any other reasons should not affect the start of Task 2.

**Task 1 Deliverables**

The minimum outputs of Task 1 will include:

1. Updated Project Plan based on the Kick-off meeting.
2. Successful delivery and put in operation of the hardware equipment, software licenses and any related infrastructure items for full functioning of the offered ODP and CTM solutions, tested for business continuity.
3. Backup solution operational and tested for system recovery.
4. System environments for development, testing and production of the ODP and CTM solutions established and available to the developers and KJC/KPC staff.
5. System environments for the Help Desk and e-Learning Platforms established and tested.
6. Installation and Testing Reports for all installations and tests performed.

**Task 2: Software Development for ODP**

Task 2, being a high priority task, can start immediately in parallel and independently to Task 1 and all other tasks. Task 2 will include activities related to the detailed design and development of the software for the ODP solution.

The planned activities should include:

* Organization of the user requirements into separate System Requirements Specifications (SRS) documents for the ODP dedicating special effort on the user interface (UI) and user experience (UX) aspects of the system.
* Establishment of the ODP Software Development Environment (independently of Task 1).
* Software development and implementation of the new ODP functionalities and any necessary enhancements to CMIS.
* Integration of the new ODP functionalities with the existing CMIS system (testing environment).
* Testing of the developed functionalities/enhancements.
* Evaluation of implemented system and preparation of the system documentation.
* Preparation of the user manuals for all aspects of the system including initial set-up, administration, maintenance, format and technical specifications of the system outputs and usage of the ODP system functionalities through the web user interface.

The minimum level of effort for the Task 2 within the project period is 300 senior expert man-days and 900 junior expert man-days.

**Task 2 Deliverables**

The minimum outputs of Task 2 will include:

1. System Requirements Specification Document (SRS) for the ODP.
2. Working ODP Software Application and Database.
3. Testing reports for the developed and tested functionalities/enhancements.
4. Source Code and Database for the ODP software.
5. User manuals including initial set-up, administration, maintenance and usage of the ODP system functionalities.

**Task 3: Software Development for CTM**

Task 3, being a high priority task, can start immediately and independently to Task 1 and all other tasks. Task 3 will include activities related to the detailed design and development of the software for the CTM solution.

The planned activities should include:

* Organization of the user requirements into separate System Requirements Specifications (SRS) documents for the CTM dedicating special effort on the user interface (UI) and user experience (UX) aspects of the system.
* Establishment of the CTM Software Development Environment (independently of Task 1).
* Software development and implementation of the new CTM functionalities and any necessary enhancements to CMIS.
* Integration of the new CTM functionalities with the existing CMIS system (testing environment).
* Testing of the developed functionalities/enhancements.
* Evaluation of implemented system and preparation of the system documentation.
* Preparation of the user manuals for all aspects of the system including initial set-up, administration, maintenance, format and technical specifications of the system outputs and usage of the CTM system functionalities through the web user interface.

The minimum level of effort for the Task 3 within the project period is 300 senior expert man-days and 900 junior expert man-days.

**Task 3 Deliverables**

The minimum outputs of Task 3 will include:

1. System Requirements Specification Document (SRS) for the CTM.
2. Working CTM Software Application and Database.
3. Testing reports for the developed and tested functionalities/enhancements.
4. Source Code and Database for the CTM software.
5. User manuals including initial set-up, administration, maintenance and usage of the CTM system functionalities.

**Task 4: Delivery of Help Desk Platform**

Task 4 allows for the implementation of the Help Desk Platform to be utilized internally by the court’s/prosecutor’s staff for the effective use and running of the ODP and CTM systems.

The activities in Task 4 should include:

* Organization of the user requirements into separate System Requirements Specifications (SRS) documents for the Help Desk Platform.
* Establishment of the Help Desk Platform environment.
* Implementation and customization of the Help Desk Platform.
* Testing of the developed functionalities/enhancements.
* Preparation of the user manuals for the Help Desk Platform.

The minimum level of effort for the Task 4 within the project period is 100 senior expert man-days and 100 junior expert man-days.

**Task 4 Deliverables**

The minimum outputs of Task 4 will include:

1. System Requirements Specification Document (SRS) for the Help Desk Platform.
2. Working Help Desk Platform Application and Database.
3. Full Software Licenses for the Help Desk software.
4. User manuals including initial set-up, administration, maintenance and usage of the Help Desk Platform.

**Task 5: Delivery of e-Learning Platform**

Task 5 activities include the set-up, customization and delivery of the e-Learning platform.

The Contractor will develop the platform including:

* Analysis of the base functionalities that need to be met by the e-learning platform with consideration of features such as remote training, testing and evaluation of users.
* Preparation of the e-learning platform on a testing server including the installation of selected functionalities on the test server.
* Beta testing with content on testing server to understand usability for system administrators and users; this includes the testing of upload by the system administrators and staff responsible for content only.
* Customization in desired languages.
* Testing of the pre-release version.
* Presentation of releases.
* Transfer of platform on agreed production host server and release testing.

Once the e-learning platform set-up, the Contractor will provide training as follows:

* Training on the usage of the platform, including preparation of various content types for uploading
* Training the trainers (ToT) of staff responsible for the development of content
* Develop a manual for the further usage of the platform (also as e-learning content)

The minimum level of effort for the Task 5 within the project period is 100 senior expert man-days and 100 junior expert man-days.

**Task 5 Deliverables**

The minimum outputs of Task 5 will include:

1. System Requirements Specification Document (SRS) for the e-Learning Platform.
2. Working e-Learning Platform Application and Database.
3. Full Software Licenses for the e-Learning software.
4. Upload of ODP, CTM, Help Desk and e-Learning training materials.
5. User manuals including initial set-up, administration, maintenance and usage of the e-Learning Platform.

**Task 6: Integration, System Acceptance Testing and Roll-out**

Task 6 includes the activities for putting in the production environment of the ODP, CTM, Help Desk and e-Learning solutions.

The activities will include:

1. Performing any integration between systems on communication, application, data, network and service layer, namely CMIS and ODP and CMIS and CTM.
2. Integrating the ODP and CTM interfaces with the KJC website.
3. Preparing and making available the ODP public OLAP interface.
4. Preparation of System Acceptance Testing use cases.
5. End user testing and acceptance of all systems.
6. Roll-out of the production systems.

The minimum level of effort for the Task 5 within the project period is 30 senior expert man-days and 60 junior expert man-days.

**Task 6 Deliverables**

The minimum outputs of Task 6 will include:

1. Systems integration reports for ODP, CTM, Help Desk and e-Learning.
2. System Acceptance Testing (SAT) Document.
3. Systems Roll-out report for ODP, CTM, Help Desk and e-Learning.
4. Fully working and integrated ODP, CTM, Help Desk and e-Learning solutions.

**Task 7: Capacity Building**

This Activity must involve improving the institutional capacity through improvement of the knowledge of the judicial institutions’ staff to use and maintain the introduced ODP and CTM IT Systems within their CMIS context.

The capacity building will focus mainly on the knowledge and needs directly linked to the facilities provided by the ODP and CTM Systems, as the core training needs, but also the Contractor will tackle the supporting systems and context training needs - these are needs that would greatly assist trainees in using the IT Systems (e.g. Helpdesk platform, e-Learning platform, PC/databases operation competencies, ITSM and related areas as identified by the).

In coordination with MFK and PAJI Consultant, a training matrix for this specific task will be developed, that is a prioritized list of topics on skills and knowledge of the staff for which they require training in IT Systems use, which will provide the main source for the themes and topics to be included in the Training Plan.

More specific Task 7 activities will include the training of the end users in usage of the ODP, CTM, Help Desk and e-learning systems. The task includes development of customized training packages for the ODP, CTM, Help Desk and e-Learning solutions that can be uploaded to the e-Learning platform.

The target groups (with estimated number of participants) for training will include, but are not limited to:

* KJC members, 13 members
* KJC Secretariat staff that needs training:
  + Legal Department, 10 staff,
  + Office for public relation, 2 staff,
  + Statistic Department, 4 staff
* In the Supreme Court, training needed for court president, court administrator, chief of registry office and officer for public relation.
* In the Court of Appeal, training needed for court president, court administrator, chief of registry office and officer for public relation.
* In the 7 Basic Courts, training needed for court president, court administrator, chief of registry office and officer for public relation.
* In the 19 Court Branches of Basic Courts, training needed for court president and court administrator.
* Additional court and prosecutor staff.

The activities will also include professional ICT training for ICT staff in the KJC and KPC for daily administration and maintenance of the ICT infrastructure in use in KJC and KPC (relating to ODP and CTM). Training for daily maintenance and administration of ODP and CTM. Training for ICT auditing, security, log analyses. Training should be provided by professional and authorized companies for training needed for the software and hardware technology that will be used in establishment of the proposed systems.

The proposed training methodology should include:

* Formal training (by utilizing the e-Learning platform),
* Practical (on-the-job) training,
* Helpdesk support.

For the materials with instructions on using the systems’ interfaces by the public users, provisions for the KJC website and all necessary languages need to be made.

All trainings will be evaluated by the participants and MFK/PAJI Consultant for quality assurance. The use of the e-Learning platform is planned for the evaluation of trainings and the knowledge of the trainees.

Additionally, two workshops will be organized with participation from all stakeholders in the ODP/CTM systems, where the systems will be discussed in detail but also ideas will be generated for future use of the benefits provided by the OPD/CTM systems and their sustainability.

Both workshops will focus on the OPD and CTM. The first workshop should be organized early in the project to communicate the solution and get feedback from the stakeholders, and the second workshop should be organized towards the end of the deployment to get the stakeholder feedback on the actual tools of the ODP and CTM.

In coordination with the stakeholders, communication action should be performed, informing the public about the existence and the purpose of the ODP and CTM platforms, how they can access it and where they can turn for any questions. This action should be in-line with the communication strategy of KJC where the ODP and CTM are included.

Besides training that should be offered and would cover the official and professional training for the offered solutions, the KJC/KPC staff also has the following training needs.

Training in security for DataCenter Administators (focused mainly on advanced security) in network, system auditing and security:

* ISO 27001 Information security and Auditing trainings
* CCNP Security
* CCNA Data Center
* ISACA – CISSP
* CompTIA Advanced Security Practitioner (CASP+)
* Certified Ethical Hacker (CEH)
* MS Information Protection Administrator

Training for the Database Administrators:

* Practical SQL Server Security, Compliance, and Auditing
* Performance Tuning and Optimizing SQL Databases
* Writing Analytical Queries for Business Intelligence

**Preparing ICT policies and Standard Operating Procedures (SOP)**

In-line with the courts and prosecution offices' use of the ICT systems the Contractor should make an assessment of the regulations and SOPs in use. Identify all relevant policies SOP relating to the ODP and CTM and provide technical assistance for drafting and provide necessary training for their implementation in accordance with the best ITSM practices.

The activities for this task include:

* Preparation of Training Plan.
* Preparation of Training Materials.
* Selection of local Key-users or Trainers.
* Delivery of the Training Courses on ODP, CTM, Help Desk and e-Learning to the appropriate target audience.
* Organization of 2 workshops
* Communication action for informing the public
* Capacity building on the SOPs

The minimum level of effort for the Task 7 within the project period is 60 senior expert man-days and 40 junior expert man-days.

**Task 7 Deliverables**

The minimum outputs of Task 7 will include:

1. Training Plan.
2. Training Programs and Materials.
3. Training Evaluation Reports.
4. First Workshop Materials (Brochures, Presentations etc)
5. Second Workshop Material (Brochures, Presentations etc)
6. Communication plan and report on the implementation of the action
7. Report on the outcomes, ideas and recommendations of the first and second workshops.
8. Identification, preparation of documents and finalization of SOPs
9. Provide training for ICT staff for implementation of the ICT policies and SOPs.
10. **TEAM COMPOSITION**

The Contractor should propose staff under the following hierarchy and with the duties and minimum requirements specified below in the appropriate tasks.

Diagram

Description automatically generated

Detailed human resource tasks/activities distribution plan for accomplishment of the task should be presented in the proposal with the minimum as defined below.

**All Tasks**

Overall Project Manager for the management and coordination of all tasks should be proposed with the following minimum qualifications.

**KE1. Overall Project Manager**

The duties of the KE1 will include:

* Overall responsibility and ownership of the management and timely delivery of all tasks.
* Clear and regular communication with all parties.
* First line of quality assurance before submission or presenting of deliverables.
* Regular and ad-hoc reporting to MFK and PAJI Consultant.

The minimum requirements for the KE1 are:

1. Qualifications and skills
   1. At least Master degree in IT or engineering or in case of undergraduate degree equivalent 5 years of general professional experience above the minimum general professional experience requested below.
2. General professional experience
   1. At least 8 (eight) years of professional experience in the field of ICT systems.
3. Specific professional experience
   1. Experience as a team leader or project manager in at least 1 (one) project valued over EUR 1M in the last five years, related to design and/or development and/or management of ICT solutions in the area of justice.
   2. At least 3 (three) years of experience in implementation of ICT reforms in the judiciary.
   3. Experience in implementation of at least one similar complexity project related to implementation and/or development and/or management of ICT solutions in the area of justice sector;
   4. Experience in implementation of projects in the area of “E-justice” or further development of the ICT regulatory and institutional framework preferably in Kosovo context will be considered an asset.

Besides the KE1 there should be dedicated key experts per tasks, as defined below, and senior/junior experts per task with adequate specialties required to fully implement the solutions.

Minimum requirements for senior experts:

* University degree in the relevant field.
* At least 6 years experience in the relevant field.
* Experience in the judiciary sector is an asset.

Minimum requirements for junior experts:

* University degree or additional 3 years experience in the relevant field.
* At least 3 years experience in the relevant field.

**Task 2**

Dedicated key expert team should be assigned to Task 2. As Task2 and Task3 should be considered independent for each other, the key experts for Task 2: Software Development for ODP should not be the same persons assigned to the Task 3: Software Development for CTM (and vice versa).

The key expert team should consist of a Task Lead Expert and a Business Anlaysist.

The Contractor should propose a key expert team with the following minimum requirements:

**KE2. Task 2 Lead Expert**

The duties of the KE2 will include:

* Full Team Lead for the development and implementation of the ODP system
* Report to the Overall Project Manager

The minimum requirements for the KE2 are:

1. Qualifications and skills
   1. Education at least Master Degree Academic level in Information Communication Technology (ICT) or similar University degree with 3 (three) years of general professional experience above the minimum general professional experience requested below.
2. General professional experience
   1. At least 5 (five) years, preferably 5 (five) years of professional working experience in information technology.
   2. Team Leader or Project Management experience in justice sector is a strong advantage.

1. Specific professional experience
   1. At least 5 (five) years experience as an IT expert in project related to design and/or development and/or management of ICT solutions in the area of justice.

**KE3. Task 2 Business Analyst**

The duties of the KE3 will include:

* Definition of the ODP software requirement specifications and business inputs during the implementation of the system.
* Take part and actively contribute in business analysis meetings together with other technical consultants and selected end users.

The minimum requirements for the KE3 are:

1. Qualifications and skills
   1. A level of education which corresponds to completed university studies of at least 4 years attested by a diploma in ICT;
   2. A post-graduate diploma in ICT will be considered as an asset;
   3. Fluent in written and spoken English;
   4. Knowledge of any of the local languages would be an asset.
2. General professional experience
   1. At least 5, but preferably 7 years of professional experience, as business analyst, in area of implementation of ICT systems
   2. Experience as a key expert in at least 1 international donors’ funded projects in judicial sector;
   3. Knowledge of Kosovo judicial context will be an asset.
3. Specific professional experience
   1. Experience minimum 3 years with judicial system software analysis and design.
   2. Experience with implementation and testing of judicial systems, including design of test plans and user acceptance test cases.
   3. Experience of interoperable IT solutions, preferably for the judiciary sector.

Additional experts should be proposed depending on the offered solution to include:

Senior experts :

* system architect,
* lead software developer,
* database administrator
* user experience and quality assurance expert.

Junior experts:

* software developers,
* user interface experts,
* testers,
* documentation writers and
* other required profiles based on the offered solution.

All senior and junior experts proposed should fulfill the minimum requirements defined above.

**Task 3**

Dedicated key expert team should be assigned to Task 2. As Task2 and Task3 should be considered independent for each other, the key experts for Task 2: Software Development for ODP should not be the same persons assigned to the Task 3: Software Development for CTM (and vice versa).

The key expert team should consist of a Task Lead Expert and a Business Analyst.

The Contractor should propose a key expert team with the following minimum requirements:

**KE4. Task 3 Lead Expert**

The duties of the KE4 will include:

* Full Team Lead for the development and implementation of the ODP system
* Report to the Overall Project Manager

The minimum requirements for the KE2 are:

1. Qualifications and skills
   1. Education at least Master Degree Academic level in Information Communication Technology (ICT) or similar University degree with 3 (three) years of general professional experience above the minimum general professional experience requested below.
2. General professional experience
   1. At least 5 (five) years, preferably 5 (five) years of professional working experience in information technology.
   2. Team Leader or Project Management experience in the justice sector is a strong advantage.

1. Specific professional experience
   1. At least 5 (five) years experience as an IT expert in project related to design and/or development and/or management of ICT solutions in the area of justice.

**KE5. Task 3 Business Analyst**

The duties of the KE5 will include:

* Definition of the ODP software requirement specifications and business inputs during the implementation of the system.
* Take part and actively contribute in business analysis meetings together with other technical consultants and selected end users.

The minimum requirements for the KE5 are:

1. Qualifications and skills
   1. A level of education which corresponds to completed university studies of at least 4 years attested by a diploma in ICT;
   2. A post-graduate diploma in ICT will be considered as an asset;
   3. Fluent in written and spoken English;
   4. Knowledge of any of the local languages would be an asset.
2. General professional experience
   1. At least 5, but preferably 7 years of professional experience, as business analyst, in area of implementation of ICT systems
   2. Experience as a key expert in at least 1 international donors’ funded projects in judicial sector;
   3. Knowledge of Kosovo judicial context will be an asset.
3. Specific professional experience
   1. Experience minimum 3 years with judicial system software analysis and design.
   2. Experience with implementation and testing of judicial systems, including design of test plans and user acceptance test cases.
   3. Experience of interoperable IT solutions, preferably for the judiciary sector.

Additional experts should be proposed depending on the offered solution to include:

Senior experts :

* system architect,
* lead software developer,
* database administrator
* user experience and quality assurance expert.

Junior experts:

* software developers,
* user interface experts,
* testers,
* documentation writers and
* other required profiles based on the offered solution.

All senior and junior experts proposed should fulfill the minimum requirements defined above.

**Task 4**

For Task 4 the Contractor should propose a lead key expert with the following minimum requirements:

**KE6. Task 4 Help Desk Expert**

The duties of the KE6 will include:

* Prepare an analysis of system architecture and subsequent implementation recommendations for the Help Desk platform
* Lead the set-up and deployment of the Help Desk platform
* Support in the technical question related to the Help Desk platform
* Report to the Overall Project Manager

The minimum requirements for the KE6 are:

1. Qualifications and skills
   1. University degree in IT, Computer Science, Management.
   2. Good planning and organizational skills.
2. Professional experience:
   1. Minimum 3 years of professional experience with a Help Desk operations
   2. Minimum 3 years of professional experience in working with ticketing system.
   3. Current experience in utilizing Help Desk platforms is a strong asset.

The senior experts should include:

• business analyst.

The junior experts should consist mainly of:

• installation and customization experts,

• documentation writers and

• other required profiles based on the offered solution.

All senior and junior experts proposed should fulfill the minimum requirements defined above.

**Task 5**

For Task 5 the Contractor should propose a e-Learning Systems key expert with the following minimum requirements:

**KE7. Task 5 e-Learning Systems Expert**

The duties of the KE7 will include:

* Prepare an analysis of system architecture and subsequent implementation recommendations for the e-Learning platform
* Lead the set-up and deployment of the the e-Learning platform
* Support in the development of content and technical question related to the uploading of content
* Report to the Overall Project Manager

The minimum requirements for the KE7 are:

1. Qualifications and skills
   1. University degree in IT, Computer Science, Management, Education, an MSc degree preferred.
   2. Good planning and organizational skills;
   3. Very good familiarity in using the MS Office application package (Word, Excel, PP Presentation);
   4. Excellent reporting capabilities
2. Professional experience:
   1. Minimum 10 years of professional experience within education sector
   2. Minimum 5 years of professional experience in Training / education sphere, either in management of training activities or as trainer
   3. Minimum 5 years of practice in developing / managing E-learning platforms
   4. Current experience in utilizing e-Learning platforms for training and evaluation is a strong asset.

The senior experts should include:

• system architecture expert.

The junior experts should consist mainly of:

• installation, integration and customization experts and

• other required profiles based on the offered solution.

All senior and junior experts proposed should fulfill the minimum requirements defined above.

**Task 6**

For Task 6 the Contractor should propose a System Integration key expert with the following minimum requirements:

**KE8. Task 6 System Integration Expert**

The duties of the KE8 will include:

* Integration of the proposed solutions including ODP, CTM, Help Desk, e-Learning platforms with the current CIMS system (hardware and software).
* Report directly to the Overall Project Manager.

The minimum requirements for the KE8 are:

1. Qualifications and skills
   1. Education at least Master Degree Academic level in Information Communication Technology (ICT) or similar undergraduate level University degree with 3 (three) years of general professional experience above the minimum general professional experience requested below.
2. General professional experience
   1. At least 3 (three) years, preferably 5 (five) years of professional working experience in information technology.
   2. Experience in the justice sector is a strong advantage.

1. Specific professional experience
   1. At least 3 (three) years of practical proven system integration experience.
   2. Experience as an IT expert in projects related to design and/or development and/or management of ICT solutions in the area of justice is a strong advantage.

The senior experts should include:

• system architecture expert.

The junior experts should consist mainly of:

• installation, integration and customization experts and

• other required profiles based on the offered solution.

All senior and junior experts proposed should fulfill the minimum requirements defined above.

**Task 7**

The organization and implementation of Task 7 should fall under the KE1. Overall Project Manager with the support of the following type of senior/junior experts.

The senior experts should include:

* organizational management expert,
* training expert.

The junior experts should consist of:

* training and facilitation assistants.

All senior and junior experts proposed should fulfill the minimum requirements defined above.

1. **DELIVERABLES SCHEDULE**

Following is the schedule for the deliverables. The Consultant shall assume 15 to 20 working days MFK internal review period for each report submittal.

**Table 1 - Deliverables Schedule**

|  |  |  |
| --- | --- | --- |
| **Task** | **Deliverable** | **Schedule of Presentation**  **(Calendar days)** |
| **Task 1: Kick-off, Hardware Delivery and Establishment of System Environments** | | |
| 1. Updated Project Plan based on the Kick-off meeting (KO). | | KO + 10 days plus feedback and correction time (max 30 days) |
| 1. Successful delivery and put in operation of the hardware equipment, software licenses and any related infrastructure items for full functioning of the offered ODP and CTM solutions, tested for business continuity. | | KO + 90 days |
| 1. Backup solution operational and tested for system recovery. | | KO + 90 days |
| 1. System environments for development, testing and production of the ODP and CTM solutions established and available to the developers and KJC/KPC staff. | | KO + 120 days |
| 1. System environments for the Help Desk and e-Learning Platforms established and tested. | | KO + 120 days |
| 1. Installation and Testing Reports for all installations and tests performed. | | KO + 150 days |
| **Task 2: Software Development for ODP** | | |
| 1. System Requirements Specification Document (SRS) for the ODP. | | KO + 90 days |
| 1. Working ODP Software Application and Database. | | KO + 270 days |
| 1. Testing reports for the developed and tested functionalities/enhancements. | | KO + 270 days |
| 1. Source Code and Database for the ODP software. | | KO + 390 days |
| 1. User manuals including initial set-up, administration, maintenance and usage of the ODP system functionalities. | | KO + 290 days |
| **Task 3: Software Development for CTM** | | |
| 1. System Requirements Specification Document (SRS) for the ODP. | | KO + 90 days |
| 1. Working ODP Software Application and Database. | | KO + 270 days |
| 1. Testing reports for the developed and tested functionalities/enhancements. | | KO + 270 days |
| 1. Source Code and Database for the ODP software. | | KO + 290 days |
| 1. User manuals including initial set-up, administration, maintenance and usage of the ODP system functionalities. | | KO + 290 days |
| **Task 4: Delivery of Help Desk Platform** | | |
| 1. System Requirements Specification Document (SRS) for the Help Desk Platform. | | KO + 120 days |
| 1. Working Help Desk Platform Application and Database. | | KO + 210 days |
| 1. Full Software Licenses for the Help Desk software. | | KO + 210 days |
| 1. User manuals including initial set-up, administration, maintenance and usage of the Help Desk Platform. | | KO + 240 days |
| **Task 5: Delivery of e-Learning Platform** | | |
| 1. System Requirements Specification Document (SRS) for the e-Learning Platform. | | KO + 120 days |
| 1. Working e-Learning Platform Application and Database. | | KO + 210 days |
| 1. Full Software Licenses for the e-Learning software. | | KO + 210 days |
| 1. Upload of ODP, CTM, Help Desk and e-Learning training materials. | | KO + 310 days |
| 1. User manuals including initial set-up, administration, maintenance and usage of the e-Learning Platform. | | KO + 240 days |
| **Task 6: Integration, System Acceptance Testing and Roll-out** | | |
| 1. Systems integration reports for ODP, CTM, Help Desk and e-Learning. | | KO + 300 days |
| 1. System Acceptance Testing (SAT) Document. | | KO + 310 days |
| 1. Systems Roll-out report for ODP, CTM, Help Desk and e-Learning. | | KO + 320 days |
| 1. Fully working and integrated ODP, CTM, Help Desk and e-Learning solutions. | | KO + 330 days |
| **Task 7: Capacity Building** | | |
| 1. Training Plan. | | KO + 270 days |
| 1. Training Programs and Materials. | | KO + 270 days |
| 1. Training Evaluation Reports. | | KO + 300 days |
| 1. First Workshop Materials (Brochures, Presentations etc) | | KO + 90 days |
| 1. Second Workshop Material (Brochures, Presentations etc) | | KO + 270 days |
| 1. Report on the outcomes, ideas and recommendations of the first and second workshops. | | KO + 330 days |

**Submission Requirements**

The Consultant shall adhere to the following submittal requirements for deliverables:

* Draft Reports (to be submitted electronically using Adobe PDF and MS Word)
* Final Reports (to be submitted electronically in Adobe PDF format)
* All deliverables shall be submitted in English and in a format acceptable to MFK and shall be submitted to MFK for review and approval.
* All native files (MS Word, Excel etc.) of work products (reports, drawings, and estimates) shall be provided to MFK.

**Reporting Requirements**

Throughout the assignment, monthly and quarterly progress reports on all tasks will be produced by the Contractor and presented to MFK.

**Period of Performance and Level of Effort**

This assignment is expected to be completed by 30 September 2022, unless otherwise agreed upon by both parties. The Contractor must indicate the total Level-of-Effort for each individual team member in their Technical Proposal.

**Items to Be Supplied by the Consultant**

The Contractor shall be solely responsible for all of its requirements for fielding its teams, The Contractor’s responsibility shall include:

* Provision of workspace for the Contractor’s team members.
* All facilities for production of reports and other deliverables.
* All internet or telephone service that the Contractor’s team members may require.

**Information or Services to Be Provided By MFK**

MFK shall provide the following Information or services for this assignment:

* Access to any reports or information relevant to this assignment, including research findings, surveys, meeting notes, interviews, photos/pictures and drawings/maps, as well as correspondence with partners and stakeholders.
* The MFK PMO will serve as a principal point of contact for this project to facilitate access to MFK management and staff whose support may be needed to obtain data and information and to provide access to MFK facilities.
* Any required services by KJC/KPC will be provided by KJC/KPC in coordination with MFK and the PAJI Consultant.

1. **Itemized** **Table of ToR requirements**

Following is a table including the key ToR requirements.

|  |  |
| --- | --- |
| ***Hardware*** |  |
| *1.1* | *Server (qty 10)* |
| *1.2* | *Storage System (qty 3)* |
| *1.3* | *Backup Solution (qty 1)* |
| *1.4* | *Backup Storage (qty 1)* |
| *1.5* | *Backup Tape Library (qty 1)* |
| *1.6* | *Server and storage Network Switch (qty 2)* |
| *1.7* | *Network Switch (qty 2)* |
| *1.8* | *Management Network Switch (qty 1)* |
| *1.9* | *Rack (42U) (qty 3)* |
| *1.10* | *Server Rack UPS (8kVA) (qty 3)* |
| *1.11* | *Monitoring and Auditing Software (qty 1)* |
|  |  |
| ***ODP System*** |  |
| *2.1* | *ODP System is able to be fully technically functional with all items provided under this procurement, without any additional purchases necessary.* |
| *2.2* | *ODP system has access to authorised CMIS data and allows for online analyitical view of publicly available judicial data.* |
| *2.3* | *Contains an analyitical reporting and visualization engine* |
| *2.4* | *Contains an through an OLAP standard system interface available online* |
| *2.5* | *ODP system public access is integrated with the KJC website* |
| *2.6* | *Predefined reports in the analytical reporting and visualization engine are available to the public as links for easy access to most demanded information* |
| *2.7* | *Minimal categories of data in the ODP include: 1. Report on the number of citizen requests submitted, and the number answered/addressed. 2. Report on the number of incoming and resolved cases. 3. Report on the number of cases resolved by each judge. 4. Report on how long it takes to resolve a specific kind of case from the moment the case is filed until the final verdict. 5. Report on the number of certain cases (I.e discrimination, hate crime, domestic violence). 6. Regular statistical reports of each court and individual judge. 7. Report on daily schedule (number) of Session hearings for each courtroom (i.e.session type, case type,number of parties involved, etc.) 8. Any other relevant reports as they become necessary.* |
| *2.8* | *Special focus on the creation of a user-friendly UI/UX design and attention to detail on how the ODP will be used from the web interface.* |
| *2.9* | *Special consideration is placed on the security of the data contained in the CMIS and no personal or protected information will be managed by the ODP at any given moment* |
| *2.10* | *All APIs that will allow access to the ODP data are developed accompanied with detailed technical documentation and specifications for the APIs.* |
| *2.11* | *The ODP analytical reporting and visualization engine allows for export of the reports and visualization data in various formats including as minimum PDF, XLS, ODS, XML, JSON* |
| *2.12* | *Solution is present in the ODP for multiple language interface and reporting methods.* |
| *2.13* | *The ODP is producing metadata relating to its own usage and allows for production of indicators and statistical reports on the user access and services usage of the OCP.* |
|  |  |
| ***CTM system*** |  |
| *3.1* | *CTM System is able to be fully technically functional with all items provided under this procurement, without any additional purchases necessary.* |
| *3.2* | *The CTM has the technical capacity to retrieve all case related metadata from the CMIS which is publicly available and make it accessible to Kosovo's citizens through online channels.* |
| *3.3* | *The CTM improves on the currently only way to search the online database (by the CMIS case number) by allowing the public to search the cases additionally by at least the following parameters:: • Personal ID for citizens, • Business registration number, • Lawyer license number, • Place of living (e.g. Village) in combination with First and Last name.* |
| *3.4* | *The CTM can integrate with the KJC website* |
| *3.5* | *CTM will present in a clear and language dependent manner all publicly available information about that case including schedule of hearings.* |
| *3.6* | *The CTM will allow the public to subscribe to a specific case and alert the persons by e-mail notifications whenever any new update relating to the subscribed case happens.* |
| *3.7* | *User-friendly UI/UX design and attention to detail on how the CTM will be used from the web interface is properly addressed.* |
| *3.8* | *Attention should be placed on the multiple language interface and searching methods, with tips for the users that might help them when searching for a content that might be language dependent.* |
| *3.9* | *The CTM will produce metadata relating to its own usage and allow the institutions to produce indicators and statistical reports on the user access and services usage of the CTM.* |
|  |  |
| ***Help Desk*** |  |
| *4.1* | *Help Desk platform will be supplied, installed and tested.* |
| *4.2* | *User will be trained to support the Help Desk personnel in dealing and tracking the user issues (ticketing system).* |
| *4.3* | *Help Desk platform will serve as a knowledge database of past issues and solutions.* |
| *4.4* | *The Help Desk platform will support the management the process when resolving issues that the users will encounter while using the ODP and CTM systems.* |
| *4.5* | *The Help Desk should be able to channel the user’s issue to the correct party that will be able to solve it.* |
| *4.6* | *Help Desk operating procedures will be drafted.* |
|  |  |
| ***e-Learning*** |  |
| *5.1* | *E-learning platform. will be supplied, developed, customized, installed and tested.* |
| *5.2* | *All produced training materials during the project will be uploaded on the e-learning platform and made available to the users.* |
| *5.3* | *The e-learning platform will be prepared for training of national trainers/lecturers, as well for other stakeholders with interest in the ODP and CTM systems.* |
| *5.4* | *Provision of support for technical questions related to the uploading of content.* |
| *5.5* | *Provision of support in developing and using the manuals for the platform.* |
| *5.6* | *Provision of support in order KJC/KPC to respond to any questions raised by potential users/target groups of the platform.* |
|  |  |
| *Integration* |  |
| *6.1* | *Performing any integration between systems on communication, application, data, network and service layer, namely CMIS and ODP and CMIS and CTM.* |
| *6.2* | *Integrating the ODP and CTM interfaces with the KJC website.* |
| *6.3* | *Preparing and making available the ODP public OLAP interface.* |
| *6.4* | *Preparation of System Acceptance Testing use cases.* |
| *6.5* | *End user testing and acceptance of all systems.* |
| *6.6* | *Roll-out of the production systems.* |
| *6.7* | *Both solutions i.e. ODP and CTM are based on independent architectures and both systems are be developed on high-availability load-balanced virtualized platforms.* |
| *6.8* | *The solutions have set up a database, application servers and administration sites for the management of system users.* |
| *6.9* | *The solutions allow for secure API and admin sites with SSL.* |
| *6.10* | *SSL Certificates with minimum 3 years and up to 5 (five) validity that are issued by a verified Certificate Authority should be provided by the Contractor.* |
| *6.11* | *The ODP and CTM are configured to work exclusively using secure protocols.* |
| *6.12* | *Both ODP and CTM should be developed using API’s from which they will be collecting the data.* |
| *6.13* | *CTM and ODP Admin sites should be able to create users that have access rights to their API’s.* |
| *6.14* | *API’s should be able to be accessed using Tokens (JWT or other) to Authenticate and authorize access to its endpoints.* |
| *6.15* | *The introduced OPD and CTM system architecture allows for improving the current technology-assisted Business Continuity capabilities.* |
| *6.16* | *Hardware solution ensures redundancy for the CMIS, ODP and CTM.* |
| *6.17* | *Both the ODP and CTM solutions should have redundancy servers and load balancers to handle traffic by the public or in case of failure of one of the servers.* |
| *6.18* | *Backup procedures will be prepared.* |
| *6.19* | *Backup soulution can notify administrators.* |
| *6.20* | *Backup solution is used for Help Desk and e-Learning platforms.* |
|  |  |
| *Warranty* |  |
| *7.1* | *The warranty offered for the solutions is for a period of minimum of 3 years and preferably 5 (five) years from the day of acceptance including both the manufacturer and integration guarantees.* |
| *7.2* | *The warranty includes maintenance, licenses, security certificates and all other recurring costs during the warranty period offered.* |
| *7.3* | *Service level of the warranty is at Next Business Day warranty that indicates service and support with coverage five days a week, eight hours a day, with an average Next Business Day (24 hour) response time. This coverage is available when the normal hours of product operation are between 9:00am and 5:00pm local European Time, Monday-Friday (excluding holidays).* |
| *7.4* | *All hardware equipment will have supporting manufacturers authorization form containing the original manufacturer’s warranty, origin and guarantee that the equipment is brand new (and not refurbished or used).* |
|  |  |
| *Capacity Building* |  |
| *8.1* | *Offered plan for improving of the institutional capacity through improvement of the knowledge of the judicial institutions’ staff to use and maintain the introduced ODP and CTM IT Systems within their CMIS context.* |
| *8.2* | *The capacity building is focused ODP and CTM Systems and the supporting systems and context training needs (e.g. Helpdesk platform, e-Learning platform, PC/databases operation competencies, ITSM and related areas).* |
| *8.3* | *Activities include the training of the end users in usage of the ODP, CTM, Help Desk and e-learning systems.* |
| *8.4* | *The task includes development of customized training packages for the ODP, CTM, Help Desk and e-Learning solutions that can be uploaded to the e-Learning platform.* |
| *8.5* | *The activities will also include professional ICT training for ICT staff in the KJC and KPC for daily administration and maintenance of the ICT infrastructure in use in KJC and KPC (relating to ODP and CTM).* |
| *8.6* | *Two workshops will be organized with participation from all stakeholders in the ODP/CTM systems.* |
| *8.7* | *Additional support training needs offered, besides the basic ODP/CTM training.* |
| *8.8* | *Preparing of ICT policies and Standard Operating Procedures (SOP) activity planned.* |

# PART 3. CONTRACT DOCUMENTS

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**A. Contract and Interpretation**

|  |  |
| --- | --- |
| 1. **Definitions** | Capitalized terms used in this Contract and not otherwise defined have the meanings given such items in the Threshold Program or the related document. Unless the context otherwise requires, the following words whenever used in this Contract have the following meanings: |
|  | 1. “Adjudicator” means the person named in Appendix 2 of the Agreement, appointed by agreement between the Purchaser and the Supplier to make a decision on or to settle any dispute between the Purchaser and the Supplier referred to him or her by the parties, pursuant to GCC Sub-Clause 6.1 (Adjudication). 2. “Affiliate” means, with respect to a party, any person, entity or association that, now or hereafter, controls, is controlled by or is under common control with a party. For purposes of this definition, the term “control” (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. A person, entity or association will be conclusively deemed to “control” another person, entity or association, if it is the “beneficial owner” of securities of that entity having the power to cast more than 50% of the votes entitled to be cast for the election of directors or similar managers of such entity. 3. “Applicable Law” means the laws and any other instruments having the force of law in the Purchaser’s Country, as they may be issued and in force from time to time. 4. “Application Software” means Software formulated to perform specific business or technical functions and interface with the business or technical users of the System and is identified as such in Appendix 4 of the Agreement and such other Software as the parties may agree in writing to be Application Software. 5. “Associate” means any entity that is a member of the Association that forms the Consultant. A Subcontractor is not an Associate. 6. “Association” or “association” or “Joint Venture” ir “joint venture” means an association of entities that forms the Supplier, with or without a legal status distinct from that of its members. 7. “Bid” means the bid for the Supply and Installation of Information Systems submitted by the Supplier and accepted by the Purchaser and that forms an integral part of this Contract. 8. “Bidding Document” refers to the collection of documents issued by the Purchaser to instruct and inform potential suppliers of the processes for bidding, selection of the winning Bid, and Contract formation, as well as the contractual conditions governing the relationship between the Purchaser and the Supplier. The General and Particular Conditions of Contract, the Purchaser’s Requirements, and all other documents included in the Bidding Documents reflect the Procurement Guidelines that the Purchaser is obligated to follow during procurement and administration of this Contract. 9. “Claims” means any civil, criminal, administrative or regulatory action or proceeding commenced or threatened by a third party, including governmental authorities and regulatory agencies. 10. “Commissioning” means operation of the System or any Subsystem by the Supplier following Installation, which operation is to be carried out by the Supplier as provided in GCC Sub-Clause 27.1 (Commissioning), for the purpose of carrying out Operational Acceptance Test(s). 11. “Compact” means the Millennium Challenge Compact described in the PCC. 12. “Completion” means the fulfilment of the related Services by the Supplier in accordance with the terms and conditions of the Contract. 13. “Contract” means the Contract Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein. The Contract Agreement and the Contract Documents shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly. The words “Agreement” and “Contract” are used interchangeably. 14. “Contract Agreement” means the agreement entered into between the Purchaser and the Supplier using the form of Contract Agreement contained in the Particular Conditions of Contract Section of the Bidding Document and any modifications to this form agreed to by the Purchaser and the Supplier. The date of the Contract Agreement shall be recorded in the signed form. 15. “Contract Documents” means the documents specified in GCC Sub-Clause 2.1 and Article 1.1 (Contract Documents) of the Agreement (including any amendments to these Documents). 16. “Contract Period” is the time period during which this Contract governs the relations and obligations of the Purchaser and Supplier in relation to the System, as specified in the PCC. 17. “Contract Price” means the price or prices defined in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement. The Contract Price shall be understood to reflect the terms and conditions used in the specification of prices in the detailed price schedules, including the terms and conditions of the associated Incoterms, and the taxes, duties and related levies if and as identified. 18. “Coverage Period” means the days of the week and the hours of those days during which maintenance, operational, and/or technical support services (if any) must be available. 19. “Custom Materials” means Materials developed by the Supplier at the Purchaser’s expense under the Contract and identified as such in Appendix 5 of the Contract and such other Materials as the parties may agree in writing to be Custom Materials. Custom Materials includes Materials created from Standard Materials. 20. “Custom Software” means Software identified as such in Appendix 4 of the Agreement and such other Software as the parties may agree in writing to be Custom Software. 21. “day” means calendar day. 22. “Delivery” means the transfer of the Goods from the Supplier to the Purchaser in accordance with the current edition Incoterms specified in the Contract. 23. “Effective Date” means the date of fulfillment of all conditions specified in Article 3 (Effective Date for Determining Time for Achieving Operational Acceptance) of the Contract Agreement, for the purpose of determining the Delivery, Installation, and Operational Acceptance dates for the System or Subsystem(s). 24. “Eligible Country” means the countries and territories eligible for participation in procurements financed by the MCC. 25. "Force Majeure" has the meaning given the term in GCC Sub-Clause 38.1. 26. “General-Purpose Software” means Software that supports general-purpose office and software development activities and is identified as such in Appendix 4 of the Contract and such other Software as the parties may agree in writing to be General- Purpose Software. Such General-Purpose Software may include, but is not restricted to, word processing, spreadsheet, generic database management, and application development software. 27. “Goods” means all equipment, machinery, furnishings, Materials, and other tangible items that the Supplier is required to supply or supply and install under the Contract, including, without limitation, the Information Technologies and Materials, but excluding the Supplier’s Equipment. 28. “Government” means the government specified in the PCC. 29. “GCC” means the General Conditions of Contract. 30. “Implementation Schedule” means the Implementation Schedule Sub-section of the Purchaser’s Requirements. 31. “Information System,” also called “the System,” means all the Information Technologies, Materials, and other Goods to be supplied, installed, integrated, and made operational (exclusive of the Supplier’s Equipment), together with the Services to be carried out by the Supplier under the Contract. 32. “Information Technologies” means all information processing and communications-related hardware, Software, supplies, and consumable items that the Supplier is required to supply and install under the Contract. 33. “Installation” means that the System or a Subsystem as specified in the Contract is ready for Commissioning as provided in GCC Clause 26 (Installation of the System). 34. “Intellectual Property Rights” means any and all copyright, moral rights, trademark, patent, and other intellectual and proprietary rights, title and interests worldwide, whether vested, contingent, or future, including without limitation all economic rights and all exclusive rights to reproduce, fix, adapt, modify, translate, create derivative works from, extract or re-utilize data from, manufacture, introduce into circulation, publish, distribute, sell, license, sublicense, transfer, rent, lease, transmit or provide access electronically, broadcast, display, enter into computer memory, or otherwise use any portion or copy, in whole or in part, in any form, directly or indirectly, or to authorize or assign others to do so. 35. “labour” and “labor” are synonymous. 36. “Losses” means all judgments, settlements, awards, damages, losses, charges, liabilities, penalties, interest claims (including taxes and all related interest and penalties incurred directly with respect thereto), however described or denominated, and all related reasonable costs, expenses and other charges (including all reasonable attorneys’ fees and reasonable costs of litigation, hearings, proceedings, internal and external investigations, document and data productions and discovery, settlements, judgments, awards (including awards of attorneys’ fees), interest and penalties), however described or denominated. 37. “Malware” means computer software, code or instructions that (i) adversely affect or disable the operation, security or integrity of a computing, telecommunications or other digital operating or processing system or environment, including, without limitation, programs, data, databases, computer libraries and computer and communications equipment, by altering, destroying, disrupting or inhibiting such operation, security or integrity; (ii) without functional purpose, self-replicate; or (iii) purport to perform a useful function but which actually perform either a destructive or harmful function, or perform no useful function and utilize substantial computer, telecommunications or memory resources. 38. “Materials” means all documentation in printed or printable form and all instructional and informational aides in any form (including audio, video, and text) and on any medium, provided to the Purchaser under the Contract. 39. “MCC Funding” means the funding MCC has made available to the Government under the terms of the Threshold Program Grant Agreement. 40. “MCC Program Procurement Guidelines” means the Millennium Challenge Corporation Program Procurement Guidelines posted to the MCC website, as may be amended from time to time and as identified in the PCC. 41. “Millennium Challenge Corporation” or “MCC” means the Millennium Challenge Corporation, a United States Government corporation, acting on behalf of the United States Government. 42. “month” means calendar month. 43. “Notification Related Costs” shall include Purchaser’s and its Affiliates’ internal and external costs associated with addressing and responding to the Security Breach, including but not limited to: (i) preparation and mailing or other transmission of any notifications or other communications to customers, clients, employees, agents or others as Purchaser deems reasonably appropriate; (ii) establishment of a call center or other communications procedures in response to such Security Breach (e.g., customer service FAQs, talking points and training); (iii) public relations and other similar crisis management services; (iv) legal and accounting fees and expenses associated with Purchaser’s and its Affiliates’ investigation of and response to such event; and (v) costs for commercially reasonable credit reporting and watch and similar services that Purchaser determines are advisable under the circumstances, if such services are available in the Purchaser’s Country. 44. “Operational Acceptance” means the acceptance by the Purchaser of the System (or any Subsystem(s) where the Contract provides for acceptance of the System in parts), in accordance with GCC Sub-Clause 27.3 (Operational Acceptance). 45. “Operational Acceptance Tests” means the tests specified in the Purchaser’s Requirements and Agreed and Finalized Project Plan to be carried out to ascertain whether the System, or a specified Subsystem, is able to attain the functional and performance requirements specified in the Purchaser’s Requirements and Agreed and Finalized Project Plan, in accordance with the provisions of GCC Sub-Clause 27.2 (Operational Acceptance Test). 46. “PCC” means the Particular Conditions of Contract. 47. “Personal Information” means any information (i) relating to an identified or identifiable natural person (such as name, postal address, email address, telephone number, date of birth, Social Security number (or its equivalent), driver’s license number, account number, personal identification number, health or medical information (or any other unique identifier or one or more factors specific to the person’s physical, physiological, mental, economic or social identity)), or (ii) defined as “personal information” (or an equivalent term) under the law, or both (i) and (ii), whether such information is in individual or aggregate form and regardless of the media in which it is contained. 48. “Plant” means the apparatus, machinery and vehicles intended to form or forming part of the permanent Works. 49. “Post-Warranty Services Period” means the number of months defined in the PCC (if any), following the expiration of the Warranty Period during which the Supplier is obligated to provide Software licenses, maintenance, and/or technical support services for the System, upon request under this Contract. 50. “Pre-commissioning” means the testing, checking, and any other required activity that may be specified in the Purchaser’s Requirements that are to be carried out by the Supplier in preparation for Commissioning of the System as provided in GCC Clause 26 (Installation). 51. “Project Plan” means the document to be developed by the Supplier and approved by the Purchaser, pursuant to GCC Clause 19, based on the requirements of the Contract and the Preliminary Project Plan included in the Supplier’s Bid. The “Agreed and Finalized Project Plan” is the version of the Project Plan approved by the Purchaser, in accordance with GCC Sub-Clause 19.2. Should the Project Plan conflict with the Contract in any way, the relevant provisions of the Contract, including any amendments, shall prevail. 52. “Project Manager” means the person named as such in the PCC or otherwise appointed by the Purchaser in the manner provided in GCC Sub-Clause 18.1 (Project Manager) to perform the duties delegated by the Purchaser. 53. “Project Site(s)” means the place(s) specified in the PCC for the supply and Installation of the System. 54. “Purchaser” means the entity purchasing the Information System, as specified in the PCC. 55. “Purchaser Data” means (i) all data and information generated, provided or submitted by, or caused to be generated, provided or submitted by, or on behalf of, Purchaser or any of its Affiliates in connection with the System or Services; (ii) all data and information regarding Purchaser or its Affiliates that is collected, generated or submitted by, or caused to be generated, provided or submitted by, Supplier or its representatives; (iii) all such data and information processed or stored, and/or then provided to or for Purchaser or any of its Affiliates, as part of the Services, including data contained in forms, reports and other similar documents provided by or on behalf of Supplier under the Contract; and (iv) Personal Information. 56. “Purchaser Indemnitees” means the Purchaser and its Affiliates, and the respective current, future and former officers, directors, employees, agents, successors and assigns of each of the foregoing. 57. “Purchaser’s Country” is the country named in the PCC. 58. “Purchaser’s Requirements” means the Purchaser’s Requirements Section of the Bidding Documents. 59. “Security Breach” means (i) any circumstance pursuant to which Applicable Law requires notification of such breach to be given to affected parties or other activity in response to such circumstance; or (ii) any actual, attempted, suspected or threatened circumstance that compromises, or could reasonably be expected to compromise Systems Security (as such term is defined below) in a fashion that either does or could reasonably be expected to permit unauthorized processing, use, disclosure or acquisition of or access to any of Purchaser’s Confidential Information or the System. “Systems Security” means security of computer, electronic or telecommunications systems of any variety (including data bases, hardware, software, storage, switching and interconnection devices and mechanisms), and networks of which such systems are a part or communicate with, used directly or indirectly by Supplier or its Subcontractors in connection with the System or Services. 60. “Services” means all technical, logistical, management, and any other services, functions, responsibilities, activities, tasks and projects (i) to be provided by the Supplier and set forth in the Contract, and (ii) that are an inherent, necessary, or customary part of the Services described in item (i). Such Services may include, but are not restricted to, activity management and quality assurance, design, development, customization, documentation, transportation, insurance, inspection, expediting, site preparation, Installation, integration, training, data migration, Pre-commissioning, Commissioning, maintenance, and technical support. 61. “Software” means that part of the System which are instructions that cause information processing Subsystems to perform in a specific manner or execute specific operations. 62. “Source Code” means the database structures, dictionaries, definitions, program source files, and any other symbolic representations necessary for the compilation, execution, and subsequent maintenance of the Software (typically, but not exclusively, required for Custom Software). 63. “Standard Materials” means all Materials not specified as Custom Materials. 64. “Standard Software” means Software identified as such in Appendix 4 of the Agreement and such other Software as the parties may agree in writing to be Standard Software. 65. “Subcontractor” means any firm to whom any of the obligations of the Supplier, including preparation of any design or supply of any Information Technologies or other Goods or Services, is subcontracted directly or indirectly by the Supplier. The list of Purchaser-approved Subcontractors is set forth in Appendix 3 (List of Approved Subcontractors). 66. “Subsystem” means any subset of the System identified as such in the Contract that may be supplied, installed, tested, and commissioned individually before Commissioning of the entire System. 67. “Supplier” means the firm or Joint Venture or Association entity whose Bid to perform the Contract has been accepted by the Purchaser and is named as such in the Contract. 68. “Supplier Indemnitees” means the Supplier and its Affiliates, and the respective current, future and former officers, directors, employees, agents, successors and assigns of each of the foregoing. 69. “Supplier’s Country” is the country in which the Supplier is legally organized, as named in the Contract. 70. “Supplier’s Equipment” means all equipment, tools, apparatus, or things of every kind required in or for installation, completion and maintenance of the System that are to be provided by the Supplier, but excluding the Information Technologies, or other items forming part of the System. 71. “Supplier’s Representative” means any person nominated by the Supplier and named as such in the Contract or otherwise approved by the Purchaser in the manner provided in GCC Sub-Clause 18.2 (Supplier’s Representative) to perform the duties delegated by the Supplier. 72. “System Software” means Software that provides the operating and management instructions for the underlying hardware and other components, and is identified as such in Appendix 4 of the Agreement and such other Software as the parties may agree in writing to be Systems Software. Such System Software includes, but is not restricted to, micro-code embedded in hardware (i.e., “firmware”), operating systems, communications, system and network management, and utility software. 73. “Tax” and “Taxes” have the meanings given the terms in the Threshold Program Grant Agreement or related agreement. 74. “Warranty Period” means the period of validity of the representation and warranty provided in GCC Sub-Clause 29.1 (Representations and Warranties). 75. “week” means seven (7) consecutive days, beginning the day of the week as is customary in the Purchaser’s Country. 76. “year” means twelve (12) consecutive months. |
| 1. **Contract Documents** | * 1. Subject to Article 1.2 (Order of Precedence) of the Contract Agreement, all documents forming part of the Contract (and all parts of these documents) are intended to be correlative, complementary, and mutually explanatory. The Contract shall be read as a whole. |
| 1. **Interpretation** | * 1. Governing Language      1. All Contract Documents and related correspondence exchanged between Purchaser and Supplier shall be written in the language **specified in the PCC**, and the Contract shall be construed and interpreted in accordance with that language.      2. If any of the Contract Documents or related correspondence are prepared in a language other than the governing language under GCC Sub-Clause 3.1.1 above, the translation of such documents into the governing language shall prevail in matters of interpretation. The originating party, with respect to such documents shall bear the costs and risks of such translation.   2. Singular and Plural   The singular shall include the plural and the plural the singular, except where the context otherwise requires.   * 1. Headings   The headings and marginal notes in the GCC are included for ease of reference and shall neither constitute a part of the Contract nor affect its interpretation.   * 1. Persons   Words importing persons or parties shall include firms, corporations, and government entities.   * 1. Incoterms   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 the current Incoterms as **specified in the PCC**. Incoterms are the international rules for interpreting trade terms published by the International Chamber of Commerce, 38 Cours Albert 1er, 75008 Paris, France.   * 1. Entire Agreement   The Contract constitutes the entire agreement between the Purchaser and Supplier with respect to the subject matter of Contract and supersedes all communications, negotiations, and agreements (whether written or oral) of parties with respect to the subject matter of the Contract made prior to the date of Contract.   * 1. Amendment   No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party to the Contract.   * 1. Independent Supplier   The Supplier shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, Joint Venture, or other joint relationship between the parties to the Contract.  Subject to the provisions of the Contract, the Supplier shall be solely responsible for the manner in which the Contract is performed. All employees, representatives, or Subcontractors engaged by the Supplier in connection with the performance of the Contract shall be under the complete control of the Supplier and shall not be deemed to be employees of the Purchaser, and nothing contained in the Contract or in any subcontract awarded by the Supplier shall be construed to create any contractual relationship between any such employees, representatives, or Subcontractors and the Purchaser.   * 1. Joint Venture/Association Entity   If the Supplier is a Joint Venture or Association entity created by two or more firms, all such firms shall be parties to the Contract and shall be jointly and severally bound, together with the Joint Venture/Association entity, to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one of such firms to act as a leader with authority to bind the Joint Venture/Association entity. The composition or constitution of the Joint Venture/Association entity shall not be altered without the prior consent of the Purchaser.   * 1. Nonwaiver      1. Subject to GCC Sub-Clause 3.10.2 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, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.      2. Any waiver of a party’s rights, powers, or remedies under the Contract must be in writing, must be 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.   2. 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.   * 1. Survival   The GCC Sub-Clauses and their respective references to the PCC that are expressly stated to survive, or that by their nature are intended to survive, the expiration, suspension or termination of this Contract will survive the expiration, suspension or termination of this Contract indefinitely or as limited by the time period set out in the respective clause, including, without limitation, the following: 1.1, 2, 3, 4, 5, 6, 14.1, 15, 16.1, 17, 28.2, 29, 30.1, 31, 32, 33, 36.2, 36.3, and 36.4.   * 1. Country of Origin   “Origin” means the place where the Information Technologies, Materials, and other Goods for the System were produced or from which the Services are supplied. Goods are produced when, through manufacturing, processing, Software development, or substantial and major assembly or integration of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components. The Origin of Goods and Services is distinct from the nationality of the Supplier and may be different. |
| 1. **Notices** | * 1. Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing and shall be sent, pursuant to GCC Sub-Clause 4.3 below, by personal delivery, airmail post, special courier, cable, telegraph, telex, facsimile, electronic mail, or Electronic Data Interchange (“EDI”), with the following provisions. |
|  | * 1. Any notice sent by cable, telegraph, telex, facsimile, electronic mail, or EDI shall be confirmed within two (2) days after dispatch by notice sent by airmail post or special courier, except as otherwise specified in the Contract.   2. Any notice sent by airmail post or special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped, and conveyed to the postal authorities or courier service for transmission by airmail or special courier.   3. Any notice delivered personally or sent by cable, telegraph, telex, facsimile, electronic mail, or EDI shall be deemed to have been delivered on the date of its dispatch.   4. Either party may change its postal, cable, telex, facsimile, electronic mail, or EDI addresses for receipt of such notices by ten (10) days’ notice to the other party in writing.   5. Notices shall be deemed to include any approvals, consents, instructions, orders, certificates, information and other communication to be given under the Contract.   6. Pursuant to GCC Clause 18, notices from/to the Purchaser are normally given by, or addressed to, the Project Manager, while notices from/to the Supplier are normally given by, or addressed to, the Supplier's Representative, or in its absence its deputy if any. If there is no appointed Project Manager or Supplier's Representative (or deputy), or if their related authority is limited by the PCC GCC Sub-Clause 18.1 or 18.2.2, or for any other reason, the Purchaser or Supplier may give and receive notices at their fallback addresses. The address of the Project Manager and the fallback address of the Purchaser are as specified in the PCC or as subsequently established/amended. The address of the Supplier's Representative and the fallback address of the Supplier are as specified in Appendix 1 of the Agreement or as subsequently established/amended. |
| 1. **Governing Law** | * 1. The Contract shall be governed by and interpreted in accordance with the laws of the country **specified in the PCC**. |
| 1. **Settlement of Disputes** | * 1. Adjudication |
|  | * + 1. If any dispute of any kind whatsoever shall arise between the Purchaser and the Supplier in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity, or termination, or the operation of the System (whether during the progress of implementation or after its achieving Operational Acceptance and whether before or after the termination, abandonment, or breach of the Contract), the parties shall seek to resolve any such dispute by mutual consultation. If the parties fail to resolve such a dispute by mutual consultation within fourteen (14) days after one party has notified the other in writing of the dispute, then, if Appendix 2 of the Agreement names an Adjudicator, the dispute shall, within another fourteen (14) days, be referred in writing by either party to the Adjudicator, with a copy to the other party. If there is no Adjudicator named, the mutual consultation period stated above shall last twenty-eight (28) days (instead of fourteen), upon expiry of which either party may move to the notification of arbitration pursuant to GCC Sub-Clause 6.2.1. |
|  | * + 1. The Adjudicator shall give his or her decision in writing to both parties within twenty-eight (28) days of the dispute being referred to the Adjudicator. If the Adjudicator has done so, and no notice of intention to commence arbitration has been given by either the Purchaser or the Supplier within fifty-six (56) days of such reference, the decision shall become final and binding upon the Purchaser and the Supplier. Any decision that has become final and binding shall be implemented by the parties forthwith.     2. The Adjudicator shall be paid an hourly fee at the rate specified in Appendix 2 of the Agreement plus reasonable expenditures incurred in the execution of duties as Adjudicator, and these costs shall be divided equally between the Purchaser and the Supplier.     3. Should the Adjudicator resign or die, or should the Purchaser and the Supplier agree that the Adjudicator is not fulfilling his or her functions in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Purchaser and the Supplier. Failing agreement between the two within twenty-eight (28) days, the new Adjudicator shall be appointed at the request of either party by the Appointing Authority **specified in the PCC,** or, if no Appointing Authority is **specified in PCC,** the Contract shall, from this point onward and until the parties may otherwise agree on an Adjudicator or an Appointing Authority, be implemented as if there is no Adjudicator.   1. Arbitration      1. If:  1. the Purchaser or the Supplier is dissatisfied with the Adjudicator’s decision and acts before this decision has become final and binding pursuant to GCC Sub-Clause 6.1.2, or 2. the Adjudicator fails to give a decision within the allotted time from referral of the dispute pursuant to GCC Sub-Clause 6.1.2, and the Purchaser or the Supplier acts within the following fourteen (14) days, or 3. in the absence of an Adjudicator named in Appendix 2 of the Agreement, the mutual consultation pursuant to GCC Sub-Clause 6.1.1 expires without resolution of the dispute and the Purchaser or the Supplier acts within the following fourteen (14) days,   then either the Purchaser or the Supplier may act to give notice to the other party, with a copy for information to the Adjudicator in case an Adjudicator had been involved, of its intention to commence arbitration, as provided below, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.   * + 1. Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GCC Sub-Clause 6.2.1, shall be finally settled by arbitration. Arbitration may be commenced prior to or after Installation of the Information System.     2. Arbitration proceedings shall be conducted in accordance with the rules of procedure **specified in the PCC**.   1. Notwithstanding any reference to the Adjudicator or arbitration in this clause,  1. the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; 2. the Purchaser shall pay the Supplier any monies due the Supplier. |
| **B. Subject Matter of Contract** | |
| 1. **Scope of the System** | * 1. Unless otherwise expressly **limited in the PCC** or Purchaser’s Requirements, the Supplier’s obligations cover the provision of all Information Technologies, Materials and other Goods as well as the performance of all Services required for the design, development, and implementation (including procurement, quality assurance, assembly, associated site preparation, Delivery, Pre-commissioning, Installation, Testing, and Commissioning) of the System, in accordance with the plans, procedures, specifications, drawings, codes, and any other documents specified in the Contract and the Agreed and Finalized Project Plan. |
|  | * 1. The Supplier shall, unless specifically excluded in the Contract, perform all such work and / or supply all such items and Materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Operational Acceptance of the System as if such work and / or items and Materials were expressly mentioned in the Contract.   2. The Supplier’s obligations (if any) to provide Goods and Services as implied by the Recurrent Price tables of the Supplier’s Bid, such as consumables, spare parts, and technical services (e.g., maintenance, technical assistance, and operational support), are as **specified in the PCC**, including the relevant terms, characteristics, and timings. |
| 1. **Time for Commencement and Operational Acceptance** | * 1. The Supplier shall commence work on the System within the period **specified in the PCC**, and without prejudice to GCC Sub-Clause 28.2, the Supplier shall thereafter proceed with the System in accordance with the time schedule specified in the Implementation Schedule in the Purchaser’s Requirements and any refinements made in the Agreed and Finalized Project Plan. |
|  | * 1. The Supplier shall achieve Operational Acceptance of the System (or Subsystem(s) where a separate time for Operational Acceptance of such Subsystem(s) is specified in the Contract) within the time **specified in the PCC** and in accordance with the time schedule specified in the Implementation Schedule in the Purchaser’s Requirements and any refinements made in the Agreed and Finalized Project Plan, or within such extended time to which the Supplier shall be entitled under GCC Clause 40 (Extension of Time for Achieving Operational Acceptance). |
| 1. **Supplier’s Responsibilities** | * 1. The Supplier shall conduct all activities with due care and diligence, in accordance with the Contract and with the skill and care expected of a competent provider of information technologies, information systems, support, maintenance, training, and other related services, or in accordance with best industry practices. In particular, the Supplier shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand. |
|  | * 1. The Supplier confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the System provided by the Purchaser and on the basis of information that the Supplier could have obtained from a visual inspection of the site (if access to the site was available) and of other data readily available to the Supplier relating to the System as at the date twenty-eight (28) days prior to Bid submission. The Supplier acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Contract.   2. The Supplier shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach a mutually Agreed and Finalized Project Plan (pursuant to GCC Sub-Clause 19.2) within the time schedule specified in the Implementation Schedule in the Purchaser’s Requirements. Failure to provide such resources, information, and decision -making may constitute grounds for termination pursuant to GCC Sub-Clause 41.2. |
|  | * 1. The Supplier shall acquire in its name all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings in the Purchaser’s Country that are necessary for the performance of the Contract, including, without limitation, visas for the Supplier’s personnel and Subcontractor’s personnel and entry permits for all imported Supplier’s Equipment. The Supplier shall acquire all other permits, approvals, and/or licenses that are not the responsibility of the Purchaser under GCC Sub-Clause 10.4 and that are necessary for the performance of the Contract.   2. The Supplier shall comply, and will cause all of its personnel and Subcontractors to comply, with all Applicable Law. The Supplier shall indemnify and hold harmless the Purchaser Indemnitees, on demand, from and against any Losses incurred by any of them, and shall defend in accordance with GCC Sub-Clause 32.7 the Purchaser Indemnitees against all Claims, arising from or in connection with the violation of such laws by the Supplier or its personnel, including the Subcontractors and their personnel. The Supplier shall not indemnify the Purchaser to the extent that such Losses were caused or contributed to by a fault of the Purchaser, unless the Supplier knew or reasonably should have known that Purchaser’s fault would result in a Claim and did not object. |
|  | * 1. The Supplier shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs, and all local laws and regulations pertaining to the employment of labor.   2. The Supplier shall adopt and implement human resources policies and procedures appropriate to its size and workforce that set out its approach to managing the Supplier’s personnel. At a minimum, the Supplier shall provide all Supplier’s personnel with documented information that is clear and understandable regarding their rights under Applicable Laws regarding labor and any applicable collective agreements, including their rights related to their employment, health, safety, welfare, immigration and emigration upon beginning the working relationship and when any material changes occur.   3. The Supplier shall adopt recruitment, hiring and retention practices that support the employment of women and staff from diverse backgrounds.   4. The Supplier shall ensure that the employment terms and conditions of migrant workers are not influenced by their migrant status.   5. The Supplier shall provide a grievance mechanism for Supplier’s personnel, including Subcontractor staff, if a separate Subcontractor grievance mechanism does not exist, to raise workplace concerns. The Supplier shall inform its personnel of the grievance mechanism at the time of recruitment and make it easily accessible to them. The mechanism should involve review by an appropriate level of management and address concerns promptly, using an understandable and transparent process that provides timely feedback to those concerned, without any retribution to personnel for initiating or participating in a complaint under such mechanism. The mechanism should also allow for anonymous complaints to be raised and addressed. The mechanism should not impede access to other judicial or administrative remedies that might be available under Applicable Law or through existing arbitration procedures, or substitute for grievance mechanisms provided through collective agreements.   6. Any Information Technologies or other Goods and Services that will be incorporated in or be required for the System and other supplies shall have their Origin, as defined in GCC Clause 3.13, in a country that shall be an Eligible Country, as defined in GCC Sub-Clause 1.1 (v).   7. The Supplier shall permit MCC and/or persons appointed by MCC to inspect the Site and/or the accounts and records of the Supplier and any subcontractors relating to the performance of this Contract, and to have such accounts and records audited by auditors appointed by MCC, if so required by MCC in accordance with the provisions of the Annex to this Contract entitled “Additional Provisions.”   8. Other Supplier responsibilities, if any, are as **stated in the PCC.** |
| 1. **Purchaser’s Responsibilities** | * 1. The Purchaser shall ensure the accuracy of all information and/or data to be supplied by the Purchaser to the Supplier, except when otherwise expressly stated in the Contract.   2. The Purchaser shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach an Agreed and Finalized Project Plan (pursuant to GCC Sub-Clause 19.2) within the time schedule specified in the Implementation Schedule in the Purchaser’s Requirements. Failure to provide such resources, information, and decision-making may constitute grounds for Termination pursuant to GCC Sub-Clause 41.3.1.   3. The Purchaser shall be responsible for acquiring and providing legal and physical possession of the site and access to it, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract.   4. If requested by the Supplier, the Purchaser shall use its best endeavors to assist the Supplier in obtaining in a timely and expeditious manner all permits, approvals, and/or licenses necessary for the execution of the Contract from all local, state, or national government authorities or public service undertakings that such authorities or undertakings require the Supplier or Subcontractors or the personnel of the Supplier or Subcontractors, as the case may be, to obtain.   5. In such cases where the responsibilities of specifying and acquiring or upgrading telecommunications and/or electric power services falls to the Supplier, as specified in the Purchaser’s Requirements, PCC, Agreed and Finalized Project Plan, or other parts of the Contract, the Purchaser shall use its best endeavors to assist the Supplier in obtaining such services in a timely and expeditious manner.   6. The Purchaser shall be responsible for timely provision of all resources, access, and information necessary for the Installation and Operational Acceptance of the System (including, but not limited to, any required telecommunications or electric power services), as identified in the Agreed and Finalized Project Plan, except where provision of such items is explicitly identified in the Contract as being the responsibility of the Supplier. Delay by the Purchaser may result in an appropriate extension of the Time for Operational Acceptance, at the Supplier’s discretion.   7. Unless otherwise specified in the Contract or agreed upon by the Purchaser and the Supplier, the Purchaser shall provide sufficient, properly qualified operating and technical personnel, as required by the Supplier to properly carry out Delivery, Pre-commissioning, Installation, Commissioning, and Operational Acceptance, at or before the time specified in the Implementation Schedule in the Purchaser’s Requirements and the Agreed and Finalized Project Plan.   8. The Purchaser will designate appropriate staff for the training courses to be given by the Supplier and shall make all appropriate logistical arrangements for such training as specified in the Purchaser’s Requirements, PCC, the Agreed and Finalized Project Plan, or other parts of the Contract.   9. The Purchaser assumes primary responsibility for the Operational Acceptance Test(s) for the System, in accordance with GCC Sub-Clause 27.2, and shall be responsible for the continued operation of the System after Operational Acceptance. However, this shall not limit in any way the Supplier’s responsibilities after the date of Operational Acceptance otherwise specified in the Contract.   10. The Purchaser is responsible for performing and safely storing timely and regular backups of its data and Software in accordance with accepted data management principles, except where such responsibility is clearly assigned to the Supplier elsewhere in the Contract.   11. All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the Purchaser, save those to be incurred by the Supplier with respect to the performance of the Operational Acceptance Test(s), in accordance with GCC Sub-Clause 27.2.   12. Other Purchaser responsibilities, if any, are **as stated in the PCC**. |

**C. Payment**

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| 1. **Contract Price** | * 1. The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement. |
|  | * 1. The Contract Price shall be a firm lump sum not subject to any alteration, except:   (a) in the event of a Change in the System pursuant to GCC Clause 39 or to other clauses in the Contract;  (b) in accordance with the price adjustment formula (if any) **specified in the PCC**. |
|  | * 1. The Supplier shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract. |
| 1. **Terms and Schedule of Payment** | * 1. The Supplier’s request for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the System or Subsystem(s), Delivered, Pre-commissioned, Installed, and Operationally Accepted, and by documents submitted pursuant to GCC Sub-Clause 22.5 and upon fulfillment of other obligations stipulated in the Contract.  The Contract Price shall be paid according to the payment schedule as **specified in the PCC**. |
|  | * 1. No payment made by the Purchaser herein shall be deemed to constitute acceptance by the Purchaser of the System or any Subsystem(s).   2. Payments shall be made promptly by the Purchaser, but in no case later than thirty (30) days after the submission of a valid invoice by the Supplier with a certificate of acceptance of delivery of a deliverable or deliverables. In the event that the Purchaser fails to make any payment by its respective due date or within the period set forth in the Contract, the Purchaser shall pay to the Supplier interest on the amount of such delayed payment at the rate(s) **specified in the PCC** for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.   3. All payments shall be made in the currency(ies) specified in the Contract, pursuant to GCC Clause 11. For Goods and Services supplied locally, payments shall be made in the currency of the Purchaser’s Country, unless otherwise **specified in the PCC.**   4. Unless otherwise **specified in the PCC**, payment of the foreign currency portion of the Contract Price for Goods supplied from outside the Purchaser’s Country shall be made to the Supplier through an irrevocable letter of credit opened by an authorized bank in the Supplier’s Country and will be payable on presentation of the appropriate documents. It is agreed that the letter of credit will be subject to Article 10 of the latest revision of Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce, Paris. |
| 1. **Securities** | * 1. Issuance of Securities   The Supplier shall provide the securities specified below in favor of the Purchaser at the times and in the amount, manner, and form specified below. |
|  | * 1. Advance Payment Security      1. As **specified in the PCC**, the Supplier shall provide a security equal in amount and currency to the advance payment, and valid until the System is Operationally Accepted.      2. The security shall be in the form provided in the Bidding Documents or in another form acceptable to the Purchaser. The amount of the security shall be reduced in proportion to the value of the System executed by and paid to the Supplier from time to time and shall automatically become null and void when the full amount of the advance payment has been recovered by the Purchaser. The way the value of the security is deemed to become reduced and, eventually, voided is as **specified in the PCC.** The security shall be returned to the Supplier immediately after its expiration. |
|  | * 1. Performance Security      1. The Supplier shall, within twenty-eight (28) days of the notification of Contract award, provide a security for the due performance of the Contract in the amount and currency **specified in the PCC.**      2. The performance security shall be denominated in the currency of this Contract, and shall be in the form of an unconditional bank guarantee issued by a reputable bank located in Purchaser’s country or in an Eligible Country and in form and substance satisfactory to the Purchaser, substantially in the appropriate form included in Section VIII. Contract Forms, or another type of security **specified in the SCC**.      3. The security shall automatically become null and void once all the obligations of the Supplier under the Contract have been fulfilled, including, but not limited to, any obligations during the Warranty Period and any extensions to the period. The security shall be returned to the Supplier no later than twenty-eight (28) days after its expiration.      4. Upon Operational Acceptance of the entire System, the security shall be reduced to the amount **specified in the PCC,** on the date of such Operational Acceptance, so that the reduced security would only cover the remaining warranty obligations of the Supplier. |
| 1. **Taxes and Duties** | * 1. As provided for under the terms of the Threshold Program Grant Agreement, most services performed under and activities undertaken in furtherance of the Contract, including in connection with the Supply and Installation of Information Systems, are exempt from taxes, duties, levies, contributions or other charges imposed under Laws currently or hereafter in effect in the Purchaser’s Country (separately “tax” and collectively “taxes”) during the effective term of the Threshold Program Grant Agreement, including, without limitation:  1. income taxes, withholding taxes, and other profit or business taxes imposed on individuals, organizations, or enterprises (other than nationals or permanent residents of the Purchaser’s Country); 2. customs duties, tariffs, import and export taxes or other taxes imposed on import, usage and re-export of goods, (including Supplier’s Equipment and spare parts thereof, Plant, Materials and supplies imported into the Purchaser’s Country for purposes of the Contract), services or personal items (including personal automobiles) to be used in connection with the execution of the Works or for usage by the Supplier’s personnel (or their family members) who are not nationals or permanent residents of the Purchaser’s Country and are in the Purchaser’s Country for the purpose of the execution of the Works; and 3. sales tax, valued added tax, excise tax, property (real or personal) transfer tax, taxes on the ownership, possession or use of property (real or personal), and other similar charges on any transactions involving goods, works or services.    1. In the case of imports of goods for personal usage, the written information shall indicate that the goods shall be used for personal usage by Supplier’s personnel (or their family members) who are neither nationals nor permanent residents of the Purchaser’s Country and who are in the Purchaser’s Country for the purpose of executing the Works.    2. The Purchaser shall use reasonable efforts to ensure that the Government provides the Supplier, any subcontractor and any Supplier’s personnel the exemptions from taxation applicable to such persons or entities, in accordance with the terms of the Threshold Program Grant Agreement or related agreements.    3. As provided for under the terms of the Threshold Program Grant Agreement, the Supplier’s local staff and labor (nationals or permanent residents of the Purchaser’s Country) will be liable to pay personal income taxes in the Purchaser’s Country in respect of such of their salaries and wages as are chargeable under the Laws for the time being in force, and the Supplier shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.    4. The Supplier, each subcontractor and their respective personnel shall pay all taxes levied under Applicable Laws. In no event shall the Purchaser be responsible for the payment of any taxes.    5. If the Supplier, any subcontractor or Supplier’s personnel is required to pay taxes that are exempt under the Threshold Program Grant Agreement or a related agreement, the Supplier shall promptly notify the Purchaser of any such taxes paid, and shall cooperate with, and take such actions as may be requested by the Purchaser, MCC, or either of their agents or representatives, in seeking the prompt and proper reimbursement of such taxes. |

**D. Intellectual Property**

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| 1. **Intellectual Property Rights** | * 1. The Intellectual Property Rights in all Standard Software and Standard Materials shall remain vested in the owner of such rights. | |
|  | * 1. The Purchaser agrees to restrict use, copying, or duplication of the Standard Software and Standard Materials in accordance with GCC Clause 16, except that additional copies of Standard Materials may be made by the Purchaser for use within the scope of the project of which the System is a part, in the event that the Supplier does not deliver copies within thirty (30) days from receipt of a request for such Standard Materials.   2. The Purchaser’s rights to use the Standard Software or elements of the Standard Software may not be assigned, licensed, or otherwise transferred voluntarily except in accordance with a permitted assignment of the Contract or as may be otherwise **specified in the PCC**.   3. As applicable, the Purchaser’s and Supplier’s rights and obligations with respect to Custom Software or elements of the Custom Software, including any license agreements, and with respect to Custom Materials or elements of the Custom Materials, are specified in the PCC. **Subject to the PCC**, the Intellectual Property Rights in all Custom Software and Custom Materials specified in Appendices 4 and 5 of the Agreement (if any) shall, at the date of this Contract or on creation of the rights (if later than the date of this Contract), vest in the Purchaser. The Supplier shall do and execute or arrange for the doing and executing of each necessary act, document, and thing that the Purchaser may consider necessary or desirable to perfect the right, title, and interest of the Purchaser in and to those rights, including those acts **specified in the PCC**. In respect of such Custom Software and Custom Materials, the Supplier shall ensure that the holder of a moral right in such an item does not assert it, and the Supplier shall, if requested to do so by the Purchaser and where permitted by Applicable Law, ensure that the holder of such a moral right waives it. Supplier shall place proprietary rights notices in favor of Purchaser on the Custom Software and Custom Materials. |
|  | * 1. The parties shall enter into such (if any) escrow arrangements in relation to the Source Code to some or all of the Software as are specified in the PCC and in accordance with the PCC. | |
| 1. **License to Software and Materials** | * 1. Except to the extent that the Intellectual Property Rights in the Software and Materials vest in the Purchaser, the Supplier hereby grants to the Purchaser and its Affiliates a license to access and use, install, load, host, access, use, execute, reproduce, display, perform, create derivative works of, modify and maintain, including the right to allow the Purchaser’s and its Affiliates’ agents, contractors, service providers, suppliers and their subcontractors to exercise such rights on Purchaser’s or an Affiliate’s behalf to the extent reasonably required for them to perform their work under their agreements with the Purchaser or its Affiliates, the Software and Materials, including all Intellectual Property Rights embodied in the Software and Materials. | |
|  | Such license to the Software and Materials shall:   1. be:    * 1. perpetual;      2. nonexclusive;      3. fully paid up;      4. valid throughout the territory of the Purchaser’s Country (or such other territory as **specified in the PCC**); and      5. subject to additional restrictions (if any) as **specified in the PCC**. 2. permit the Software (and Materials, as applicable) to be: 3. used or copied for use on or with the computer(s) for which it was acquired (if specified in the Purchaser’s Requirements and/or the Supplier’s Bid), plus a backup computer(s) of the same or similar capacity, if the primary is(are) inoperative, and during a reasonable transitional period when use is being transferred between primary and backup; 4. as **specified in the PCC**, used or copied for use on or transferred to a replacement computer(s), (and use on the original and replacement computer(s) may be simultaneous during a reasonable transitional period) provided that, if the Purchaser’s Requirements and/or the Supplier’s Bid specifies a class of computer to which the license is restricted and unless the Supplier agrees otherwise in writing, the replacement computer(s) is (are) within that class; 5. if the nature of the System is such as to permit such access, accessed from other computers connected to the primary and/or backup computer(s) by means of a local or wide-area network or similar arrangement, and used on or copied for use on those other computers to the extent necessary to that access; 6. reproduced for safekeeping or backup purposes; 7. customized, adapted, or combined with other computer software for use by the Purchaser, provided that derivative software incorporating any substantial part of the delivered, restricted Software shall be subject to same restrictions as are set forth in this Contract; 8. as **specified in the PCC,** disclosed to, and reproduced for use by, support service suppliers and their subcontractors, (and the Purchaser may sublicense such persons to use and copy for use the Software) to the extent reasonably necessary to the performance of their support service contracts, subject to the same restrictions as are set forth in this Contract; and 9. disclosed to, and reproduced for use by, the Purchaser and by such other persons as are **specified in the PCC** (and the Purchaser may sublicense such persons to use and copy for use the Software), subject to the same restrictions as are set forth in this Contract. | |
|  | * 1. Except if otherwise **specified in the PCC**, on Supplier’s written request, but not more than once per year, the Purchaser shall furnish to the Supplier with a signed certification verifying that the Purchaser’s use of the Standard Software is consistent with the terms, conditions and restrictions of GCC Clause 16. | |
| 1. **Confidential Information and Data Security** | * 1. Except if otherwise **specified in the PCC** and in GCC Sub-Clause 17.3 below**,** the "Receiving Party" (either the Purchaser or the Supplier) shall not, without the written consent of the other party to this Contract (“the Disclosing Party”), divulge to any third party any documents, data, or other information of a confidential or proprietary nature, in any form, of the Disclosing Party that is (i) marked as confidential or proprietary or otherwise identified as confidential or proprietary by the Disclosing Party, or (ii) disclosed orally or visually, or in written or other form of tangible information or materials without an appropriate letter, proprietary stamp or legend, if it would be apparent to a reasonable person, familiar with the Disclosing Party’s business and industry, that such documents, data or information are of a confidential or proprietary nature (collectively, “Confidential Information”), which is furnished directly or indirectly by the Disclosing Party prior to or during performance, or following termination, of the Contract. Purchaser Data is the Purchaser’s Confidential Information. The Receiving Party shall hold as confidential through use of the same level of care (including both facility physical security and electronic security) to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, the Confidential Information of the Disclosing Party as it employs to avoid unauthorized access, storage, disclosure, publication, dissemination or use of its own Confidential Information, but in no event less than a reasonable standard of care. | |
|  | * 1. For the purposes of GCC Sub-Clause 17.1, the Supplier is also deemed to be the Receiving Party of Confidential Information generated by the Supplier itself in the course of the performance of its obligations under the Contract and relating to the businesses, finances, suppliers, employees, or other contacts of the Purchaser or the Purchaser’s use of the System or Services.   2. Notwithstanding GCC Sub-Clauses 17.1 and 17.2:  1. the Supplier may furnish to its Subcontractor(s) Confidential Information of the Purchaser to the extent reasonably required for the Subcontractor to perform its work under the Contract; and 2. the Purchaser may furnish Confidential Information of the Supplier: (i) to its agents, contractors, service providers, advisors, suppliers and their subcontractors to the extent reasonably required for them to perform their work under their agreements with Purchaser; and (ii) to its Affiliates   in which event the Receiving Party shall ensure that (A) the person to whom it furnishes Confidential Information of the Disclosing Party is bound by obligations of confidentiality, non-disclosure and the other restrictive covenants at least as restrictive and extensive in scope as those set forth in this GCC Clause 17; and (B) the Disclosing Party assumes full responsibility for the acts or omissions of the persons to which it makes such disclosures no less than if the acts or omissions were those of the Receiving Party. | |
|  | * 1. The Purchaser shall not, without the Supplier’s prior written consent, use any Confidential Information received from or on behalf of the Supplier for any purpose other than those that are required to receive and utilize the System and Services and to exercise its rights under the Contract, including without limitation the operation, maintenance and further development of the System. Similarly, the Supplier shall not, without the Purchaser’s prior written consent, use any Confidential Information received from or on behalf of the Purchaser for any purpose other than those that are required for the performance of the Contract.   2. Except for Personal Information, the obligation of a party under GCC Sub-Clauses 17.1 through 17.4 above, however, shall not apply to that information which:  1. now or hereafter enters the public domain through no fault of the Receiving Party; 2. can be proven to have been possessed by the Receiving Party at the time of disclosure and that was not previously obtained, directly or indirectly, from the Disclosing Party; 3. otherwise lawfully becomes available to the Receiving Party from a third party that has no obligation of confidentiality to the Disclosing Party.   In the event of disclosure pursuant to an order of court or governmental agency, and subject to compliance with law, the Receiving Party shall give the Disclosing Party prompt notice to permit the Disclosing Party an opportunity, if available, to obtain a protective order or otherwise protect the confidentiality of such Confidential Information of the Disclosing Party, all at the Disclosing Party’s cost and expense.   * 1. All Confidential Information of the Disclosing Party, whether in existence at the date of the Contract or compiled thereafter in the course of providing the System or Services, shall be treated by the Receiving Party as the exclusive property of the Disclosing Party and the furnishing of such Confidential Information, or access to such Confidential Information, by the Disclosing Party shall not grant any express or implied interest in the Receiving Party to such Confidential Information. Furthermore, except as set forth in the Contract, the Receiving Party will not acquire any right in or assert any lien against the Disclosing Party’s Confidential Information. Upon request at any time and from time to time and without regard to the default status of the parties under the Contract, the Receiving Party shall promptly deliver to the Disclosing Party the Confidential Information of the Disclosing Party in such format as may be reasonably requested by the Disclosing Party and in such hard copy as exists on the date of the request; provided, however, that Supplier may only request the return of its Confidential Information if the return will not adversely affect the provision of the System or Services, Purchaser’s full enjoyment of the System or Services as permitted in the Contract, or the full exercise by Purchaser of the rights granted to Purchaser under the Contract.   2. In addition to any specific requirements set forth in the Contract, Supplier shall establish an information security program with respect to the Confidential Information of the Purchaser and its Affiliates which: (i) ensures the security and confidentiality of such Confidential Information; (ii) protects against any anticipated threats or hazards to the security or integrity of such Confidential Information, and (iii) protects against any unauthorized use of or access to such Confidential Information. Supplier shall also establish and maintain network and internet security procedures, protocols, security gateways and firewalls with respect to the Confidential Information of the Purchaser and its Affiliates. All of the foregoing shall be consistent with the Contract and no less rigorous than those maintained by Supplier for its own data and information of a similar nature, but in no event shall such safeguards and procedures be less than what is standard in the industry. Without limiting the generality of the foregoing, the Supplier’s information security program shall also address: (1) regular assessment and re-assessment of the risks to the security of Confidential Information of the Purchaser and its Affiliates and systems acquired or maintained by the Supplier and its Subcontractors, including (A) identification of internal and external threats that could result in a Security Breach, (B) assessment of the likelihood and potential damage of such threats, taking into account the sensitivity of such data and systems, and (C) assessment of the sufficiency of policies, procedures, and information systems of Supplier and its Subcontractors, and other arrangements in place, to control risks; and (2) protection against such risks.   3. Supplier shall remove all of the Confidential Information of the Purchaser and its Affiliates from any media taken out of service and shall destroy or securely erase such media in a manner designed to protect against unauthorized access to or use of any such Confidential Information in connection with such destruction or erasure.   4. In the event Supplier becomes aware of any Security Breach, Supplier shall (i) as promptly as practicable (and, in any event, within 24 hours) notify Purchaser of such Security Breach, (ii) perform a root cause analysis thereon; (iii) investigate such Security Breach and report its findings to Purchaser; (iv) provide Purchaser with a remediation plan for its approval to address the Security Breach and prevent any further incidents; (v) once approved, remediate such Security Breach in accordance with such approved plan; (vi) conduct a forensic investigation to determine what systems, data and information have been affected by such Security Breach and provide all of the results and related reporting to Purchaser for its review; and (vii) cooperate with Purchaser and, at Purchaser’s request, any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach. If Supplier does not provide to Purchaser the results and related reporting associated with its forensic investigation or Purchaser determines that such information is not sufficient, then Supplier shall allow Purchaser and its designees to conduct a forensic investigation of the Security Breach. Supplier shall use commercially reasonable efforts to preserve all evidence relating to the Security Breach until Purchaser and its designees have completed such forensic investigation or confirmed to Supplier that it waives its right to conduct such an investigation. To the extent Supplier is unable to preserve any evidence relating to the Security Breach, Supplier shall create and maintain forensic copies of all such evidence and supporting documentation reasonably necessary for the investigation and prosecution of claims relating to such Security Breach. Supplier will be responsible for the costs and expenses associated with the performance of its obligations in this GCC Sub-Clause 17.9 and Supplier shall reimburse Purchaser on demand for all Notification Related Costs incurred by Purchaser arising out of or in connection with any such Security Breach, except to the extent the Security Breach is caused by the acts or omissions of Purchaser. Without limiting the foregoing and notwithstanding anything herein to the contrary, Purchaser shall make the final decision on notifying any third party of the Security Breach, and the implementation of any other remedies, including the remediation plan.   5. Supplier acknowledges that its violation of this GCC Clause 17 may cause irreparable harm, the amount of which would be impossible to estimate, thus making any remedy at law or in damages inadequate. Supplier therefore agrees that Purchaser shall have the right to apply to any court or administrative body of competent jurisdiction for and be granted an injunction or similar order compelling specific performance by Supplier of its obligations under the Contract. Purchaser shall not be required to post any bond or other security in connection with any such injunction.   6. The above provisions of this GCC Clause 17 shall not in any way modify any undertaking of confidentiality given by either of the parties to this Contract prior to the date of the Contract in respect of the System or Services, or any part thereof.   7. The provisions of this GCC Clause 17: (i) will apply after the date of the Contract to any Confidential Information disclosed or made available to the Receiving Party before and after the date of the Contract and (ii) will continue and must be maintained from the date of the Contract through the expiration or earlier termination of the Contract and (a) with respect to trade secrets, until such trade secrets no longer qualify as trade secrets under Applicable Law; (b) with respect to Personal Information disclosed by the Disclosing Party, in perpetuity; and (c) with respect to all other Confidential Information, for a period equal to three (3) years after termination of the parties’ relationship under the Contract or such longer period as may be **specified in the PCC**. | |

**E. Supply, Installation, Testing,   
Commissioning, and Acceptance of the System**

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| 1. **Representatives** | * 1. Project Manager   If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Purchaser shall appoint and notify the Supplier in writing of the name of the Project Manager. The Purchaser may from time to time appoint some other person as the Project Manager in place of the person previously so appointed and shall give a notice of the name of such other person to the Supplier without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the System. Such appointment shall take effect only upon receipt of such notice by the Supplier. Subject to the extensions and/or limitations **specified in the PCC** (if any), the Project Manager shall have the authority to represent the Purchaser on all day-to-day matters relating to the System or arising from the Contract, and shall normally be the person giving or receiving notices on behalf of the Purchaser pursuant to GCC Clause 4. |
|  | * 1. Supplier’s Representative      1. If the Supplier’s Representative is not named in the Contract, then within fourteen (14) days of the Effective Date, the Supplier shall appoint the Supplier’s Representative and shall request the Purchaser in writing to approve the person so appointed. The request must be accompanied by a detailed curriculum vitae for the nominee, as well as a description of any other System or non-System responsibilities the nominee would retain while performing the duties of the Supplier’s Representative. If the Purchaser does not object to the appointment within fourteen (14) days, the Supplier’s Representative shall be deemed to have been approved. If the Purchaser objects to the appointment within fourteen (14) days giving the reason therefore, then the Supplier shall appoint a replacement within fourteen (14) days of such objection in accordance with this GCC Sub-Clause 18.2.1.      2. Subject to the extensions and/or limitations **specified in the PCC** (if any), the Supplier’s Representative shall have the authority to represent the Supplier on all day-to-day matters relating to the System or arising from the Contract, and shall normally be the person giving or receiving notices on behalf of the Supplier pursuant to GCC Clause 4.      3. The Supplier shall not revoke the appointment of the Supplier’s Representative without the Purchaser’s prior written consent, which shall not be unreasonably withheld. If the Purchaser consents to such an action, the Supplier shall appoint another person of equal or superior qualifications as the Supplier’s Representative, pursuant to the procedure set out in GCC Sub-Clause 18.2.1.      4. The Supplier’s Representative and staff are obliged to work closely with the Purchaser’s Project Manager and staff, act within their own authority, and abide by directives issued by the Purchaser that are consistent with the terms of the Contract. The Supplier’s Representative is responsible for managing the activities of the Supplier’s personnel and any subcontracted personnel.      5. The Supplier’s Representative may, subject to the approval of the Purchaser, at any time delegate to any person any of the powers, functions, and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Supplier’s Representative and shall specify the powers, functions, and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until the notice of it has been delivered.      6. Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with GCC Sub-Clause 18.2.5 shall be deemed to be an act or exercise by the Supplier’s Representative.   2. Objections and Removals      1. If the Purchaser finds that any of the Supplier’s personnel has committed serious misconduct or has been charged with having committed a criminal action, then the Supplier shall remove such person from work on the Purchaser’s account.      2. If the Purchaser has reasonable cause to be dissatisfied with the performance of any of the Supplier’s personnel, the Purchaser may by notice to the Supplier request the replacement of any representative or person employed by the Supplier in the execution of the Contract who, in the reasonable opinion of the Purchaser and for reasons that are not unlawful are not in the best interests of the Purchaser. After receipt of such notice, the Supplier will immediately suspend such person’s assignment to the Purchaser’s account and promptly investigate the matter. If the Supplier is not able to address the matter to the Purchaser’s reasonable satisfaction within five (5) days, then Supplier shall remove such person from work on the Purchaser’s account.      3. If any representative or person employed by the Supplier is removed in accordance with GCC Sub-Clauses 18.3.1 or 18.3.2, the Supplier shall, where required, promptly appoint a replacement. |
| 1. **Project Plan** | * 1. In close cooperation with the Purchaser and based on the Preliminary Project Plan included in the Supplier’s Bid, the Supplier shall develop a Project Plan encompassing the activities specified in the Contract. The contents of the Project Plan shall be as **specified in the PCC** and/or Purchaser’s Requirements. |
|  | * 1. The Supplier shall formally present to the Purchaser the Project Plan in accordance with the procedure **specified in the PCC**.   2. If required, the impact on the Implementation Schedule of modifications agreed during finalization of the Agreed and Finalized Project Plan shall be incorporated in the Contract by amendment, in accordance with GCC Clauses 39 and 40.   3. The Supplier shall undertake to supply, install, test, and commission the System in accordance with the Agreed and Finalized Project Plan and the Contract.   4. The Progress and other reports **specified in the PCC** shall be prepared by the Supplier and submitted to the Purchaser in the format and frequency specified in the Purchaser’s Requirements. |
| 1. **Subcontracting** | * 1. Appendix 3 (List of Approved Subcontractors) to the Contract specifies critical items of supply or services and a list of Subcontractors for each item that are considered acceptable by the Purchaser. If no Subcontractors are listed for an item in Appendix 3, then, except as provided in GCC Clause 20.3, Supplier may not subcontract such item. Approval by the Purchaser of a Subcontractor(s) shall not relieve the Supplier from any of its obligations, duties, or responsibilities under the Contract. |
|  | * 1. The Supplier may, at its discretion, select and employ Subcontractors for such critical items from those Subcontractors listed pursuant to GCC Sub-Clause 20.1. If the Supplier wishes to employ a Subcontractor not so listed, or subcontract an item not so listed, it must seek the Purchaser’s prior approval under GCC Sub-Clause 20.3.   2. For items for which pre-approved Subcontractor lists have not been specified in Appendix 3 to the Contract, the Supplier may employ such Subcontractors as it may select, provided: (i) the Supplier notifies the Purchaser in writing at least twenty-eight (28) days prior to the proposed mobilization date for such Subcontractor; and (ii) by the end of this period either the Purchaser has granted its approval in writing or fails to respond. The Supplier shall not engage any Subcontractor to which the Purchaser has objected in writing prior to the end of the notice period. The absence of a written objection by the Purchaser during the above specified period shall constitute formal acceptance of the proposed Subcontractor. Except to the extent that it permits the deemed approval of the Purchaser of Subcontractors not listed in the relevant Appendix of the Agreement, nothing in this Clause, however, shall limit the rights and obligations of either the Purchaser or Supplier as they are specified in GCC Sub-Clauses 20.1 and 20.2, in the PCC, or in Appendix 3 of the Contract. |
| 1. **Design and Engineering** | * 1. Technical Specifications and Drawings      1. The Supplier shall execute the basic and detailed design and the implementation activities necessary for successful Installation of the System in compliance with the provisions of the Contract or, where not so specified, in accordance with good industry practice. |
|  | The Supplier shall be responsible for any discrepancies, errors or omissions in the specifications, drawings, and other technical documents that it has prepared, whether such specifications, drawings, and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors, or omissions are not because of inaccurate information furnished in writing to the Supplier by or on behalf of the Purchaser.   * + 1. The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification, or other document, or any modification of such design, drawings, specification, or other documents provided or designated by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Project Manager.   1. Codes and Standards   Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of Bid submission shall apply unless otherwise **specified in the PCC**. During Contract execution, any changes in such codes and standards shall be applied after approval by the Purchaser and shall be treated in accordance with GCC Sub-Clause 39.3.   * 1. Approval/Review of Technical Documents by the Project Manager      1. The Supplier shall prepare and furnish to the Project Manager the documents as **specified in the PCC** for the Project Manager’s approval or review.   Any part of the System covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager’s approval of these documents.  GCC Sub-Clauses 21.3.2 through 21.3.7 shall apply to those documents requiring the Project Manager’s approval, but not to those furnished to the Project Manager for its review only.   * + 1. Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager’s approval in accordance with GCC Sub-Clauses 21.3.1, the Project Manager shall either return one copy of the document to the Supplier with its approval endorsed on the document or shall notify the Supplier in writing of its disapproval of the document and the reasons for disapproval and the modifications that the Project Manager proposes. If the Project Manager fails to take such action within the fourteen (14) days, then the document shall be deemed to have been approved by the Project Manager.     2. The Project Manager shall not disapprove any document except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good industry practice.     3. If the Project Manager disapproves the document, the Supplier shall modify the document and resubmit it for the Project Manager’s approval in accordance with GCC Sub-Clause 21.3.2. If the Project Manager approves the document subject to modification(s), the Supplier shall make the required modification(s), and the document shall then be deemed to have been approved, subject to GCC Sub-Clause 21.3.5. The procedure set out in GCC Sub-Clause 21.3.2 through 21.3.4 shall be repeated, as appropriate, until the Project Manager approves such documents.     4. If any dispute occurs between the Purchaser and the Supplier in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) to a document that cannot be settled between the parties within a reasonable period, then, in case Appendix 2 of the Agreement names an Adjudicator, such dispute may be referred to the Adjudicator for determination in accordance with GCC Sub-Clause 6.1 (Adjudicator). If such dispute is referred to an Adjudicator, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Supplier shall proceed with the Contract in accordance with the Project Manager’s instructions, provided that if the Adjudicator upholds the Supplier’s view on the dispute and if the Purchaser has not given notice under GCC Sub-Clause 6.1.2, then the Supplier shall be reimbursed by the Purchaser for any additional, reasonable costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Adjudicator shall decide, and the Time for Achieving Operational Acceptance shall be extended in accordance with GCC Clause 40 (Extension of Time for Achieving Operational Acceptance).     5. The Project Manager’s approval, with or without modification of the document furnished by the Supplier, shall not relieve the Supplier of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager or inaccurate information furnished in writing to the Supplier by or on behalf of the Purchaser.     6. The Supplier shall not depart from any approved document unless the Supplier has first submitted to the Project Manager an amended document and obtained the Project Manager’s approval of the document, pursuant to the provisions of this GCC Sub-Clause 21.3.7. If the Project Manager requests any change in any already approved document and/or in any document based on such an approved document, the provisions of GCC Clause 39 (Changes to the System) shall apply to such request. |
| 1. **Procurement, Delivery, and Transport** | * 1. Subject to related Purchaser's responsibilities pursuant to GCC Clauses 10 and 14, the Supplier shall manufacture or procure and transport all the Information Technologies, Materials, and other Goods in an expeditious and orderly manner to the Project Site. |
|  | * 1. Delivery of the Information Technologies, Materials, and other Goods shall be made by the Supplier in accordance with the Purchaser’s Requirements.   2. Early or partial deliveries require the explicit written consent of the Purchaser, which consent shall not be unreasonably withheld.   3. Transportation      1. The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during shipment. The packing, marking, and documentation within and outside the packages shall comply strictly with the Purchaser’s instructions to the Supplier.      2. The Supplier will bear responsibility for and cost of transport to the Project Sites in accordance with the terms and conditions used in the specification of prices in the Price Schedules, including the terms and conditions of the associated Incoterms.      3. Unless otherwise **specified in the PCC**, the Supplier shall be free to use transportation through carriers registered in any eligible country and to obtain insurance from any eligible source country.   4. Unless otherwise **specified in the PCC**, the Supplier will provide the Purchaser with shipping and other documents, as specified below:      1. For Goods supplied from outside the Purchaser’s Country:   Upon shipment, the Supplier shall notify the Purchaser and the insurance company contracted by the Supplier to provide cargo insurance by telex, cable, facsimile, electronic mail, or EDI with the full details of the shipment. The Supplier shall promptly send the following documents to the Purchaser by mail or courier, as appropriate, with a copy to the cargo insurance company:   1. two copies of the Supplier’s invoice showing the description of the Goods, quantity, unit price, and total amount; 2. usual transportation documents; 3. insurance certificate; 4. certificate(s) of origin; and 5. estimated time and point of arrival in the Purchaser’s Country and at the site.    * 1. For Goods supplied locally (i.e., from within the Purchaser’s country):   Upon shipment, the Supplier shall notify the Purchaser by telex, cable, facsimile, electronic mail, or EDI with the full details of the shipment. The Supplier shall promptly send the following documents to the Purchaser by mail or courier, as appropriate:   1. two copies of the Supplier’s invoice showing the Goods’ description, quantity, unit price, and total amount; 2. delivery note, railway receipt, or truck receipt; 3. certificate of insurance; 4. certificate(s) of origin; and 5. estimated time of arrival at the site.    1. Customs Clearance 6. The Purchaser will bear responsibility for, and cost of, customs clearance into the Purchaser's country in accordance the particular Incoterm(s) used for Goods supplied from outside the Purchaser’s country in the Price Schedules referred to by Article 2 of the Contract Agreement. 7. At the request of the Purchaser, the Supplier will make available a representative or agent during the process of customs clearance in the Purchaser's country for Goods supplied from outside the Purchaser's country. In the event of delays in customs clearance that are the fault of the Purchaser:    * 1. the Supplier shall be entitled to an extension in the Time for Achieving Operational Acceptance, pursuant to GCC Clause 40;      2. the Contract Price shall be adjusted to compensate the Supplier for any additional, reasonable storage charges that the Supplier incurs as a result of the delay. |
| 1. **Product Upgrades** | * 1. At any point during performance of the Contract, should technological advances be introduced by the Supplier for Information Technologies originally offered by the Supplier in its Bid and still to be delivered, the Supplier shall be obligated to offer to the Purchaser the latest versions of the available Information Technologies having equal or better performance or functionality at the same or lesser unit prices, pursuant to GCC Clause 39 (Changes to the System). |
|  | * 1. At any point during performance of the Contract, for Information Technologies still to be delivered, the Supplier will also pass on to the Purchaser any cost reductions and additional and/or improved support and facilities that it offers to other clients of the Supplier in the Purchaser’s Country, pursuant to GCC Clause 39 (Changes to the System).   2. During performance of the Contract, the Supplier shall provide to the Purchaser all new versions, releases, and updates of Standard Software, as well as related documentation and technical support services, within thirty (30) days of their availability from the Supplier to other clients of the Supplier in the Purchaser’s Country, and no later than twelve (12) months after they are released in the country of origin. In no case will the prices for these Software exceed those quoted by the Supplier in the Recurrent Costs tables in its Bid.   3. During the Warranty Period, unless otherwise **specified in the PCC,** the Supplier will provide at no additional cost to the Purchaser all new versions, releases, and updates for all Standard Software that are used in the System, within thirty (30) days of their availability from the Supplier to other clients of the Supplier in the Purchaser’s country, and no later than twelve (12) months after they are released in the country of origin of the Software.   4. The Purchaser shall use commercially reasonable efforts to introduce all new versions, releases or updates of the Software within eighteen (18) months of receipt of a production-ready copy of the new version, release, or update, provided that the new version, release, or update does not adversely affect System operation or performance, require extensive reworking of the System or require the purchase of new or updated Information Technologies. In cases where the new version, release, or update adversely affects System operation or performance, requires extensive reworking of the System, or requires the purchase of new of updated Information Technologies, the Supplier shall continue to support and maintain, or arrange for the support and maintenance of, the version or release previously in operation for as long as necessary to allow introduction of the new version, release, or update. In no case shall the Supplier stop supporting or maintaining a version or release of the Software less than twenty-four (24) months after the Purchaser receives a production-ready copy of a subsequent version, release, or update. |
| 1. **Implementation, Installation, and Other Services** | * 1. The Supplier shall provide all Services specified in the Contract and Agreed and Finalized Project Plan in accordance with the highest standards of professional competence and integrity. |
|  | * 1. Prices charged by the Supplier for Services, if not included in the Contract, shall be agreed upon in advance by the parties (including, but not restricted to, any prices submitted by the Supplier in the Recurrent Cost Schedules of its Bid) and shall not exceed the prevailing rates charged by the Supplier to other purchasers in the Purchaser’s Country for similar services. |
| 1. **Inspections and Tests** | * 1. The Purchaser or its representative shall have the right to inspect and/or test any components of the System, as specified in the Purchaser’s Requirements, to confirm their good working order and/or conformity to the Contract at the point of delivery and/or at the Project Site. |
|  | * 1. The Purchaser or its representative shall be entitled to attend any such inspections and/or tests of the components, provided that the Purchaser shall bear all costs and expenses incurred in connection with such attendance, including but not limited to all inspection agent fees, travel, and related expenses.   2. Should the inspected or tested components fail to conform to the Contract, the Purchaser may reject the component(s), and the Supplier shall either replace the rejected component(s), or make alterations as necessary so that it meets the Contract requirements free of cost to the Purchaser.   3. The Project Manager may require the Supplier to carry out any inspection and/or test not specified in the Contract, provided that the Supplier’s commercially reasonable costs and expenses incurred in the carrying out of such inspection and/or test shall be added to the Contract Price. Further, if such inspection and/or test impedes the progress of work on the System and/or the Supplier’s performance of its other obligations under the Contract, the Time for Achieving Operational Acceptance and the other obligations so affected shall be extended in accordance with GCC Clause 40 (Extension of Time for Achieving Operational Acceptance).   4. If any dispute shall arise between the parties in connection with or caused by an inspection and/or with regard to any component to be incorporated in the System that cannot be settled amicably between the parties within a reasonable period of time, either party may invoke the process pursuant to GCC Clause 6 (Settlement of Disputes), starting with referral of the matter to the Adjudicator in case an Adjudicator is named in Appendix 2 of the Agreement. |
| 1. **Installation of the System** | * 1. As soon as the System, or any Subsystem, has, in the opinion of the Supplier, been delivered, Pre-commissioned, and made ready for Commissioning and Operational Acceptance Testing in accordance with the Purchaser’s Requirements, the PCC and the Agreed and Finalized Project Plan, the Supplier shall so notify the Purchaser in writing. |
|  | * 1. The Project Manager shall, within fourteen (14) days after receipt of the Supplier’s notice under GCC Sub-Clause 26.1, either issue an Installation Certificate in the form specified in the Bidding Forms Section in the Bidding Documents, stating that the System, or major component or Subsystem (if Acceptance by major component or Subsystem is specified pursuant to the PCC GCC Sub-Clause 27.2.1), has achieved Installation by the date of the Supplier’s notice under GCC Sub-Clause 26.1, or notify the Supplier in writing of any defects and/or deficiencies, including, but not limited to, defects or deficiencies in the interoperability or integration of the various components and/or Subsystems making up the System. The Supplier shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies that the Project Manager has notified the Supplier of. The Supplier shall then promptly carry out retesting of the System or Subsystem and, when in the Supplier’s opinion the System or Subsystem is ready for Commissioning and Operational Acceptance Testing, notify the Purchaser in writing, in accordance with GCC Sub-Clause 26.1. The procedure set out in this GCC Sub-Clause 26.2 shall be repeated, as necessary, until an Installation Certificate is issued.   2. If the Project Manager fails to issue the Installation Certificate and fails to inform the Supplier of any defects and/or deficiencies within fourteen (14) days after receipt of the Supplier’s notice under GCC Sub-Clause 26.1, or if the Purchaser puts the System or a Subsystem into production operation, then the System (or Subsystem) shall be deemed to have achieved successful Installation as of the date of the Supplier’s notice or repeated notice, or when the Purchaser put the System into production operation, as the case may be. |
| 1. **Commissioning and Operational Acceptance** | * 1. Commissioning      1. Commissioning of the System (or Subsystem if specified pursuant to the PCC GCC Sub-Clause 27.2.1) shall be commenced by the Supplier:  1. immediately after the Installation Certificate is issued by the Project Manager, pursuant to GCC Sub-Clause 26.2; or 2. as otherwise specified in the Purchaser’s Requirements or the Agreed and Finalized Project Plan; or 3. immediately after Installation is deemed to have occurred, under GCC Sub-Clause 26.3. |
|  | * + 1. The Purchaser shall supply the operating and technical personnel and all materials and information reasonably required to enable the Supplier to carry out its obligations with respect to Commissioning.   Production use of the System or Subsystem(s) shall not commence prior to the start of formal Operational Acceptance Testing.   * 1. Operational Acceptance Tests      1. The Operational Acceptance Tests (and repeats of such tests) shall be the primary responsibility of the Purchaser (in accordance with GCC Sub-Clause 10.9), but shall be conducted with the full cooperation of the Supplier during Commissioning of the System (or major components or Subsystem[s] if **specified in the PCC** and supported by the Purchaser’s Requirements), to ascertain whether the System (or major component or Subsystem[s]) conforms to the Purchaser’s Requirements and meets the standard of performance quoted in the Supplier’s Bid, including, but not restricted to, the functional and technical performance requirements. The Operational Acceptance Tests during Commissioning will be conducted as **specified in the PCC**, the Purchaser’s Requirements and/or the Agreed and Finalized Project Plan.   At the Purchaser’s discretion, Operational Acceptance Tests may also be performed on replacement Goods, upgrades and new version releases, and Goods that are added or field-modified after Operational Acceptance of the System.   * + 1. If for reasons solely attributable to the Purchaser, the Operational Acceptance Test of the System (or Subsystem[s] or major components, pursuant to the PCC GCC Sub-Clause 27.2.1) cannot be successfully completed within the period **specified in the PCC**, from the date of Installation or any other period agreed upon in writing by the Purchaser and the Supplier, the Supplier shall be deemed to have fulfilled its obligations with respect to the technical and functional aspects of the Technical Specifications, PCC and/or the Agreed and Finalized Project Plan, and GCC Sub-Clause 28.2 and 28.3 shall not apply.   1. Operational Acceptance      1. Subject to GCC Sub-Clause 27.4 (Partial Acceptance) below, Operational Acceptance shall occur in respect of the System, when  1. the Operational Acceptance Tests, as specified in the Purchaser’s Requirements, and/or PCC and/or the Agreed and Finalized Project Plan have been successfully completed; or 2. the Operational Acceptance Tests have not been successfully completed or have not been carried out for reasons that are attributable to the Purchaser within the period from the date of Installation or any other agreed-upon period as specified in GCC Sub-Clause 27.2.2 above; or 3. the Purchaser has put the System into production or use for sixty (60) consecutive days. If the System is put into production or use in this manner, the Supplier shall notify the Purchaser and document such use.    * 1. At any time after any of the events set out in GCC Sub-Clause 27.3.1 have occurred, the Supplier may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate.      2. After consultation with the Purchaser, and within fourteen (14) days after receipt of the Supplier’s notice, the Project Manager shall: 4. issue an Operational Acceptance Certificate; or 5. notify the Supplier in writing of any defect or deficiencies or other reason for the failure of the Operational Acceptance Tests; or 6. issue the Operational Acceptance Certificate, if the situation covered by GCC Sub-Clause 27.3.1 (b) arises.    * 1. The Supplier shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies and/or other reasons for the failure of the Operational Acceptance Test that the Project Manager has notified the Supplier of. Once such remedies have been made by the Supplier, the Supplier shall notify the Purchaser, and the Purchaser, with the full cooperation of the Supplier, shall use all reasonable endeavors to promptly carry out retesting of the System or Subsystem. Upon the successful conclusion of the Operational Acceptance Tests, the Supplier shall notify the Purchaser of its request for Operational Acceptance Certification, in accordance with GCC Sub-Clause 27.3.3. The Purchaser shall then issue to the Supplier the Operational Acceptance Certification in accordance with GCC Sub-Clause 27.3.3 (a), or shall notify the Supplier of further defects, deficiencies, or other reasons for the failure of the Operational Acceptance Test. The procedure set out in this GCC Sub-Clause 27.3.4 shall be repeated, as necessary, until an Operational Acceptance Certificate is issued.      2. If the System or Subsystem fails to pass the Operational Acceptance Test(s) in accordance with GCC Sub-Clause 27.2, then either: 7. the Purchaser may terminate the Contract, pursuant to GCC Sub-Clause 41.2.2 (c);   or   1. if the failure to achieve Operational Acceptance within the specified time period is a result of the failure of the Purchaser to fulfill its obligations under the Contract, then the Supplier shall be deemed to have fulfilled its obligations with respect to the relevant technical and functional aspects of the Contract, and GCC Sub-Clause 30.3 shall not apply.    * 1. If within fourteen (14) days after receipt of the Supplier’s notice the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Supplier in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Supplier shall send a notification to the Project Manager informing that the fourteen (14) day period has expired. If the Project Manager fails to take action as set forth above in this GCC Sub-Clause 27.3.6 within three (3) days from the receipt of such notice, the System or Subsystem shall be deemed to have been accepted as of the date of the Supplier’s said notice.    1. Partial Acceptance       1. If so, specified in the PCC GCC Sub-Clause 27.2.1, Installation and Commissioning shall be carried out individually for each identified major component or Subsystem(s) of the System. In this event, the provisions in the Contract relating to Installation and Commissioning, including the Operational Acceptance Test, shall apply to each such major component or Subsystem individually, and Operational Acceptance Certificate(s) shall be issued accordingly for each such major component or Subsystem of the System, subject to the limitations contained in GCC Sub-Clause 27.4.2.       2. The issuance of Operational Acceptance Certificates for individual major components or Subsystems pursuant to GCC Sub-Clause 27.4.1 shall not relieve the Supplier of its obligation to obtain an Operational Acceptance Certificate for the System as an integrated whole (if so, specified in the PCC GCC Sub-Clauses 12.1 and 27.2.1) once all major components and Subsystems have been supplied, installed, tested, and commissioned.       3. In the case of minor components for the System that by their nature do not require Commissioning or an Operational Acceptance Test (e.g., minor fittings, furnishings or site works, etc.), the Project Manager shall issue an Operational Acceptance Certificate within fourteen (14) days after the fittings and/or furnishings have been delivered and/or installed or the site works have been completed. The Supplier shall, however, use all reasonable endeavors to promptly remedy any defects or deficiencies in such minor components detected by the Purchaser or Supplier. |

**F. Guarantees and Liabilities**

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| 1. **Operational Acceptance Time Guarantee** | * 1. The Supplier guarantees that it shall complete the Supply, Installation, Commissioning, and achieve Operational Acceptance of the System (or Subsystems, pursuant to the PCC GCC Sub-Clause 27.2.1) within the time periods specified in the Implementation Schedule in the Purchaser’s Requirements and/or the Agreed and Finalized Project Plan pursuant to GCC Sub-Clause 8.2, or within such extended time to which the Supplier shall be entitled under GCC Clause 40 (Extension of Time for Achieving Operational Acceptance). |
|  | * 1. If the Supplier fails to supply, install, commission, and achieve Operational Acceptance of the System (or Subsystems pursuant to the PCC GCC Sub-Clause 27.2.1) within the time for achieving Operational Acceptance specified in the Implementation Schedule in the Purchaser’s Requirements or the Agreed and Finalized Project Plan, or any extension of the time for achieving Operational Acceptance previously granted under GCC Clause 40 (Extension of Time for Achieving Operational Acceptance), the Supplier shall pay to the Purchaser liquidated damages at the rate **specified in the PCC** as a percentage of the Contract Price, or the relevant part of the Contract Price if a Subsystem has not achieved Operational Acceptance. The aggregate amount of such liquidated damages shall in no event exceed the amount specified in the PCC (“the Maximum”). Once the Maximum is reached, the Purchaser may terminate the Contract, pursuant to GCC Sub-Clause 41.2.2.   2. Unless otherwise **specified in the PCC**, liquidated damages payable under GCC Sub-Clause 28.2 shall apply only to the failure to achieve Operational Acceptance of the System (and Subsystems) as specified in the Implementation Schedule in the Purchaser’s Requirements and/or Agreed and Finalized Project Plan. This GCC Sub-Clause 28.3 shall not limit, however, any other rights or remedies the Purchaser may have under the Contract for other delays.   3. If liquidated damages are claimed by the Purchaser for the System (or Subsystem), the Supplier shall have no further liability whatsoever to the Purchaser in respect to the Operational Acceptance time guarantee for the System (or Subsystem). However, the payment of liquidated damages shall not in any way relieve the Supplier from any of its obligations to complete the System or from any other of its obligations and liabilities under the Contract. |
| 1. **Representations and Warranties** | * 1. The Supplier represents and warrants that the System, including all Information Technologies, Materials, and other Goods supplied and Services provided, shall be free from defects in the design, engineering, Materials, and workmanship, including any defects that prevent the System and/or any of its components from fulfilling the Purchaser’s Requirements or that limit the performance, reliability, or extensibility of the System and/or Subsystems. Exceptions and/or limitations, if any, to this warranty with respect to Software (or categories of Software), shall be as **specified in the PCC**. In addition to the representations and warranties set forth in the Contract, the Supplier shall pass-through or assign to the Purchaser the rights Supplier obtains from the manufacturers and/or vendors of any Information Technologies, Materials, and other Goods supplied and Services provided hereunder (including warranty and indemnification rights). |
|  | * 1. The Supplier represents and warrants that the Information Technologies, Materials, and other Goods supplied under the Contract (i) are new, unused, and incorporate all recent improvements in design that materially affect the System’s or Subsystem’s ability to fulfill the Purchaser’s Requirements, and (ii) shall be free and clear of all liens, restrictions, claims, charges, security interests, or other encumbrances of any nature whatsoever.   2. The Supplier represents and warrants that: (i) all Goods components to be incorporated into the System form part of the Supplier’s and/or Subcontractor’s current product lines, (ii) they have been previously released to the market, and (iii) those specific items **identified in the PCC** (if any) have been in the market for at least the minimum periods **specified in the PCC**.   3. Reserved.   4. The Supplier represents and warrants that it does and shall at all times comply with all Applicable Laws.   5. The Supplier represents and warrants that no Malware or similar items are coded into or will be introduced into the System or Services and that the System and Services do not and will not contain any Malware. If Malware is found to have been introduced into System or Services, Supplier shall diligently work to eliminate the effects of the Malware at Supplier’s expense, unless otherwise directed by Purchaser.   6. The Supplier represents and warrants that it has the skill and experience necessary to fully perform its obligations under the Contract and that the System and Services will be rendered by competent professionals who possess the degree of skill and care that is required by current good and sound professional procedures and practices in accordance with industry standards and will conform to requirements under the Contract.   7. Supplier represents and warrants that (i) it is a corporation, partnership or limited liability company (as applicable) duly organized, validly subsisting or existing and in good standing under the laws of the jurisdiction of its organization, (ii) it is duly qualified or licensed to conduct business and is in good standing under the laws of each jurisdiction where such qualification is required, (iii) has the full right, power and authority, including all necessary licenses, visas, work permits or other governmental approvals, to enter into and perform its obligations under the Contract, provide the System and Services hereunder, and to conduct its business as now conducted and hereafter contemplated to be conducted and is in compliance with its articles of incorporation and bylaws, partnership agreement or limited liability company agreement (as applicable), (iv) the Contract has been duly executed and delivered by Supplier and constitutes a legal, valid and binding obligation of Supplier, which is enforceable against Supplier in accordance with its terms, and (v) it is not under any obligation of a contractual or other nature to any person or entity which is inconsistent or in conflict with the Contract or which would prevent, limit or impair in any way the performance by Supplier of its obligations under the Contract.   8. Supplier represents and warrants that it will promptly pay all of Supplier’s personnel and Subcontractors. If any of Supplier’s personnel or Subcontractors files a lien or threatens to file a lien against Purchaser’s or any of its Affiliates’ property for the System or Services provided or otherwise in connection with the transactions contemplated by the Contract, Supplier shall immediately obtain a release of any such lien and post a bond indemnifying Purchaser and its Affiliates, as applicable, against all loss by reason of such lien.   9. The Warranty Period shall commence from the date of Operational Acceptance of the System (or of any major component or Subsystem for which separate Operational Acceptance is provided for in the Contract) and shall extend for the length of time **specified in the PCC**, and, for the avoidance of doubt, such time period shall survive termination of the Contract unless expiration of the Warranty Period occurs prior to Contract termination.   10. If during the Warranty Period any defect as described in GCC Sub-Clause 29.1 should be found in the design, engineering, Materials, and workmanship of the Information Technologies and other Goods supplied or of the Services provided by the Supplier, the Supplier shall promptly, at its sole cost, and at Purchaser’s direction, either repair, replace, or otherwise make good (as the Supplier shall, at its discretion, determine) such defect as well as any damage to the System caused by such defect. Any defective Information Technologies or other Goods that have been replaced by the Supplier shall remain the property of the Supplier.   11. The Supplier shall not be responsible for the repair, replacement, or making good of any defect, or of any damage to the System, to the extent arising out of or resulting from any of the following causes:  1. operation or maintenance of the System by the Purchaser in a manner not permitted in the Contract; 2. normal wear and tear; 3. use of the System with items not supplied by the Supplier, unless otherwise identified in the Purchaser’s Requirements or such items were recommended or approved by the Supplier or were necessary for the System to achieve its commercial function); or 4. material modifications made to the System by the Purchaser, or a third party, not recommended or approved by the Supplier.    1. The Supplier’s obligations under GCC Sub-Clause 29.1 shall not apply to: 5. any materials that are normally consumed in operation or have a normal life shorter than the Warranty Period; or 6. any designs, specifications, or other data designed, supplied, or specified by or on behalf of the Purchaser or any matters for which the Supplier has disclaimed responsibility, in accordance with GCC Sub-Clause 21.1.2.    1. The Purchaser shall give the Supplier a notice promptly following the discovery of such defect, stating the nature of any such defect. The Purchaser shall afford the Supplier with a reasonable opportunity for the Supplier to inspect any such defect. Upon Supplier’s reasonable request, the Purchaser shall afford the Supplier with access to the System and the site solely as required to enable the Supplier to perform its obligations under this GCC Clause 29.    2. The Supplier may, with the consent of the Purchaser, remove from the site any Information Technologies and other Goods that are defective, if the nature of the defect, and/or any damage to the System caused by the defect, is such that repairs cannot be expeditiously carried out at the site. If the repair, replacement, or making good is of such a character that it may affect the efficiency of the System, the Purchaser may give the Supplier notice requiring that tests of the defective part be made by the Supplier immediately upon completion of such remedial work, whereupon the Supplier shall carry out such tests.   If such part fails the tests, the Supplier shall carry out further repair, replacement, or making good (as the case may be) until that part of the System passes such tests. The tests shall be agreed upon by the Purchaser and the Supplier.   * 1. If the Supplier fails to commence the work necessary to remedy such defect or any damage to the System caused by such defect within the time period **specified in the PCC,** the Purchaser may, following notice to the Supplier, proceed to do such work or contract a third party (or parties) to do such work, and the reasonable costs incurred by the Purchaser in connection with such work shall be paid to the Purchaser by the Supplier or may be deducted by the Purchaser from any monies due the Supplier or claimed under the Performance Security.   2. If the System or Subsystem cannot be used by reason of such defect and/or making good of such defect, the Warranty Period for the System shall be extended by a period equal to the period during which the System or Subsystem could not be used by the Purchaser because of such defect and/or making good of such defect.   3. Items substituted for defective parts of the System during the Warranty Period shall be covered by the Warranty for the remainder of the Warranty Period applicable for the part replaced or three (3) months, whichever is greater.   4. At the request of the Purchaser and without prejudice to any other rights and remedies that the Purchaser may have against the Supplier under the Contract, the Supplier will pass-through or assign to Purchaser (to the extent such rights and remedies are capable of being passed-through or assigned) and offer all possible assistance to the Purchaser to seek warranty services or remedial action from any subcontracted third-party producers or licensor of Goods included in the System, including without limitation assignment or transfer in favor of the Purchaser of the benefit of any warranties given by such producers or licensors to the Supplier. |
| 1. **Functional Guarantees** | * 1. The Supplier guarantees that, once the Operational Acceptance Certificate(s) has been issued, the System represents a complete, integrated solution to the requirements set forth in the Purchaser’s Requirements and it conforms to all other aspects of the Contract. The Supplier acknowledges that GCC Clause 27 regarding Commissioning and Operational Acceptance governs how technical conformance of the System to the Contract requirements will be determined. |
|  | * 1. If, for reasons attributable to the Supplier, the System does not conform to the Purchaser’s Requirements or does not conform to all other aspects of the Contract, the Supplier shall at its cost and expense make such changes, modifications, and/or additions to the System as may be necessary to conform to the Purchaser’s Requirements and meet all functional and performance standards. The Supplier shall notify the Purchaser upon completion of the necessary changes, modifications, and/or additions and shall request the Purchaser to repeat the Operational Acceptance Tests until the System achieves Operational Acceptance.   2. If the System (or Subsystem[s]) fails to achieve Operational Acceptance, the Purchaser may terminate the Contract, pursuant to GCC Sub-Clause 41.2.2 (c), and require the Supplier to forfeit the Supplier’s Performance Security in accordance with GCC Sub-Clause 13.3 in partial compensation for the extra costs and delays likely to result from this failure. |
| 1. **Intellectual Property Rights Warranty** | * 1. The Supplier hereby represents and warrants that:  1. the System as supplied, installed, tested, and accepted; 2. use of the System in accordance with the Contract; and 3. copying of the Software and Materials provided to the Purchaser in accordance with the Contract   do not and will not infringe, misappropriate or violate any Intellectual Property Rights held by any third party and that it has all necessary rights or at its sole expense shall have secured in writing all transfers of rights and other consents necessary to make the assignments, licenses, and other transfers of Intellectual Property Rights and the warranties set forth in the Contract, and for the Purchaser to own or exercise all Intellectual Property Rights as provided in the Contract. Without limitation, the Supplier shall secure all necessary written agreements, consents, and transfers of rights from its employees and other persons or entities whose services are used for development of the System, including the Custom Software and Custom Materials. |
| 1. **Intellectual Property Rights Indemnity** | * 1. The Supplier shall indemnify and hold harmless the Purchaser Indemnitees, on demand, from and against any and all Losses incurred by any of them, and shall defend in accordance with GCC Sub-Clause 32.7 the Purchaser Indemnitees against all Claims, arising from or in connection with any infringement, misappropriation or violation, or alleged infringement, misappropriation or violation, of any Intellectual Property Rights by reason of:  1. Installation of the System by the Supplier or the use of the System, including the Software and Materials, in the country where the site is located; 2. copying of the Software and Materials provided the Supplier in accordance with the Contract; and 3. sale of the products produced by the System in any country, except to the extent that such Losses arise as a result of the Purchaser’s breach of GCC Sub-Clause 32.2. |
|  | * 1. Such indemnity shall not cover any use of the System, including the Materials, to the extent such use is other than for the purpose indicated by or to be reasonably inferred from the Contract, or to the extent any infringement, misappropriation or violation results from the use of the System, or any products of the System produced thereby in association or combination with any other goods or services not supplied, recommended or authorized by the Supplier (unless such association or combination was necessary for the System to achieve its commercial function), where the infringement, misappropriation or violation arises because of such association or combination and not because of use of the System in its own right.   2. Such indemnity shall also not apply to the extent any Claim of infringement, misappropriation or violation:  1. is asserted by a parent, subsidiary, or Affiliate of the Purchaser’s organization; 2. is a direct result of a design mandated by the Purchaser’s Requirements and the possibility of such infringement, misappropriation or violation was duly noted in the Supplier’s Bid; or 3. is a direct result of the alteration of the System, including the Materials, in a manner not permitted under the Contract by the Purchaser or any persons other than the Supplier or a person authorized by the Supplier. |
|  | * 1. The Purchaser shall indemnify and hold harmless the Supplier Indemnitees, on demand, from and against any and all Losses incurred by any of them, and shall defend in accordance with GCC Sub-Clause 32.7 the Supplier Indemnitees against all Claims, arising from or in connection with any infringement, misappropriation or violation, or alleged infringement, misappropriation or violation, of any Intellectual Property Rights arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided to the Supplier in connection with this Contract by the Purchaser or any persons (other than the Supplier) contracted by the Purchaser, except to the extent that such Losses arise as a result of the Supplier’s breach of GCC Sub-Clause 32.5. |
|  | * 1. Such indemnity shall not cover  1. any use of the design, data, drawing, specification, or other documents or materials, other than for the purpose indicated by or to be reasonably inferred from the Contract; 2. any infringement, misappropriation or violation resulting from the use of the design, data, drawing, specification, or other documents or materials, or any products produced thereby, in association or combination with any other Goods or Services not provided by the Purchaser or any other person (other than the Supplier) contracted by the Purchaser, where the infringement, misappropriation or violation arises because of such association or combination and not because of the use of the design, data, drawing, specification, or other documents or materials in its own right.    1. Such indemnities shall also not apply to the extent any Claim of infringement, misappropriation or violation: 3. is asserted by a parent, subsidiary, or Affiliate of the Supplier’s organization; 4. is caused by the alteration, by the Supplier, or any persons contracted by the Supplier, of the design, data, drawing, specification, or other documents or materials provided to the Supplier by the Purchaser or any persons contracted by the Purchaser.    1. If any Claim is made against an indemnified party arising out of the matters referred to in GCC Sub-Clause 9.5, GCC Sub-Clause 32.1, GCC Sub-Clause 32.4, GCC Sub-Clause 36.2 or GCC Sub-Clause 36.3, the indemnified party shall promptly give the indemnifying party notice of such Claim (but the failure to timely notify will only relieve the indemnifying party of its obligation to the extent that the defense of such Claim is prejudiced by such failure), and the indemnifying party shall at its own expense and in the indemnified party’s name defend such Claim and conduct any negotiations for the settlement of any such Claim. If the indemnifying party fails to promptly notify the indemnified party after receipt of such notice that it intends to defend any such Claim, then the indemnified party shall be free to conduct the same on its own behalf, at the expense of the indemnifying party. Unless the indemnifying party has so failed to notify the Supplier, the indemnified party shall make no admission that may be prejudicial to the defense of any such Claim. The indemnified party shall, at the indemnifying party’s request, afford all available assistance to the indemnifying party in defending such Claim and shall be reimbursed by the indemnifying party for all reasonable expenses incurred in so doing. In any such Claim, the indemnified party shall have the right to retain its own counsel, but the fees and expense of such counsel shall be at the expense of such indemnified party unless (a) the indemnifying party and the indemnified party shall have mutually agreed otherwise, or (b) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential conflicting interests between them. The indemnifying party shall not, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding (i) if such settlement: (A) involves any form of relief other than the payment of money, (B) involves any finding or admission of any violation of any law or any of the rights of any person or entity, or (C) has any adverse effect on any other Claims that have been or may be made against the indemnified party, or (ii) if such settlement involves only the payment of money, unless it includes an unconditional release of such indemnified party of all liability on all indemnified Claims that are the subject of such proceeding. |
| 1. **Limitation of Liability** | * 1. Provided the following does not exclude or limit any liabilities of either party in ways not permitted by Applicable Law, and except as provided in GCC Sub-Clause 33.2: |
|  | 1. neither party shall be liable to the other party, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, including loss of use, loss of production or loss of profits; even if such party has been advised of the possibility of such losses or damages; provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser; and 2. the aggregate liability of each party arising under or relating to the Contract, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price.    1. The limitations on the types and amounts of damages in GCC Sub-Clause 33.1 shall not apply to: 3. damages covered under the party’s indemnification obligations; 4. damages caused by or arising out of intentional misconduct, gross negligence, theft or fraud; 5. damages caused by Supplier’s abandonment or repudiation of the Contract; 6. damages arising from a violation by either party of the provisions of GCC Clause 17 (Confidential Information and Data Security), including Notification Related Costs; and 7. damages arising from the failure to comply with Applicable Law. |

**G. Risk Distribution**

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| 1. **Transfer of Ownership** | * 1. With the exception of Software and Materials, the ownership of the Information Technologies and other Goods shall be transferred to the Purchaser at the time of Delivery or otherwise under terms that may be agreed upon and specified in the Contract. |
|  | * 1. Ownership and the terms of usage of the Software and Materials supplied under the Contract shall be governed by GCC Clause 15 (Intellectual Property Rights) and any elaboration in the Purchaser’s Requirements.   2. Ownership of the Supplier’s Equipment used by the Supplier and its Subcontractors in connection with the Contract shall remain with the Supplier or its Subcontractors. |
| 1. **Care of the System** | * 1. The Purchaser shall become responsible for the care and custody of the System or Subsystems upon their Delivery. The Purchaser shall make good at its own cost any loss or damage that may occur to the System or Subsystems from any cause from the date of Delivery until the date of Operational Acceptance of the System or Subsystems, pursuant to GCC Clause 27 (Commissioning and Operational Acceptance), excepting such loss or damage arising from acts or omissions of the Supplier, its employees, or subcontractors.   2. If any loss or damage occurs to the System or any part of the System by reason of:  1. (insofar as they relate to the country where the Project Site is located) nuclear reaction, nuclear radiation, radioactive contamination, a pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance taken out under GCC Clause 37; 2. any use not in accordance with the Contract, by the Purchaser or any third party; 3. any use of or reliance upon any design, data, or specification provided or designated by or on behalf of the Purchaser, or any such matter for which the Supplier has disclaimed responsibility in accordance with GCC Sub-Clause 21.1.2,   the Purchaser shall pay to the Supplier all sums payable in respect of the System or Subsystems that have achieved Operational Acceptance, notwithstanding that the same be lost, destroyed, or damaged. If the Purchaser requests the Supplier in writing to make good any loss or damage to the System thereby occasioned, the Supplier shall make good the same at the cost of the Purchaser in accordance with GCC Clause 39. If the Purchaser does not request the Supplier in writing to make good any loss or damage to the System thereby occasioned, the Purchaser shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the System thereby lost, destroyed, or damaged, or, where the loss or damage affects a substantial part of the System, the Purchaser shall terminate the Contract pursuant to GCC Sub-Clause 41.1.   * 1. The Purchaser shall be liable for any loss of or damage to any Supplier’s Equipment which the Purchaser has authorized to locate within the Purchaser's premises for use in fulfillment of Supplier's obligations under the Contract, except where such loss or damage arises from acts or omissions of the Supplier, its employees, or subcontractors. |
| 1. **Loss of or Damage to Property; Accident or Injury to Workers; Indemnification** | * 1. The Supplier and each and every Subcontractor shall abide by the job safety, insurance, customs, and immigration measures prevalent, and laws in force, in the Purchaser’s Country.   2. The Supplier shall indemnify and hold harmless the Purchaser Indemnitees, on demand, from and against any and all Losses incurred by any of them, and shall defend in accordance with GCC Sub-Clause 32.7 the Purchaser Indemnitees against all Claims, arising from or in connection with the death or injury of any person or loss of or damage to any property arising from or in connection with the negligence of the Supplier or its Subcontractors, or their employees, officers, Affiliates or agents, except to the extent any injury, death, or property damage is caused by the negligence of the Purchaser, its contractors, employees, officers, or agents. |
|  | * 1. The Purchaser shall indemnify and hold harmless the Supplier Indemnitees from any Losses incurred by any of them, and shall defend in accordance with GCC Sub-Clause 32.7 the Supplier Indemnitees against all Claims, arising from or in connection with the death or personal injury of any person or loss of or damage to property of the Purchaser, other than the System not yet achieving Operational Acceptance, that is caused by fire, explosion, or any other perils, arising from or in connection with the negligence of the Purchaser, or its employees, officers, Affiliates or agents, and in excess of the amount recoverable from insurances procured under GCC Clause 37 (Insurances), except to the extent any injury, death, or property damage arising from such fire, explosion, or other perils is caused by the negligence of the Supplier, its Subcontractors, employees, officers, Affiliates or agents. |
|  | * 1. The party entitled to the benefit of an indemnity under this GCC Clause 36 shall take all commercially reasonable measures to mitigate any loss or damage that has occurred. If the party fails to take such measures, the other party’s liabilities shall be correspondingly reduced. |
| 1. **Insurances** | * 1. The Supplier shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurance set forth below. The identity of the insurers and the form of the policies shall be subject to the approval of the Purchaser, who should not unreasonably withhold such approval. |
|  | 1. Cargo Insurance During Transport 2. as applicable, 110 percent of the price of the Information Technologies and other Goods in a freely convertible currency, covering the Goods from physical loss or damage during shipment through receipt at the Project Site. 3. Installation “All Risks” Insurance 4. as applicable, 110 percent of the price of the Information Technologies and other Goods covering the Goods at the site from all risks of physical loss or damage (excluding only perils commonly excluded under “all risks” insurance policies of this type by reputable insurers) occurring prior to Operational Acceptance of the System. 5. Third-Party Liability Insurance 6. On terms as specified in the PCC, covering bodily injury or death suffered by third parties (including the Purchaser’s personnel) and loss of or damage to property (including the Purchaser’s property and any Subsystems that have been accepted by the Purchaser) occurring in connection with the supply and Installation of the Information System. 7. Automobile Liability Insurance 8. In accordance with the statutory requirements prevailing in the Purchaser’s Country, covering use of all vehicles used by the Supplier or its Subcontractors (whether or not owned by them) in connection with the execution of the Contract. 9. Other Insurance (if any), as **specified in the PCC.** |
|  | * 1. The Purchaser shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to GCC Sub-Clause 37.1, except for the Third-Party Liability, and the Supplier’s Subcontractors shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to GCC Sub-Clause 37.1 except for Cargo Insurance During Transport. All insurer’s rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.   2. The Supplier shall deliver to the Purchaser certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect.   3. The Supplier shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Supplier.   4. If the Supplier fails to take out and/or maintain in effect the insurance referred to in GCC Sub-Clause 37.1, the Purchaser may take out and maintain in effect any such insurance and may from time to time deduct from any amount due the Supplier under the Contract any premium that the Purchaser shall have paid to the insurer or may otherwise recover such amount as a debt due from the Supplier.   5. Unless otherwise provided in the Contract, the Supplier shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 37, and all monies payable by any insurers shall be paid to the Supplier. The Purchaser shall give to the Supplier all such reasonable assistance as may be required by the Supplier in connection with any claim under the relevant insurance policies. With respect to insurance claims in which the Purchaser’s interest is involved, the Supplier shall not give any release or make any compromise with the insurer without the prior written consent of the Purchaser. With respect to insurance claims in which the Supplier’s interest is involved, the Purchaser shall not give any release or make any compromise with the insurer without the prior written consent of the Supplier. |
| 1. **Force Majeure** | * 1. “Force Majeure” shall mean any event beyond the reasonable control of the Purchaser or of the Supplier, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected and shall include, without limitation, the following: |
|  | 1. war, hostilities, or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, and civil war; 2. rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, and terrorist acts; 3. confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler, or any other act or failure to act of any local state or national government authority; 4. strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague; 5. earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical disaster; 6. failure, by the Supplier, to obtain the necessary export permit(s) from the governments of the Country(s) of Origin of the Information Technologies or other Goods, or Supplier’s Equipment provided that the Supplier has made all reasonable efforts to obtain the required export permit(s), including the exercise of due diligence in determining the eligibility of the System and all of its components for receipt of the necessary export permits.    1. If either party is prevented, hindered, or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances of the event of Force Majeure within fourteen (14) days after the occurrence of such event.    2. The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party’s performance is prevented, hindered, or delayed. The Time for Achieving Operational Acceptance shall be extended in accordance with GCC Clause 40 (Extension of Time for Achieving Operational Acceptance).    3. The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect of the event of Force Majeure upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party’s right to terminate the Contract under GCC Sub-Clause 38.6.    4. No delay or nonperformance by either party to this Contract caused by the occurrence of any event of Force Majeure shall: 7. constitute a default or breach of the Contract; 8. (subject to GCC Sub-Clauses 35.2, 38.3, and 38.4) give rise to any claim for damages or additional cost or expense occasioned by the delay or nonperformance,   if, and to the extent that, such delay or nonperformance is caused by the occurrence of an event of Force Majeure.   * 1. If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the time period covered by the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which, either party may terminate the Contract by giving a notice to the other.   2. In the event of termination pursuant to GCC Sub-Clause 38.6, the rights and obligations of the Purchaser and the Supplier shall be as specified in GCC Sub-Clauses 41.1.2 and 41.1.3.   3. Notwithstanding GCC Sub-Clause 38.5, Force Majeure shall not apply to any obligation of the Purchaser to make payments to the Supplier under this Contract. |

**H. Change in Contract Elements**

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| 1. **Changes to the System** | * 1. Introducing a Change      1. Subject to GCC Sub-Clauses 39.2.5 and 39.2.7, the Purchaser shall have the right to propose, and subsequently require, the Project Manager to order the Supplier from time to time during the performance of the Contract to make any change, modification, addition, or deletion to, in, or from the System (interchangeably called “Change”), provided that such Change falls within the general scope of the System, does not constitute unrelated work, and is technically practicable, taking into account both the state of advancement of the System and the technical compatibility of the Change envisaged with the nature of the System as originally specified in the Contract. |
|  | A Change may involve, but is not restricted to, the substitution of updated Information Technologies and related Services in accordance with GCC Clause 23 (Product Upgrades). |
|  | * + 1. The Supplier may from time to time during its performance of the Contract propose to the Purchaser (with a copy to the Project Manager) any Change that the Supplier considers necessary or desirable to improve the quality or efficiency of the System. The Purchaser may at its discretion approve or reject any Change proposed by the Supplier.     2. Notwithstanding GCC Sub-Clauses 39.1.1 and 39.1.2, no change made necessary because of any default of the Supplier in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Achieving Operational Acceptance.     3. The procedure on how to proceed with and execute Changes is specified in GCC Sub-Clauses 39.2 and 39.3, and further details and Bidding Forms are provided in the Bidding Forms Section in the Bidding Documents.     4. Moreover, the Purchaser and Supplier will agree, during development of the Project Plan, to a date prior to the scheduled date for Operational Acceptance, after which the Purchaser’s Requirements for the System shall be “frozen.” Any Change initiated after this time will be dealt with after Operational Acceptance.   1. Changes Originating from Purchaser      1. If the Purchaser proposes a Change pursuant to GCC Sub-Clause 39.1.1, it shall send to the Supplier a “Request for Change Proposal,” requiring the Supplier to prepare and furnish to the Project Manager as soon as reasonably practicable a “Change Proposal,” which shall include the following:  1. brief description of the Change; 2. impact on the Time for Achieving Operational Acceptance; 3. detailed estimated cost of the Change; 4. effect on Functional Guarantees pursuant to GCC Clause 30 (if any); 5. effect on any other provisions of the Contract.    * 1. Prior to preparing and submitting the “Change Proposal,” the Supplier shall submit to the Project Manager a “Change Estimate Proposal,” which shall be an estimate of the cost of preparing the Change Proposal, plus a first approximation of the suggested approach and cost for implementing the changes. Upon receipt of the Supplier’s Change Estimate Proposal, the Purchaser shall do one of the following: 6. accept the Supplier’s estimate with instructions to the Supplier to proceed with the preparation of the Change Proposal 7. advise the Supplier of any part of its Change Estimate Proposal that is unacceptable and request the Supplier to review its estimate; 8. advise the Supplier that the Purchaser does not intend to proceed with the Change.    * 1. Upon receipt of the Purchaser’s instruction to proceed under GCC Sub-Clause 39.2.2 (a), the Supplier shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Sub-Clause 39.2.1. The Supplier, at its discretion, may specify a validity period for the Change Proposal, after which if the Purchaser and Supplier has not reached agreement in accordance with GCC Sub-Clause 39.2.6, then GCC Sub-Clause 39.2.7 shall apply.      2. The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If the nature of the Change is such that the Contract rates and prices are inequitable, the parties to the Contract shall agree on other specific rates to be used for valuing the Change.      3. If before or during the preparation of the Change Proposal it becomes apparent that the aggregate impact of compliance with the Request for Change Proposal and with all other Change Orders that have already become binding upon the Supplier under this GCC Clause 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement by more than fifteen (15) percent, the Supplier may give a written notice of objection to this Request for Change Proposal prior to furnishing the Change Proposal. If the Purchaser accepts the Supplier’s objection, the Purchaser shall withdraw the proposed Change and shall notify the Supplier in writing of its acceptance.      4. The Supplier’s failure to object to a Request for Change Proposal shall neither affect its right to object to any subsequent requested Changes or Change Orders, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Supplier represents.      5. Upon receipt of the Change Proposal, the Purchaser and the Supplier shall mutually agree upon all matters contained in the Change Proposal. Within fourteen (14) days after such agreement, the Purchaser shall, if it intends to proceed with the Change, issue the Supplier a Change Order. If the Purchaser is unable to reach a decision within fourteen (14) days, it shall notify the Supplier with details of when the Supplier can expect a decision. If the Purchaser decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Supplier accordingly. Under such circumstances, the Supplier shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Supplier in its Change Estimate Proposal submitted in accordance with GCC Sub-Clause 39.2.2.      6. If the Purchaser and the Supplier cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Achieving Operational Acceptance, or any other matters identified in the Change Proposal, the Change will not be implemented. However, this provision does not limit the rights of either party under GCC Clause 6 (Settlement of Disputes).    1. Changes Originating from Supplier   If the Supplier proposes a Change pursuant to GCC Sub-Clause 39.1.2, the Supplier shall submit to the Project Manager a written “Application for Change Proposal,” giving reasons for the proposed Change and including the information specified in GCC Sub-Clause 39.2.1. Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Sub-Clauses 39.2.6 and 39.2.7. However, should the Purchaser choose not to proceed or the Purchaser and the Supplier cannot come to agreement on the change during any validity period that the Supplier may specify in its Application for Change Proposal, the Supplier shall not be entitled to recover the costs of preparing the Application for Change Proposal, unless subject to an agreement between the Purchaser and the Supplier to the contrary. |
| 1. **Extension of Time for Achieving Operational Acceptance** | * 1. The time(s) for achieving Operational Acceptance specified in the Schedule of Implementation shall be extended if the Supplier is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following: |
|  | 1. any Change in the System as provided in GCC Clause 39 (Changes to the System); 2. any occurrence of Force Majeure as provided in GCC Clause 38 (Force Majeure); 3. default of the Purchaser; or 4. any other matter specifically mentioned in the Contract;   by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Supplier.   * 1. Except where otherwise specifically provided in the Contract, the Supplier shall submit to the Project Manager a notice of a claim for an extension of the time for achieving Operational Acceptance, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Purchaser and the Supplier shall agree upon the period of such extension. In the event that the Supplier does not accept the Purchaser’s estimate of a fair and reasonable time extension, the Supplier shall be entitled to refer the matter to the provisions for the Settlement of Disputes pursuant to GCC Clause 6.   2. The Supplier shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract. |
| 1. **Termination** | * 1. Termination for Purchaser’s Convenience |
|  | * + 1. The Purchaser may at any time terminate the Contract for any reason (including the expiration, suspension, or termination of the Threshold Program Grant Agreement in whole or in part in accordance with the terms of the Threshold Program Grant Agreement) by giving the Supplier a notice of termination that refers to this GCC Sub-Clause 41.1.     2. Upon receipt of the notice of termination under GCC Sub-Clause 41.1.1, the Supplier shall either as soon as reasonably practical or upon the date specified in the notice of termination:  1. cease all further work, except for such work as the Purchaser may specify in the notice of termination for the sole purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition; 2. terminate all subcontracts, except those to be assigned to the Purchaser pursuant to GCC Sub-Clause 41.1.2 (d) (ii) below; 3. remove all Supplier’s Equipment from the site, repatriate the Supplier’s and its Subcontractors’ personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind; 4. in addition, the Supplier, subject to the payment specified in GCC Sub-Clause 41.1.3, shall: 5. deliver to the Purchaser the parts of the System executed by the Supplier up to the date of termination; 6. to the extent legally possible, assign to the Purchaser all right, title, and benefit of the Supplier to the System, or Subsystem, as at the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the Supplier and its Subcontractors; 7. deliver to the Purchaser all drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the System.    * 1. In the event of termination of the Contract under GCC Sub-Clause 41.1.1 or when the Contract otherwise refers to this Sub-Clause 41.1.3, the Purchaser shall pay to the Supplier, as Supplier’s sole and exclusive remedy, the following amounts (if any): 8. the portion of the Contract Price that is properly attributable to the parts of the System executed by the Supplier as of the date of termination, as mutually agreed by the parties; 9. the costs reasonably incurred by the Supplier in the removal of the Supplier’s Equipment from the site and in the repatriation of the Supplier’s and its Subcontractors’ personnel; 10. the reasonable amounts to be paid by the Supplier to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges; 11. costs reasonably incurred by the Supplier in protecting the System and leaving the site in a clean and safe condition pursuant to GCC Sub-Clause 41.1.2 (a).     1. Termination for Supplier’s Default        1. The Purchaser, without prejudice to any other rights or remedies it may possess, may terminate the Contract for the following reasons by giving a notice of termination and its reasons therefore to the Supplier, referring to this GCC Sub-Clause 41.2: 12. if the Supplier becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Supplier is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Supplier takes or suffers any other analogous action in consequence of debt; 13. if the Supplier assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 42 (Assignment); or 14. if the Supplier, in the judgment of the Purchaser, has engaged in coercion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices, in competing for or in executing the Contract, including but not limited to willful misrepresentation of facts concerning ownership of Intellectual Property Rights in, or proper authorization and/or licenses from the owner to offer, the hardware, software, or materials provided under this Contract.     * 1. If the Supplier:   (a) has abandoned or repudiated the Contract;  (b) has without valid reason failed to commence work on the System promptly;  (c) has materially breached any term, condition, obligation or duty set forth in the Contract;  (d) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause; or  (e) refuses or is unable to provide sufficient Materials, Services, or labor to execute and complete the System in the manner specified in the Agreed and Finalized Project Plan furnished under GCC Clause 19 at rates of progress that give reasonable assurance to the Purchaser that the Supplier can attain Operational Acceptance of the System by the Time for Achieving Operational Acceptance as extended;  then the Purchaser may, without prejudice to any other rights it may possess under the Contract, give a notice to the Supplier stating the nature of the default and requiring the Supplier to remedy the same. If the Supplier fails to remedy the same within fourteen (14) days of its receipt of such notice, then the Purchaser may terminate the Contract forthwith by giving a notice of termination to the Supplier that refers to this GCC Sub-Clause 41.2.   * + 1. Upon receipt of the notice of termination under GCC Sub-Clauses 41.2.1 or 41.2.2, the Supplier shall, either immediately or upon such date as is specified in the notice of termination:   (a) cease all further work, except for such work as the Purchaser may specify in the notice of termination for the sole purpose of protecting that part of the System already executed or any work required to leave the site in a clean and safe condition;  (b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to GCC Sub-Clause 41.2.3 (d) below;  (c) deliver to the Purchaser the parts of the System executed by the Supplier up to the date of termination;  (d) to the extent legally possible, assign to the Purchaser all right, title and benefit of the Supplier to the System or Subsystems as at the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the Supplier and its Subcontractors;  (e) deliver to the Purchaser all drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as at the date of termination in connection with the System.   * + 1. Upon a Supplier’s default under GCC Sub-Clause 41.2.1 or 41.2.2, the Purchaser may enter upon the site, expel the Supplier, and complete the System itself or by employing any third party. Upon completion of the System or at such earlier date as the Purchaser thinks appropriate, the Purchaser shall give notice to the Supplier that such Supplier’s Equipment will be returned to the Supplier at or near the site and shall return such Supplier’s Equipment to the Supplier in accordance with such notice. The Supplier shall thereafter without delay and at its cost remove or arrange removal of the same from the site.     2. Subject to GCC Sub-Clause 41.2.6, the Supplier shall be entitled to be paid the Contract Price attributable to the portion of the System executed as at the date of termination, as mutually agreed by the parties, and the reasonable costs, if any, incurred in protecting the System and in leaving the site in a clean and safe condition pursuant to GCC Sub-Clause 41.2.3 (a). Any sums due the Purchaser from the Supplier accruing prior to the date of termination shall be deducted from such amount.     3. If the Purchaser completes the System, the cost of completing the System by the Purchaser shall be factored into the sum that the Supplier is entitled to be paid, pursuant to GCC Sub-Clause 41.2.5. If the sum that the Supplier is entitled to be paid, pursuant to GCC Sub-Clause 41.2.5, plus the reasonable costs incurred by the Purchaser in completing the System, exceeds the Contract Price, the Supplier shall be liable for such excess, which shall be paid within thirty (30) days of the Purchaser’s request. If such excess is greater than the sums due the Supplier under GCC Sub-Clause 41.2.5, the Supplier shall pay the balance to the Purchaser within thirty (30) days of the Purchaser’s request, and if such excess is less than the sums due the Supplier under GCC Sub-Clause 41.2.5, the Purchaser shall pay the balance to the Supplier.   1. Termination by Supplier      1. If the Purchaser has failed to pay the Supplier any material and undisputed sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause **pursuant to the PCC**, or commits a material breach of the Contract, the Supplier may give a notice to the Purchaser that: requires payment of such sum, with interest on this sum as stipulated in GCC Sub-Clause 12.3; requires approval of such invoice or supporting documents, or specifies the breach; and requires the Purchaser to remedy the same, as the case may be. If the Purchaser fails to pay such sum together with such interest, fails to approve such invoice or supporting documents, or give its reasons for withholding such approval, or fails to remedy the breach within fourteen (14) days after receipt of the Supplier’s notice, then the Supplier may terminate the Contract forthwith by giving a notice of termination to the Purchaser that refers to this GCC Sub-Clause 41.3.1. For these purposes, “material” sums mean a percentage of the Contract Price as **specified in the PCC**.      2. The Supplier may terminate the Contract immediately by giving a notice to the Purchaser to that effect, referring to this GCC Sub-Clause 41.3.2, if the Purchaser becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Purchaser takes or suffers any other analogous action in consequence of debt.      3. If the Contract is terminated under GCC Sub-Clauses 41.3.1 or 41.3.2, then the Supplier shall immediately:   (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;  (b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to Sub-Clause 41.3.3 (d) (ii);  (c) remove all Supplier’s Equipment from the site and repatriate the Supplier’s and its Subcontractors’ personnel from the site.  (d) In addition, the Supplier, subject to the payment specified in GCC Sub-Clause 41.3.4, shall:  (i) deliver to the Purchaser the parts of the System executed by the Supplier up to the date of termination;  (ii) to the extent legally possible, assign to the Purchaser all right, title, and benefit of the Supplier to the System, or Subsystems, as of the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the Supplier and its Subcontractors;  (iii) deliver to the Purchaser all drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the System.   * + 1. If the Contract is terminated under GCC Sub-Clause 41.3.1 or 41.3.2, the Purchaser shall pay to the Supplier all payments specified in GCC Sub-Clause 41.1.3. The Supplier acknowledges and agrees that the Purchaser shall not be liable for loss of profit or any damages sustained by the Supplier arising out of, in connection with, or in consequence of such termination.     2. Termination by the Supplier pursuant to this GCC Sub-Clause 41.3 is without prejudice to any other rights or remedies of the Supplier that may be exercised in lieu of or in addition to rights conferred by GCC Sub-Clause 41.3.   1. In this GCC Clause 41, the expression “portion of the System executed” shall include all work executed, Services provided, and all Information Technologies, or other Goods acquired (or subject to a legally binding obligation to purchase) by the Supplier and used or intended to be used for the purpose of the System, up to and including the date of termination.   2. In this GCC Clause 41, in calculating any monies due from the Purchaser to the Supplier, account shall be taken of any sum previously paid by the Purchaser to the Supplier under the Contract, including any advance payment paid pursuant to the PCC GCC Sub-Clause 12.1. |
| 1. **Assignment** | * 1. Neither party shall assign the whole or any part of the Contract, or any benefit or interest in or under the Contract, without the consent of the other party; provided that, the Purchaser may assign the whole or any part of the Contract, or any benefit or interest in or under the Contract, to another person or entity of the Government (or another entity designated by the Government) without the consent of the Supplier. The Purchaser shall use commercially reasonable efforts to notify the Supplier as soon as reasonably practicable of any such assignment. Any attempted assignment that does not comply with the terms of this GCC Sub-Clause 42.1 shall be null and void.   2. In the event of any assignment of the Contract by the Purchaser in accordance with GCC Sub-Clause 42.1:  1. the Supplier shall obtain a replacement Performance Security according to the terms of GCC Sub-Clause 13.3 in an amount equal to that of the then currently issued Performance Security naming the Purchaser’s assignee as beneficiary, and shall deliver this replacement Performance Security to the Purchaser on or before the date the assignment becomes effective at which time the Purchaser shall concurrently return the original Performance Security to the Supplier; 2. in the event any advance payment guarantee is outstanding at the time of assignment, the Supplier shall obtain a replacement advance payment guarantee according to the terms of GCC Sub-Clause 13.2 in an amount equal to that of the then currently issued advance payment guarantee naming the Purchaser’s assignee as beneficiary, and shall deliver this replacement advance payment guarantee to the Purchaser on or before the date the assignment becomes effective at which time the Purchaser shall concurrently return the original advance payment guarantee to the Supplier. |
| 1. **MCC Required Provisions; Flow Through Provisions** | * 1. The provisions set forth in Annex A (Additional Provisions) form an integral part of this Contract. For the avoidance of doubt, the Parties agree and understand that the provisions set forth in Annex A reflect certain requirements of the Government and the Purchaser under the terms of the Threshold Program Grant Agreement that are required to be transferred onto any supplier or subcontractor who partakes in procurement or subsequent contracts in which MCC Funding is involved and that, as with the other clauses under this Contract, the provisions of Annex A are binding obligations under this Contract.   2. In any subcontract or sub-award entered into by the Supplier, as permitted by the terms of this Contract, the Supplier shall ensure the inclusion of all the provisions contained in Annex A in any agreement related to such subcontract or sub-award. |
| 1. **Fraud and Corruption Requirements** | * 1. MCC requires that the Purchaser and any other beneficiaries of MCC Funding, including any Bidders, Suppliers, Subcontractors under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts.   MCC’s Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations (“MCC’s AFC Policy”) is applicable to all procurements and contracts involving MCC Funding and can be found on the MCC website ([www.mcc.gov](http://www.mcc.gov)) . MCC’s AFC Policy requires that companies and entities receiving MCC funds acknowledge notice of MCC’s AFC Policy and certify to the Purchaser that they have acceptable commitments and procedures in place to address the potential for fraud and corruption.  Any entity receiving an award (including, but not limited to, both contracts and grants) of MCC Funding of over $500,000 will be required to certify to the Purchaser that they will adopt and implement a code of business ethics and conduct within ninety (90) days of Contract award. Such entity will also include the substance of this clause in subcontracts that have a value in excess of $500,000. Information regarding the establishment of business ethics and conduct programs can be obtained from numerous sources, including but not limited to:  <http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>;  <https://www.cipe.org/wp-content/uploads/2014/01/CIPE_Anti-Corruption_Compliance_Guidebook.pdf>   1. For purposes of the Contract, the terms set forth below are defined as follows, and sometimes referred to collectively in this document as “Fraud and Corruption”: 2. “coercion” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party, to improperly influence the actions of a party in connection with the implementation of any contract supported, in whole or in part, with MCC Funding, including such actions taken in connection with a procurement process or the execution of a contract; 3. “collusion” means a tacit or explicit agreement between two or more parties to engage in coercion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or a prohibited practice, including any such agreement designed to fix, stabilize, or manipulate prices or to otherwise deprive the Purchaser of the benefits of free and open competition; 4. “corruption” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of a public official, Purchaser staff, MCC staff, consultants, or employees of other entities engaged in work supported, in whole or in part, with MCC Funding, including such work involving taking or reviewing selection decisions, otherwise advancing the selection process or contract execution, or the making of any payment to any third party in connection with or in furtherance of a contract.; 5. “fraud” means any act or omission, including any misrepresentation, that knowingly or recklessly misleads or attempts to mislead a party in order to obtain a financial or other benefit in connection with the implementation of any contract supported, in whole or in part, with MCC Funding, including any act or omission designed to influence (or attempt to influence) improperly a selection process or the execution of a contract, or to avoid (or attempt to avoid) an obligation; 6. “obstruction of investigation into allegations of fraud or corruption” means any act taken in connection with the implementation of any contract supported, in whole or in part, with MCC Funding: (a) that results in the deliberate destroying, falsifying, altering or concealing of evidence or making false statement(s) to investigators or any official in order to impede an investigation into allegations of coercion, corruption, fraud, or prohibited practice; or (b) that threatens, harasses, or intimidates any party to prevent him or her from either disclosing his or her knowledge of matters relevant to an investigation or from pursuing the investigation; or (c) that is intended to impede the conduct of an inspection and/or the exercise of audit rights of MCC and/or the Office of the Inspector General (OIG) responsible for MCC provided under the Compact, a Threshold Program agreement, or related agreements. 7. “prohibited practice” means any action that violates Section E (Compliance with Anti-Corruption Legislation), Section F (Compliance with Anti-Money Laundering Legislation), and Section G (Compliance with Terrorist Financing Legislation and Other Restrictions) of the Annex A (Additional Provisions) attached to this Contract. 8. MCC may cancel any portion or all of the MCC Funding allocated to the Contract if it determines at any time that representatives of the Purchaser, the Supplier or any other beneficiary of the MCC Funding were engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices during the selection process or the performance of the Contract, or another MCC-funded contract, without the Purchaser, the Supplier or such other beneficiary having taken timely and appropriate action satisfactory to MCC to remedy the situation. 9. MCC and the Purchaser may pursue sanction of the Supplier, including declaring the Supplier ineligible, either indefinitely or for a stated period of time, to be awarded any MCC-funded contract if at any time either MCC or the MFK determines that the Supplier has, directly or through an agent, engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or a prohibited practice in competing for, or in performance of, the Contract or another MCC-funded contract. 10. If the Purchaser or MCC determines that the Supplier, any Subcontractor, any of the Supplier’s personnel, or any agent or Affiliate of any of them has, directly or indirectly, engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices, in competing for or in the performance of the Contract, then the Purchase or MCC may, by notice, immediately terminate the Contract, and the provisions of GCC Sub-Clause 41.1 shall apply. 11. Should any of the Supplier’s personnel be determined to have engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices during the competition for or execution of the Contract, but the Purchaser or MCC determines not to terminate the Contract in accordance with the immediately preceding sub-paragraph, then the relevant Supplier’s personnel shall be removed in accordance with GCC Sub-Clause 18.3.1. |
| 1. **Combatting of Trafficking in Persons** | * 1. MCC, along with other United States Government entities, has adopted a zero-tolerance policy with regard to Trafficking in Persons (“TIP”) through its Counter-Trafficking in Persons Policy. In pursuance of this policy:  1. **Defined Terms.** For purposes of the application and interpretation of this Clause: 2. The terms “coercion,” “commercial sex act,” “debt bondage,” “employee,” “forced labor,” “fraud,” “involuntary servitude,” and “sex trafficking” have the meanings given such terms in the MCC Counter-Trafficking in Persons Policy (“MCC C-TIP Policy”) and such definitions are incorporated by reference into this Sub-Clause; and   (ii) “Trafficking in Persons” means (A) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; (B) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.   1. **Prohibition**. Suppliers, Subcontractors, , or any agent or Affiliate of any of them, and any of their respective personnel shall not engage in any form of Trafficking in Persons during the period of performance of any contract funded, in whole or in part, with MCC Funding and must also comply with those prohibitions described in U.S. laws and Executive Orders regarding TIP, including using misleading recruitment practices; charging employees recruitment fees; or destroying, concealing, confiscating, or otherwise denying access by an employee to the employee’s identity documents.   (c) **Supplier Requirements.**   1. Each Supplier, Subcontractor, or any agent or Affiliate of any of them shall:   a. notify its employees of the MCC C-TIP Policy and of the actions that will be taken against their respective personnel for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and  b. take appropriate action, up to and including termination, against its respective personnel that violate the prohibitions set out in this policy.  (ii) Each Supplier shall:  a. certify that it is not engaged in, facilitating, or allowing any activities constituting Trafficking in Persons, or related activities also prohibited under this policy, for the duration of the Contract;  b. provide assurances that activities constituting Trafficking in Persons, or related activities also prohibited under this policy, will not be tolerated on the part of its personnel, Subcontractors or any agent or Affiliate of any of them (as the case may be), or their respective employees; and  c. acknowledge that engaging in such activities is cause for suspension or termination of employment or of the Contract.  (iii) A Bidder, Supplier, Subcontractor, or any agent or Affiliate of any of them shall inform the MFK within 24 hours of:  a. any information it receives from any source (including law enforcement) that alleges its personnel, subcontractor, sub-consultant, or the employee of a subcontractor or sub-consultant, has engaged in conduct that violates this policy; and  b. any actions taken against any of their respective personnel, pursuant to these requirements.  (d) **Remedies.** Once the incident has been confirmed and depending on the severity of each case, the MFK will apply remedies, which could include any, all, or any combination of the following:  (i) the MFK requiring the Supplier to remove the involved personnel, Subcontractor or any of its involved personnel, or any involved agent or Affiliate;  (ii) the MFK requiring the termination of a subcontract or sub-award;  (iii) suspension of Contract payments until the breach is remedied to the satisfaction of the MFK;  (iv) loss of incentive payment, consistent with the incentive plan set out in the Contract, if any, for the performance period in which the MFK determined non-compliance;  (v) the MFK pursuing sanctions against the Supplier, including declaring the Supplier ineligible, either indefinitely or for a stated period of time, to be awarded any MCC-funded contract;  (vi) termination of the Contract by the MFK for default or cause in accordance with the termination clause of the Contract; and   * 1. the MFK directing the Supplier to provide reasonable financial support or restitution to the victim(s) of any such incident, in each case in accordance with the Supplier’s applicable TIP risk management plan, and/or based on a final judicial or administrative determination issued pursuant to Applicable Law or the findings of an investigation conducted (directly or through a third party) by the MFK. |
| 1. **Gender and Social Inclusion** | * 1. The Supplier shall ensure that its activities under the Contract comply with the MCC Gender Policy[[4]](#footnote-4) and the MFK’s Social and Gender Integration Plan, as relevant to the activities performed under this Contract. The MCC Gender Policy requires that activities funded by MCC specifically address social and gender inequalities to ensure opportunities for the participation and benefit of women and vulnerable groups, as well as to ensure that its activities do not cause significant negative social and gender impacts. MCC also requires equitable opportunities for women and other disadvantaged groups to participate in and benefit from MCC funded activities, including in project-related employment. |
| 1. **Prohibition of Harmful Child Labor** | * 1. The Supplier shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development. The Supplier will identify the presence of all persons under the age of eighteen (18). Where Applicable Law does not specify a minimum age, the Supplier shall ensure that children aged below 15 are not employed to perform work under this contract. Where Applicable Law diverges from this specified age standard, the higher age should apply. Children under the age of eighteen (18) will not be employed in hazardous work. All work of persons under the age of eighteen (18) will be subject to an appropriate risk assessment and regular monitoring of health, working conditions, and hours of work. |
| 1. **Prohibition of Sexual Harassment** | * 1. The Supplier, including all Sub-Consultants and any Personnel, shall prohibit, and refrain from, sexual harassment behaviors directed at Threshold Program Grant Agreement beneficiaries, partners, stakeholders, MFK employees, MFK consultants, MCC personnel, or MCC consultants. Sexual harassment is defined in the *Guidance Note to MCAs on Sexual Harassment* available at [www.mcc.gov](http://www.mcc.gov) . Examples of sexual harassment include, but are not limited to, the following behaviors: unwelcome sexual advances; requests for sexual favors; verbal or physical harassment of a sexual nature; or offensive remarks about a person’s sex, sexual orientation or non-conformity with gender stereotypes. The Supplier shall put in place an incident referral and reporting plan with respect to the provision of the Services to support a safe and respectful work environment, in form and substance satisfactory to the MFK and MCC. The Supplier shall be responsible for ensuring that all Sub-Consultant Personnel understand and operate in accordance the requirements of this Clause in order to assure a safe, respectful, and harassment free work environment. The MFK may investigate (either directly or through a third party) allegations of sexual harassment as it determines appropriate. The Supplier shall fully cooperate with any investigation conducted by the MFK regarding breach of this provision. The Supplier will ensure that any incident of sexual harassment investigated by the MFK has been resolved to the MFK and MCC’s satisfaction. |
| 1. **Non-Discrimination and Equal Opportunity** | * 1. The Supplier shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. Personal characteristics include sex, race, nationality, ethnic, social and indigenous origin, religion or belief, disability, age, sexual orientation, and gender identity. The Supplier shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where the relevant labor laws provide for non-discrimination in employment, the Supplier shall comply with such laws. When the relevant labor laws are silent on non-discrimination in employment, the Supplier shall ensure compliance with this Clause’s requirements by implementing a policy in form and substance satisfactory to the MFK and MCC. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination. |
| 1. **Contractor Past Performance System** | * 1. The Supplier acknowledges that during the performance of the Contract the Employer shall maintain a performance record of the Supplier in accordance with MCC’s Contractor Past Performance Reporting System, as described on MCC’s website. The Supplier shall provide timely information or input to, and otherwise respond to requests for input or information. |

## Section VII. Particular Conditions of Contract (“PCC”)

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**Particular Conditions of Contract**

The following Particular Conditions of Contract (“PCC”) shall supplement or amend the General Conditions of Contract (“GCC”). Whenever there is a conflict, the provisions of the PCC shall prevail over those in the General Conditions of Contract. For the purposes of clarity, any referenced GCC clause numbers are indicated in the left column of the PCC.

**A. Contract and Interpretation**

1. **Definitions (GCC Clause 1)**

|  |  |
| --- | --- |
| GCC 1.1 (i) | “Threshold Program Grant Agreement” means the Millennium Challenge Threshold between the Government and the United States of America, acting through MCC, executed on September 2017that sets forth the general terms and conditions on which MCC will provide funding of up to US$ 49 Millionto the Government for a Millennium Challenge Account program to advance economic growth and reduce poverty in Kosovo. |
| GCC 1.1 (n) | ***“The Contract shall continue in force until the Information System and all the Services have been provided unless the Contract is terminated earlier in accordance with the terms set out in the Contract.”*** |
| GCC 1.1 (y) | “Government” means the Government of *Kosovo* |
| GCC 1.1 (kk) | The applicable edition of the Procurement Guidelines is:  *MCC Program Procurement Guidelines* as amended on February 10, 2021, which is provided ontheMCC website: <http://www.mcc.gov/ppg>. |
| GCC 1.1 (tt) | The Post-Warranty Services Period is ***24 months*** starting with the completion of the Warranty Period. |
| GCC 1.1 (ww) | The Project Manager is: *[insert:* ***name and/or the official title of Project Manager****].* |
| GCC 1.1 (xx) | The Project Site is **as specified in the Implementation Schedule in the Technical Requirements Section**. |
| GCC 1.1 (yy) | The Purchaser is: Millennium Challenge Account *–Millennium Foundation Kosovo* |
| GCC 1.1 (bbb) | The Purchaser’s Country is: Kosovo*.* |

1. **Contract Documents (GCC Clause 2)**

|  |  |
| --- | --- |
| GCC 2 | ***There are no Particular Conditions of Contract applicable to GCC Clause 2.*** |

1. **Interpretation (GCC Clause 3)**

|  |  |
| --- | --- |
| GCC 3.1.1 | The Contract's governing language is *:* ***English***. |
| GCC 3.5 | The Incoterms edition is “I**ncoterms 2010”** |

1. **Notices (GCC Clause 4)**

|  |  |
| --- | --- |
| GCC 4.3 | Address of the Project Manager: *[as appropriate, insert:* ***personal delivery, postal, cable, telegraph, telex, facsimile, electronic mail****]*  Fallback address of the Purchaser:  Millennium Foundation Kosovo  Migjeni Str, no. 21 / Ex-Ljubljana Building / Floor 09,  Prishtina 10000, Kosovo  Email: procurement@millenniumkosovo.org |

1. **Governing Law (GCC Clause 5)**

|  |  |
| --- | --- |
| GCC 5.1 | The Contract shall be interpreted in accordance with the laws of*:* ***Kosovo****.* |

1. **Settlement of Disputes (GCC Clause 6)**

|  |  |
| --- | --- |
| GCC 6.1.4 | ***Not applicable.*** |
| GCC 6.2.3 | *If the Supplier is foreign (including a Joint Venture or Association when at least one partner is foreign), the Contract shall contain the following provision:* Arbitration proceedings shall be conducted in accordance with the rules of arbitration of ***the International Chamber of Commerce (ICC)*** These rules, in the version in force at the time of the request for arbitration, will be deemed to form part of this Contract.  *If the Supplier is a national of the Purchaser’s Country, the Contract shall contain the following provision:* Any dispute between the Purchaser and a Supplier arising in connection with the present Contract shall be referred to arbitration in accordance with the laws of the Purchaser’s Country. |

**B. Subject Matter of Contract**

1. **Scope of the System (GCC Clause 7)**

|  |  |
| --- | --- |
| GCC 7.1 | ***The Supplier’s obligations are in accordance with GCC 7.1.*** |
| GCC 7.3 | N/A |

1. **Time for Commencement and Operational Acceptance (GCC Clause 8)**

|  |  |
| --- | --- |
| GCC 8.1 | The Supplier shall commence work on the System within ***14*** days from the Effective Date of the Contract. |
| GCC 8.2 | Operational Acceptance will occur on or before Kick-off date+310 days, but no later than 1st of September 2022. |

1. **Supplier’s Responsibilities (GCC Clause 9)**

|  |  |
| --- | --- |
| GCC 9.13 | The Supplier shall have the following additional responsibilities***:***  ***a) In working in Beneficiary premises, the Contractor is expected to comply with the administrative policies and rules and regulations of beneficiary, such as but not limited to, use of identification cards, working time, other security procedures.*** |

1. **Purchaser’s Responsibilities (GCC Clause 10)**

|  |  |
| --- | --- |
| GCC 10.12 | Not applicable |

**C. Payment**

1. **Contract Price (GCC Clause 11)**

|  |  |
| --- | --- |
| GCC 11.2 (b) | Adjustments to the Contract Price shall be as follows ***“none”*** |

1. **Terms and Schedule of Payment (GCC Clause 12)**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| GCC 12.1 | Subject to the provisions of GCC Clause 12 (Terms and Schedule of Payment), the Purchaser shall pay the Contract Price to the Supplier in the manner specified below. Except as otherwise noted, all payments shall be made for the portion of the Contract Price corresponding to the goods or services actually Delivered, Installed, or Operationally Accepted, per the Contract Implementation Schedule, at unit prices and in the currencies specified in the Price Schedules of the Contract***.***  **PAYMENT SCHEDULE:**   |  |  |  | | --- | --- | --- | | **Task** | **Payment schedule per Task** | **Percentage of contract value** | | **Task 1: Kick-off, Hardware Delivery and Establishment of System Environments** | | | | At the end of task | | 20% | | **Task 2: Software Development for ODP** | | | | At the end of task | | 15% | | **Task 3: Software Development for CTM** | | | | At the end of task | | 15% | | **Task 4: Delivery of Help Desk Platform** | | | | At the end of task | | 5% | | **Task 5: Delivery of e-Learning Platform** | | | | At the end of task | | 5% | | **Task 6: Integration, System Acceptance Testing and Roll-out** | | | | At the end of task | | 20% | | **Task 7: Capacity Building** | | | | At the end of task | | 20% |   All goods and/or services shall be received and accepted satisfactory by purchaser. |
| GCC 12.3 | Not applicable |
| GCC 12.4 | For Goods and Services supplied locally, the Purchaser will pay the Supplier ***“in the currency stated in the Contract Agreement and the Price Schedules it refers to”****.* |
| GCC 12.5 | Not applicable |

1. **Securities (GCC Clause 13)**

|  |  |
| --- | --- |
| GCC 13.2.1 | Not applicable |
| GCC 13.2.2 | Not applicable |
| GCC 13.3.1 | The Performance Security shall be denominated in US Dollars or ***Euro*** for an amount equal 10 percent of the Contract Price excluding any Recurrent Costs. |
| GCC 13.3.4 | During the Warranty Period (i.e., after Operational Acceptance of the System), the Performance Security shall be reduced to*:* ***5*** percent of the Contract Price, excluding any Recurrent Costs. |

1. **Taxes and Duties (GCC Clause 14)**

|  |  |
| --- | --- |
| GCC 14 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 14”****.* |

**D. Intellectual Property**

1. **Intellectual Property Rights (GCC Clause 15)**

|  |  |
| --- | --- |
| GCC 15.3 | The Purchaser may assign, license, or otherwise voluntarily transfer its contractual rights to use the Standard Software or elements of the Standard Software, without the Supplier’s prior written consent, under the following circumstances: ***such as*** *Upon threshold program closure, the contracts are generally assigned to the government.* |
| GCC 15.4 | The Purchaser’s and Supplier’s rights and obligations with respect to Custom Software or elements of the Custom Software are as follows ***“all rights of the custom software and elements are transferred to the KJC/KPC with the delivery of the source-code”****.* |
| GCC 15.5 | ***No software escrow contract is required for the execution of the Contract*** |

1. **License to Software and Materials (GCC Clause 16)**

|  |  |
| --- | --- |
| GCC 16.1 (a) (iv) | The Standard Software license shall be valid ***“throughout the territory of the Purchaser’s Country.”****.* |
| GCC 16.1 (a) (v) | License to the Software and Materials shall be subject to the following additional restrictions: *[****“none.”****]* |
| GCC 16.1 (b) (ii) | The Software (and Materials, as applicable) **are** permitted to be used or copied for use on or transferred to a replacement computer(s). |
| GCC 16.1 (b) (vi) | The Software (and Materials, as applicable) **are** permitted to be disclosed to, and reproduced for use by, support service suppliers and their contractors. |
| GCC 16.1 (b) (vii) | ***The Software (and Materials, as applicable) are permitted to be disclosed to, and reproduced for use by the Purchaser and the following persons:******“none.”*** |
| GCC 16.2 | *“****The Standard Software is subject to an audit by the Supplier paid for by the Supplier, subject to the following terms to verify compliance with its license agreements.”***  The Purchaser will make available to the Supplier within ***30*** days of a written request accurate and up-to-date records of the number and location of copies, the number of authorized users, or any other relevant data required to demonstrate use of the Standard Software as per the license agreement. |

1. **Confidential Information and Data Security (GCC Clause 17)**

|  |  |
| --- | --- |
| GCC 17.1 | ***There are no modifications to the confidentiality terms expressed in GCC 17.1.*** |
| GCC 17.12 | The provisions of this GCC Clause 17 shall survive the termination, for whatever reason, of the Contract. |

**E. Supply, Installation, Testing, Commissioning and Acceptance of the System**

1. **Representatives (GCC Clause 18)**

|  |  |
| --- | --- |
| GCC 18.1 | The Purchaser’s Project Manager shall have the following additional powers and/or limitations to his or her authority to represent the Purchaser in matters relating to the Contract:  ***“no additional powers or limitations.”****.* |
| GCC 18.2.2 | The Supplier’s Representative shall have the following additional powers and / or limitations to his or her authority to represent the Supplier in matters relating to the Contract: ***“no additional powers or limitations.”****].* |

1. **Project Plan (GCC Clause 19)**

|  |  |
| --- | --- |
| GCC 19.1 | Chapters in the Project Plan shall address the following subjects**:**  ***(a) Project Organization and Management Plan;***  ***(b) Delivery and Installation Plan***  ***(c) Training Plan***  ***(d) Pre-commissioning and Operational Acceptance Testing Plan***  ***(e) Warranty Service Plan***  ***(f) Task, Time, and Resource Schedules***  ***(g) Post-Warranty Service Plan***  ***(h) Technical Support Plan***  ***Further details regarding the required contents of each of the above chapters are contained in the Purchaser’s Requirements, Section (Tasks and Deliverables defined under the Tasks in Section V.****].* |
| GCC 19.2 | Within *10*days from the Effective Date of the Contract, the Supplier shall present a Project Plan to the Purchaser. The Purchaser shall, within *10* days of receipt of the Project Plan, notify the Supplier of any respects in which it considers that the Project Plan does not adequately ensure that the proposed program of work, proposed methods, and/or proposed Information Technologies will satisfy the Purchaser’s Requirements and/or the PCC (in this PCC GCC Sub-Clause 19.2 called “non-conformities” below). The Supplier shall, within *5*days of receipt of such notification, correct the Project Plan and resubmit to the Purchaser. The Purchaser shall, within *5* days of resubmission of the Project Plan, notify the Supplier of any remaining non-conformities. This procedure shall be repeated as necessary until the Project Plan is free from non-conformities. When the Project Plan is free from non-conformities, the Purchaser shall provide confirmation in writing to the Supplier. This approved Project Plan (“the Agreed and Finalized Project Plan”) shall be contractually binding on the Purchaser and the Supplier. |
| GCC 19.5 | The Supplier shall submit to the Purchaser the following reports:  ***(a) Monthly (Quarterly) progress reports, summarizing:***  ***(i) results accomplished during the prior period;***  ***(ii) cumulative deviations to date from schedule of progress milestones as specified in the Agreed and Finalized Project Plan;***  ***(iii) corrective actions to be taken to return to planned schedule of progress; proposed revisions to planned schedule;***  ***(iv) other issues and outstanding problems; proposed actions to be taken;***  ***(v) resources that the Supplier expects to be provided by the Purchaser and/or actions to be taken by the Purchaser in the next reporting period;***  ***(vi) other issues or potential problems the Supplier foresees that could impact on project progress and/or effectiveness.***   1. ***Ad-hoc reports on specific questions as required by the MFK/MCC and PAJI consultant such as:***    1. ***Quality assurance related questions;***    2. ***Training participants and evaluation reports;***    3. ***Risks and challenges of technical and non-technical nature as they become relevant.*** |
|  |  |

1. **20. Subcontracting (GCC Clause 20)**

|  |  |
| --- | --- |
| GCC 20 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 20.”*** |

1. **Design and Engineering (GCC Clause 21)**

|  |  |
| --- | --- |
| GCC 21.2 | The Contract shall be executed in accordance with the edition or the revised version of all referenced codes and standards current at the date ***“as specified in the GCC,*** |
| GCC 21.3.1 | The Supplier shall prepare and furnish to the Project Manager the following documents for which the Supplier must obtain the Project Manager’s approval before proceeding with work on the System or any Subsystem covered by the documents.  ***(1) Project Plan;***  ***(2) System Requirements Specification Document (SRS) for the ODP;***  ***(3) System Requirements Specification Document (SRS) for the CTM;***  ***(4) System Requirements Specification Document (SRS) for the Help Desk;***  ***(5) System Requirements Specification Document (SRS) for the e-Learning platform;***  ***(6) System Acceptance Testing (SAT) Document;***  ***(7) Training Plan*** |

1. **Procurement, Delivery, and Transport (GCC Clause 22)**

|  |  |
| --- | --- |
| GCC 22.4.3 | The Supplier ***“shall”***be free to use transportation through carriers registered in any eligible country and***“shall”***obtain insurance from any eligible source country. |
| GCC 22.5 | The Supplier shall provide the Purchaser with shipping and other documents ***“as specified in the GCC,”*** |

1. **Product Upgrades (GCC Clause 23)**

|  |  |
| --- | --- |
| GCC 23.4 | The Supplier shall provide the Purchaser: “***with all new versions, releases, and updates to all Standard Software during the Warranty Period, for free, as specified in the GCC unless there are known and documented compatibility issues between the new versions and the existing solution or where there is reasonable doubt of any incompatibility risks (eg. where the new version is radically different from the current version)”****.* |

1. **Implementation, Installation, and Other Services (GCC Clause 24)**

|  |  |
| --- | --- |
| GCC 24 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 24.”****]* |

1. **Inspections and Tests (GCC Clause 25)**

|  |  |
| --- | --- |
| GCC 25 | ***“MFK/MCC and the PAJI Consultant can perform ad-hoc inspections and test on the solutions during the entire duration of the project. The ad-hoc inspections can be announced with a notice of 3 days”*** |

1. **Installation of the System (GCC Clause 26)**

|  |  |
| --- | --- |
| GCC 26 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 26.”*** |

1. **Commissioning and Operational Acceptance (GCC Clause 27)**

|  |  |
| --- | --- |
| GCC 27.2.1 | Operational Acceptance Testing shall be conducted in accordance with *section V. Requirements of the Information System (specifically Task 6 and 9. Delivery Schedule) of the Technical Requirements****.****]* |
| GCC 27.2.2 | If the Operational Acceptance Test of the System, or Subsystem(s), cannot be successfully completed within *40*days from the date of Installation or any other period agreed upon by the Purchaser and the Supplier, then GCC 27.3.5 (a) or (b) shall apply, as the circumstances may dictate. |

**F. Guarantees and Liabilities**

1. **Operational Acceptance Time Guarantee (GCC Clause 28)**

|  |  |
| --- | --- |
| GCC 28.2 | At Purchaser’s option, liquidated damages may be assessed at **one** ***half of one* percent (0.5%) of the Contract Price per week of delay.** The maximum liquidated damages are ***ten* percent (10%)** of the Contract Price, or relevant part of the Contract Price if the liquidated damages apply to a Subsystem. For clarity, a week of delay consists of seven (7) calendar days. |
| GCC 28.3 | Liquidated damages shall be assessed ***“only with respect to achieving Operational Acceptance;”*** |

1. **Representations and Warranties (GCC Clause 29)**

|  |  |
| --- | --- |
| GCC 29.1 | For Software, exceptions or limitations to the Supplier’s warranty obligations shall be as follows: ***“None”*** |
| GCC 29.3 (iii) | The Supplier warrants that the following items have been released to the market for the following specific minimum time periods*:* ***“No specific minimum time requirements are established for this Contract other than that the Information Technologies must have been previously released to the market;”*** |
| GCC 29.10 | The Warranty Period (N) shall begin from the date of Operational Acceptance of the System or Subsystem and extend for ***“minimum of 36 months;”*** |
| GCC 29.16 | During the Warranty Period the Supplier must commence the work necessary to remedy defects or damage within ***5 days*** of notification specified below. |

1. **Functional Guarantees (GCC Clause 30)**

|  |  |
| --- | --- |
| GCC 30 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 30***.”*]* |

1. **Intellectual Property Rights Warranty (GCC Clause 31)**

|  |  |
| --- | --- |
| GCC 31 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 31.]*** |

1. **Intellectual Property Rights Indemnity (GCC Clause 32)**

|  |  |
| --- | --- |
| GCC 32 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 32.”]*** |

1. **33.Limitation of Liability (GCC Clause 33)**

|  |  |
| --- | --- |
| GCC 33 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 33.”*** |

**G. Risk Distribution**

1. **Transfer of Ownership (GCC Clause 34)**

|  |  |
| --- | --- |
| GCC 34 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 34*.”** |

1. **Care of the System (GCC Clause 35)**

|  |  |
| --- | --- |
| GCC 35 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 35.”*** |

1. **Loss of or Damage to Property; Accident or Injury to Workers; Indemnification (GCC Clause 36)**

|  |  |
| --- | --- |
| GCC 36 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 36.”*** |

1. **Insurances (GCC Clause 37)**

|  |  |
| --- | --- |
| GCC 37.1 (c) | The Supplier shall obtain Third-Party Liability Insurance in the amount of *value of the contract.* The Insurance shall cover the period from ***Effective Date of the Contract***until *September 2022.* |
| GCC 37.1 (e) | ***“There are no Particular Conditions of Contract applicable to GCC 37.1 (e)”****.* |

1. **Force Majeure (GCC Clause 38)**

|  |  |
| --- | --- |
| GCC 38 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 38.”*** |

**H. Change in Contract Elements**

1. **Changes to the System (GCC Clause 39)**

|  |  |
| --- | --- |
| GCC 39 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 39.”*** |

1. **Extension of Time for Achieving Operational Acceptance (GCC Clause 40)**

|  |  |
| --- | --- |
| GCC 40 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 40.”*** |

1. **Termination (GCC Clause 41)**

|  |  |
| --- | --- |
| GCC 41.3.1 | For these purposes, “material” sums means a 20% of the Contract Price. |

1. **Assignment (GCC Clause 42)**

|  |  |
| --- | --- |
| GCC 42 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 42.”*** |

1. **MCC Required Provisions; Flow Through Provisions (GCC Clause 43)**

|  |  |
| --- | --- |
| GCC 43 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 43.”*** |

1. **Fraud and Corruption Requirements (GCC Clause 44)**

|  |  |
| --- | --- |
| GCC 44 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 44.”*** |

1. **Combatting of Trafficking in Persons (GCC Clause 45)**

|  |  |
| --- | --- |
| GCC 45 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 45.”*** |

1. **Gender and Social Inclusion (GCC Clause 46)**

|  |  |
| --- | --- |
| GCC 46 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 46.”*** |

1. **Prohibition of Harmful Child Labor (GCC Clause 47)**

|  |  |
| --- | --- |
| GCC 47 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 47.”*** |

1. **Prohibition of Sexual Harassment (GCC Clause 48)**

|  |  |
| --- | --- |
| GCC 48 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 48.”*** |

1. **Non-Discrimination and Equal Opportunity (GCC Clause 49)**

|  |  |
| --- | --- |
| GCC 49 | ***“There are no Particular Conditions of Contract applicable to GCC Clause 49.”*** |

## Section VIII. Contract Forms and Annexes

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**Form of Letter of Acceptance**

[**letterhead paper of the Purchaser**]

[**date**]

To: **[insert name and address of the Supplier]**

This is to notify you that your Bid dated **[date]** for execution of the Design, Supply, Installation and Commissioning of [**insert Bid Name**], CB No: **[insert Bid number]** for the Accepted Contract Amount of the equivalent of **[insert amount in numbers and words] [insert name of currency]**, as corrected and modified in accordance with the Instructions to Bidders, is hereby accepted by us in our capacity as Purchaser under the Contract.

Within 28 days of your receipt of this Letter of Acceptance and the attached Contract Agreement you are hereby instructed to (a) sign and return the attached Contract Agreement in accordance with Clause 2.1 of the General Conditions of Contract (b) complete and return the Compliance with Sanctions Certification Form included in the Annex to the Particular Conditions of Contract – Contract Forms (c) complete and return the PS-2 Self-Certification Form for Contractors and (d) forward the Performance Security in accordance with Clause 13.3 of the General Conditions of Contract, using for that purpose the Form of Performance Bank Guarantee included in the Annex to the Particular Conditions of Contract – Contract Forms, or another form acceptable to us.

Authorized Signature:

Name and Title of Signatory:

**Form of Contract Agreement**

CONTRACT AGREEMENT

THIS CONTRACT AGREEMENT is made

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

BETWEEN

1. *[insert:* ***Name of Purchaser****],* a *[insert:* ***description of type of legal entity, for example, an agency of the Ministry of . . .****]* of the Government of *[insert:* ***country of Purchaser****],* or corporation incorporated under the laws of *[insert:* ***country of Purchaser****]* 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 desires to engage the Supplier to supply, install, achieve Operational Acceptance of, and support the following Information System and other works *[insert:* ***brief description of the Information System****]*(“the System”), and the Supplier has agreed to such engagement upon and subject to the terms and conditions appearing below in this Contract Agreement.

**NOW IT IS HEREBY AGREED as follows:**

|  |  |
| --- | --- |
| **Article 1.   Contract Documents** | 1.1 Contract Documents (Reference GCC Sub-Clause 1.1 (m))  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 and the Appendices attached to the Contract Agreement  (b) ParticularConditions of Contract  (c) General Conditions of Contract  (d) Purchaser’s Requirements (including Implementation Schedule)  (e) The Supplier’s Bid and original Price Schedules  (f) *[Add here:* ***any other documents****]* |
|  | 1.2 Order of Precedence (Reference GCC Clause 2)  In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above, provided that Appendix 7 shall prevail over all provisions of the Contract Agreement and the other Appendices attached to the Contract Agreement and all the other Contract Documents listed in Article 1.1 above.  1.3 Definitions (Reference GCC Clause 1)  Capitalized words and phrases used in this Contract Agreement shall have the same meanings as are ascribed to them in the General Conditions of Contract. |
| **Article 2.   Contract Price and Terms of Payment** | 2.1 Contract Price (Reference GCC Sub-Clause 1.1(o) and GCC Clause 11)  The Purchaser hereby agrees to pay to the Supplier the Contract Price in consideration of the performance by the Supplier of its obligations under the Contract. The Contract Price shall be the aggregate of: *[insert:* ***amount of foreign currency A in words****],**[insert:* ***amount in figures****],*plus *[insert:* ***amount of foreign currency B in words****],**[insert:* ***amount in figures****],* plus *[insert:* ***amount of foreign currency C in words****], [insert****: amount in figures****], [insert:* ***amount of local currency in words****], [insert:* ***amount in figures****],* as specified in the Grand Summary Price Schedule.  The Contract Price shall be understood to reflect the terms and conditions used in the specification of prices in the detailed price schedules, including the terms and conditions of the associated Incoterms, and the taxes, duties and related levies if and as identified. |
| **Article 3.   Effective Date for Determining Time for Operational Acceptance** | 3.1 Effective Date (Reference GCC Sub-Clause 1.1 (u))  The time allowed for supply, installation, and achieving Operational Acceptance of the System shall be determined from the date when all of the following conditions have been fulfilled:  (a) This Contract Agreement has been duly executed for and on behalf of the Purchaser and the Supplier;  (b) The Supplier has submitted to the Purchaser the performance security and the advance payment security, in accordance with GCC Sub-Clause 13.2 and GCC Sub-Clause 13.3; |
|  | (c) The Purchaser has paid the Supplier the advance payment, in accordance with GCC Clause 12;  (d) *[specify here:* ***any other conditions, for example, opening/confirmation of letter of credit****].*  Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.  3.2 If the conditions listed under 3.1 are not fulfilled within two (2) months from the date of this Contract Agreement because of reasons not attributable to the Supplier, the parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Achieving Operational Acceptance and/or other relevant conditions of the Contract. |
| **Article 4.   Appendixes** | 4.1 The Appendixes listed below shall be deemed to form an integral part of this Contract Agreement. |
|  | 4.2 Reference in the Contract to any Appendix shall mean the Appendixes listed below and attached to this Contract Agreement, and the Contract shall be read and construed accordingly. |

APPENDIXES

Appendix 1. Supplier’s Representative

Appendix 2. Adjudicator *[if there is no Adjudicator, state* ***“not applicable”****]*

Appendix 3. List of Approved Subcontractors

Appendix 4. Categories of Software

Appendix 5. Custom Materials

Appendix 6. Revised Price Schedules (if any)

Appendix 7. Minutes of Contract Finalization Discussions and Agreed-to Contract Amendments

**Appendix 1. Supplier’s Representative**

In accordance with GCC Sub-Clause 1.1(ppp), the Supplier’s Representative is:

Name: *[insert:* ***name*** *and provide title and address further below****,*** *or state* ***“to be nominated within fourteen (14) days of the Effective Date”****]*

Title: *[if appropriate, insert:* ***title****]*

In accordance with GCC Sub-Clause 4.3, the Supplier's addresses for notices under the Contract are:

Address of the Supplier's Representative: *[as appropriate, insert:* ***personal delivery, postal, cable, telegraph, telex, facsimile, electronic mail, and/or EDI addresses.****]*

Fallback address of the Supplier: *[as appropriate, insert:* ***personal delivery, postal, cable, telegraph, telex, facsimile, electronic mail, and/or EDI addresses.****]*

**Appendix 2. Adjudicator**

In accordance with GCC Sub-Clause 1.1 (a), the agreed-upon Adjudicator is:

Name: *[ insert:* ***name****]*

Title: *[insert:* ***title****]*

Address: *[insert:* ***postal address****]*

Telephone: *[insert:* ***telephone****]*

In accordance with GCC Sub-Clause 6.1.3, the agreed-upon fees and reimbursable expenses are:

Hourly Fees: *[insert:* ***hourly fees****]*

Reimbursable Expenses: *[list:* ***reimbursables****]*

Pursuant to GCC Sub-Clause 6.1.4, if at the time of Contract signing, agreement has not been reached between the Purchaser and the Supplier, an Adjudicator will be appointed by the Appointing Authority named in the PCC.

**Appendix 3. List of Approved Subcontractors**

The Purchaser has approved use of the following Subcontractors nominated by the Supplier for carrying out the item or component of the System indicated. Where more than one Subcontractor is listed, the Supplier is free to choose between them, but it must notify the Purchaser of its choice sufficiently in advance of the time when the subcontracted work needs to commence to give the Purchaser reasonable time for review. In accordance with GCC Sub-Clause 20.1, the Supplier is free to submit proposals for Subcontractors for additional items from time to time. No subcontracts shall be placed with any such Subcontractors for additional items until the Subcontractors have been approved in writing by the Purchaser and their names have been added to this list of Approved Subcontractors, subject to GCC Sub-Clause 20.3.

*[specify:* ***item, approved Subcontractors, and their place of registration that the Supplier proposed in the corresponding attachment to its Bid and that the Purchaser approves that the Supplier engage during the performance of the Contract.*** *Add additional pages as necessary.]*

|  |  |  |
| --- | --- | --- |
| Item | Approved Subcontractors | Place of Registration |
|  |  |  |
|  |  |  |
|  |  |  |
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|  |  |  |

**Appendix 4. Categories of Software**

The following table assigns each item of Software supplied and installed under the Contract to one of the three categories: (i) System Software, (ii) General-Purpose Software, or (iii) Application Software; and to one of the two categories: (i) Standard Software or (ii) Custom Software.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | (select one per item) | | | (select one per item) | |
| Software Item | System Software | General-Purpose Software | Application Software | Standard Software | Custom Software |
|  |  |  |  |  |  |
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**Appendix 5. Custom Materials**

The follow table specifies the Custom Materials the Supplier will provide under the Contract.

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| --- |
| Custom Materials |
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**Appendix 6. Revised Price Schedules**

The attached Revised Price Schedules (if any) shall form part of this Contract Agreement and, where differences exist, shall supersede the Price Schedules contained in the Supplier’s Bid. These Revised Price Schedules reflect any corrections or adjustments to the Supplier’s Bid price, pursuant to the ITB Sub-Clauses 18.3, 26.2, and 33.1.

**Appendix 7. Minutes of Contract Finalization[[5]](#footnote-5) Discussions and Agreed-to Contract Amendments**

**Annex A: Additional Provisions**

The additional provisions of contract can be found on the MCC website:<https://www.mcc.gov/resources/doc/annex-of-general-provisions>

**NB: These provisions must be downloaded and attached to the Contract**

**Annex B: Compliance with Sanctions Certification Form**

In satisfaction of Clause G of the Additional Provisions at Annex A of the Contract, this form is to be completed by the Bidder upon submission of the Bid and, if selected, by the Supplier initially, within 28 days of receipt of Letter of Acceptance and Contract Agreement, and subsequently thereafter on the last business day prior to the last day of each quarter (March 31, June 30, September 30, December 31) after the signature of an MCC-Funded Contract[[6]](#footnote-6), for the duration of the Contract.

The form is to be submitted to the MKF Procurement Manager at the time of Bid submission, and to the MCA Entity Fiscal Agent thereafter [*procurement@millenniumkosovo.org and info@bakertillyks.com*] with a copy to MCC at [sanctionscompliance@mcc.gov](mailto:sanctionscompliance@mcc.gov).

For the avoidance of doubt, pursuant to the *MCC Program Procurement Guidelines*, reporting the provision of material support or resources (as defined below) to an individual or entity on the enumerated lists will not necessarily result in the disqualification of a Bidder or cancellation of the Contract. However, **failure** to report such provision, or any similar material misrepresentation, whether intentional or without due diligence, would be grounds for disqualifying the Bidder or canceling the Contract, and may subject such Bidder or Supplier to criminal, civil, or administrative remedies as appropriate under U.S. law.

**Instructions for completing this form are provided below.**

**Full Legal Name of Bidder/ Supplier: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Full Name and Number of Contract: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**MCA Entity with which Contract Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

|  |
| --- |
| ALL BIDDERS/SUPPLIERS TO CHECK THE APPLICABLE BOX BELOW:   * All eligibility verifications have been completed in accordance with **Annex A “Additional Provisions,” Paragraph G “Compliance with Terrorist Financing Legislation and Other Restrictions”,** and the Bidder/Supplier hereby certifies as follows:   + No adverse or negative results were obtained from such eligibility verifications; and   + To the best of its current knowledge, the Bidder/Supplier has not provided, at any time within the previous ten years or currently, any material support or resources (including without limitation, any MCC Funding[[7]](#footnote-7)), directly or indirectly to, or knowingly permitted any funding (including without limitation any MCC Funding) to be transferred to, any individual, corporation or other entity that the Bidder or Supplier knew, or had reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities on the enumerated lists described below (including the Bidder or Supplier itself).   **OR**   * All eligibility verifications have been completed in accordance with  **Annex A “Additional Provisions,” Paragraph G “Compliance with Terrorist Financing Legislation and Other Restrictions,”** and the Bidder/Supplier hereby certifies that the following adverse or negative results were obtained from such eligibility verification (information to be provided for each result in accordance with the instructions included with this form): * Name of individual, corporation or other entity: * Eligibility verification source(s) where listed ineligible: * Position (if individual), or goods or services provided (if corporation or other entity): * Estimated value of work performed as of certification date: * A description of, and the circumstances under which such support was provided: |

I hereby certify that the information provided above is true and correct in all material respects and understand that any material misstatement, misrepresentation or failure to provide the information requested in this certification may be deemed to be “fraud” for purposes of the ITB or Contract, the *MCC Program Procurement Guidelines*, and other applicable MCC policy or guidance, including MCC’s Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations.

**Authorized Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Printed Name of Signatory: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**INSTRUCTIONS FOR COMPLETING THE COMPLIANCE WITH SANCTIONS CERTIFICATION FORM:**

The Bidder/Supplier shall perform the following procedures to verify the eligibility of firms, key personnel, subcontractors, vendors, suppliers, and grantees, in accordance with **Annex A “Additional Provisions,” Paragraph G “Compliance with Terrorist Financing Legislation and Other Restrictions,”** which is copied below for convenience.

Based on the results of these eligibility verifications, the Bidder/Supplier shall provide the applicable certification in the attached certification form. Note that for the purposes of this certification, Bidders/Suppliers are only required to submit detailed back-up documentation about the eligibility verifications together with their certification form if the Bidder/Supplier identifies adverse or negative results. If not, Bidders/Suppliers are free to mark the certification form accordingly and submit it to the appropriate recipient (although the Bidder/Supplier must maintain records per the instructions below).

The Bidder/Supplier shall verify that any individual, corporation, or other entity that has access to or is (or would be) a recipient of MCC Funding, including Bidder/Supplier staff, consultants, Subcontractors, vendors, suppliers, and grantees, is not listed on any of the following (or, in the case of #8 below, is not a national of, or associated in, any country appearing on such list):

1. System for Award Management (SAM) Excluded Parties List - <https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>
2. World Bank Debarred List - <https://www.worldbank.org/debarr>
3. US Treasury, Office of Foreign Assets Control, Specially Designated Nationals (SDN) List - <https://sanctionssearch.ofac.treas.gov/>
4. US Department of Commerce, Bureau of Industry and Security, Denied Persons List - <https://www.bis.doc.gov/index.php/the-denied-persons-list>
5. US State Department, Directorate of Defense Trade Controls, AECA Debarred List - <https://www.pmddtc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=c22d1833dbb8d300d0a370131f9619f0>
6. US State Department, Foreign Terrorist Organizations (FTO) List - <https://www.state.gov/foreign-terrorist-organizations/>
7. US State Department, Executive Order 13224 - <https://www.state.gov/executive-order-13224/>
8. US State Sponsors of Terrorism List - <https://www.state.gov/state-sponsors-of-terrorism/>

In addition to these lists, before providing any material support or resources to an individual or entity, the Bidder/Supplier will also consider all information about that individual or entity of which it is aware and all public information that is reasonably available to it or of which it should be aware.

Documentation of the process takes two forms. The Bidder/Supplier should prepare a table listing each staff member, consultant, subcontractor, vendor, supplier, and grantee working on the contract, such as the form provided below.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | Date Checked | | | | | | |  |
| Name | 1 | 2 | 3 | 4 | 5 | 6 | 7 | Eligible (Y/N) |
| SAM Excluded Parties List | World Bank Debarred List | SDN List | Denied Persons List | AECA Debarred List | FTO List | Executive Order 13224 |
| Bidder/Supplier (the firm itself) |  |  |  |  |  |  |  |  |
| Staff Member #1 |  |  |  |  |  |  |  |  |
| Staff Member #2 |  |  |  |  |  |  |  |  |
| Consultant #1 |  |  |  |  |  |  |  |  |
| Consultant #2 |  |  |  |  |  |  |  |  |
| Sub-Contractor #1 |  |  |  |  |  |  |  |  |
| Sub-Contractor #2 |  |  |  |  |  |  |  |  |
| Vendor #1 |  |  |  |  |  |  |  |  |
| Supplier #1 |  |  |  |  |  |  |  |  |
| Grantee #1 |  |  |  |  |  |  |  |  |

The Bidder/Supplier should list the date on which the search was conducted using each eligibility verification source, and whether the staff member, consultant, subcontractor, vendor, supplier, or grantee was determined to be eligible – that is, did not show up on any of the eligibility verification sources.

In addition, 1. SAM Excluded Parties List, 3. SDN List, and 5. AECA Debarred List are searchable databases that return a positive or negative search results page upon submission of a name to be searched, in order to document the eligibility, the Bidder/Supplier should print out and retain for each staff member, consultant, subcontractor, vendor, supplier, or grantee the search results page for each eligibility verification source, which should read, *“Has Active Exclusion? No”* or *“No records found.”* (in the case of SAM Excluded Parties List), *“Your search has not returned any results.”* (in the case of SDN List), or *“No records in Statutorily Debarred Parties using that filter”* or *“No records in Admin Debarred Parties using that filter”* (in the case of AECA Debarred List). In the case of 2. World Bank Debarred List, Table 1: Debarred & Cross-Debarred Firms & Individuals will display a blank field that indicates no matching records have been found. For 4. Denied Persons List, 6. FTO List, and 7 Executive Order 13224, there is no searchable database provided so the Consultant will review each static list and confirm it does not name the firms or individuals identified in the table above.

If an adverse record(s) has/have been found for one or more individuals or entities, including for the Bidder/Supplier itself, the Bidder/Supplier must conduct additional research to determine whether the finding is a “false positive” (such as an individual whose name matches the name of an individual listed on a sanctions list, but is a different person). If it is a false positive, the Bidder/Supplier will mark the staff member, consultant, subcontractor, vendor, supplier, or grantee as eligible, and retain the research confirming that eligibility.

If any of the Bidder’s/Supplier’s personnel, consultants, subcontractors, vendors, suppliers, or grantees are found to be ineligible at this stage, the MCA Entity will determine whether it is possible under the circumstances to allow the Bidder/Supplier to make a substitution. This determination will be made on a case by case basis and will require approval by MCC regardless of the estimated value of the proposed contract.

In addition, in accordance with *MCC Program Procurement Guidelines* P1.A.1.9(d), the Bidder/Supplier must ensure that MCC Funding is not used for goods or services from a country, or from a firm that is organized in or has its principal place of business or a significant portion of its operations in a country, that is subject to country-based sanctions or other restrictions under the law of the United States, including U.S. designated State Sponsors of Terrorism (<https://www.state.gov/state-sponsors-of-terrorism/>).

All of these documents must be retained by the Bidder/Supplier as part of the overall record of the Contract for the duration of the Contract, and for the further period after the contract expiration that is required for document retention under the Contract (typically five years after the expiration date of the Compact Program or Threshold Program). Access to these documents must be provided to the MCA Entity, MCC, or their designees in accordance with the access provisions of the Contract, And to the USAID Office of Inspector General (responsible for oversight of MCC operations), upon request.

**Annex A “Additional Provisions,” Paragraph G “Compliance with Terrorist Financing Legislation and Other Restrictions”**

1. The Contract Party, to the best of its current knowledge, did not provide, within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide material support or resources (as defined below) directly or indirectly to, or knowingly permit any funding (including without limitation MCC Funding) to be transferred to, any individual, corporation or other entity that such Party knows, or has reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities (i) on the master list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury’s Office of Foreign Assets Control, which list is available at [www.treas.gov/offices/enforcement/ofac](http://www.treas.gov/offices/enforcement/ofac), (ii) on the consolidated list of individuals and entities maintained by the “1267 Committee” of the United Nations Security Council, (iii) on the list maintained on [www.sam.gov](http://www.sam.gov), or (iv) on such other list as the MCA Entity may request from time to time.

For purposes of this provision:

1. “Material support and resources” includes currency, monetary instruments or other financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.
2. “Training" means instruction or teaching designed to impart a specific skill, as opposed to general knowledge.
3. “Expert advice or assistance" means advice or assistance derived from scientific, technical, or other specialized knowledge
4. The Contract Party shall ensure that its activities under this Agreement comply with all applicable U.S. laws, regulations and executive orders regarding money laundering, terrorist financing, U.S. sanctions laws, restrictive trade practices, boycotts, and all other economic sanctions promulgated from time to time by means of statute, executive order, regulation or as administered by the Office of Foreign Assets Control of the United States Treasury Department or any successor governmental authority, including, 18 U.S.C. Section 1956, 18 U.S.C. Section 1957, 18 U.S.C. Section 2339A, 18 U.S.C. Section 2339B, 18 U.S.C. Section 2339C, 18 U.S.C. Section 981, 18 U.S.C. Section 982, Executive Order 13224, 15 C.F.R. Part 760, and those economic sanctions programs enumerated at 31 C.F.R. Parts 500 through 598 and shall ensure that its activities under the Contract comply with any policies and procedures for monitoring operations to ensure compliance, as may be established from time to time by MCC, the MCA Entity, the Fiscal Agent, or the Bank, as may be applicable. The Contract Party shall verify, or cause to be verified, appropriately any individual, corporation or other entity with access to or recipient of funds, which verification shall be conducted in accordance with the procedures set out in Part 10 of the MCC Program Procurement Guidelines (Eligibility Verification Procedures) that can be found on MCC’s website at www.mcc.gov. The Contract Party shall (A) conduct the monitoring referred to in this paragraph on at least a quarterly basis, or such other reasonable period as the MCA Entity or MCC may request from time to time and (B) deliver a report of such periodic monitoring to the MCA Entity with a copy to MCC.
5. Other restrictions on the Contract Party shall apply as set forth in Section 5.4(b) of the Threshold Program Grant Agreement with respect to drug trafficking, terrorism, sex trafficking, prostitution, fraud, felony, any misconduct injurious to MCC or the MCA Entity, any activity contrary to the national security interests of the United States or any other activity that materially and adversely affects the ability of the Government or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of the Compact or any Supplemental Agreement or that materially and adversely affects the Program Assets or any Permitted Account.

**Annex B: PS-2 Self-Certification Form**

The below self-certification form should be signed by the Contractor as part of the Contract. This self-certification declares that the Contractor will only procure goods and materials essential for the Contract (as set out in the Bill of Quantity), from suppliers that are free of forced and child labor and provide their direct workers with a safe and hygienic workplace.

------------------------------------------------------------------------------------------------------------

As stipulated in the Contract in Sections 4.18, 6.1, and 6.6, the Contractor must comply with the International Finance Corporation’s *Performance Standards on Environmental and Social Sustainability* regarding labor standards and protections. In turn, the Contractor must ensure that its Primary Suppliers, i.e., any person or legal entity who provides goods or materials essential for the Contract, do not use forced and child labor in the production of such goods and materials, and provide their direct workers with a safe and hygienic workplace.

In acknowledgement of my understanding, I certify that with respect to this contract:

* + I understand the requirements in the contract with the MCA**-[Name of Country].**
  + [**Name of Contractor**] will ensure that all operations undertaken are done in accordance with the IFC Performance Standards, as described in Sections 6.1, 6.6, 6.13, 6.14, and 6.16 of the Contract.
  + [**Name of Contractor**] does not and will not use forced or child labor, and provides workers with a safe and hygienic workplace.
  + [**Name of Contracto**r] does not and will not procure material or goods from suppliers that employ forced or child labor.
  + [**Name of Contracto**r] will only procure material or goods from suppliers that provide a safe and hygienic working place for all laborers.
  + [**Name of Contractor**] has a system in place to monitor our suppliers, identify any new and emerging risks. This system also allows [Name of Contractor] to effectively remedy any risks.
  + Where remedy is not possible for any new risks or incidents, [**Name of Contractor**] commits to severing ties with these suppliers.

Record any exceptions to the above here:

|  |
| --- |
|  |

*I HEREBY CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT IN ALL MATERIAL RESPECTS AND UNDERSTAND THAT ANY MATERIAL MISSTATEMENT, MISREPRESENTATION OR FAILURE TO PROVIDE THE INFORMATION REQUESTED IN THIS CERTIFICATION MAY BE DEEMED A “FRAUD” FOR PURPOSES OF THE CONTRACT. I CONFIRM THAT I DULY REPRESENT [****NAME OF CONTRACTOR****] AND HAVE THE LEGAL AUTHORITY TO SIGN.*

Authorized Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name of Signatory:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Annex C: Code of Business Ethics and Conduct Certification Form**

*In satisfaction of clause 44.1 of the General Conditions of Contract, this form is to be completed by the Supplier and submitted for any MCC-Funded Contract with a value in excess of $500,000. This form is to be completed by the Supplier and submitted together with the signed Contract Agreement.*

*If the original certification, submitted along with the signed Contract Agreement, is that the Supplier “has adopted and implemented,” then further submissions will not be required, except as applicable for subcontracts. If the original certification is that the Supplier “will adopt and implement,” then a subsequent submission will be required when the Supplier “has adopted and implemented.”*

*The form is to be submitted to the MFK Procurement Manager* ***[email address for MCA Entity Procurement Agent to be inserted here]****, together with a copy of the Supplier’s code of business ethics and conduct.*

*If the Supplier is a Joint Venture or Association, each Member of the Joint Venture or Association must complete and submit this form, together with their respective code of business ethics and conduct.*

**Code of Business Ethics and Conduct Certification Form**

**Full Legal Name of Supplier: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Full Name and Number of Contract: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**MCA Entity with which Contract Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

As stipulated in GCC 3.1 of the Contract, the Supplier must certify to the MCA Account Entity that they will adopt and implement a code of business ethics and conduct within ninety (90) days of Contract award. The Supplier must also include the substance of this clause in subcontracts that have a value in excess of $500,000.

In satisfaction of this requirement, pursuant to GCC 3.1 of the Contract, I certify that with respect to this contract:

* + **[Name of Supplier]** has adopted and implemented a code of business ethics and conduct, a copy of which is hereby submitted together with this certification form.

**OR**

* + **[Name of Supplier]** will adopt and implement a code of business ethics and conduct within ninety (90) days after the date of Contract signature. **[Name of Supplier]** will resubmit this certification, together with a copy of the Consultant’s code of business ethics and conduct, when such code has been adopted and implemented.
  + **[Name of Supplier]** will include the substance of this requirement in all subcontracts having a value in excess of $500,000 and will forward all resulting certifications to **[Name of MCA Entity]**.

I hereby certify that the information provided above is true and correct in all material respects and understand that any material misstatement, misrepresentation or failure to provide the information requested in this certification may be deemed “fraud” for purposes of the Contract between the Supplier and the MCA Entity, the *MCC Program Procurement Guidelines*, and other applicable MCC policy or guidance, including MCC’s Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations.

**Authorized Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Printed Name of Signatory: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Annex D: Performance Security Form (Bank Guarantee)**

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
[insert:* ***Bank’s Name, and Address of Issuing Branch or Office****]*

**Beneficiary:** *[insert:* ***Name and Address of Purchaser****]*

**Date:** *[insert:* ***date****]*

**PERFORMANCE GUARANTEE No.:** *[insert:* ***Performance Guarantee Number****]*

We have been informed that on *[insert:* ***date of award****]* you awarded Contract No. *[insert:* ***Contract number****]* for *[insert:* ***title and/or brief description of the Contract****]* (hereinafter called "the Contract") to *[insert:* ***complete name of Supplier****]* (hereinafter called "the Supplier"). Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Supplier, we hereby irrevocably undertake to pay you any sum(s) not exceeding *[insert:* ***amount(s)****[[8]](#footnote-8)* ***in figures and words****]* upon receipt by us of your first demand in writing declaring the Supplier to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

On the date of your issuing, to the Supplier, the Operational Acceptance Certificate for the System, the value of this guarantee will be reduced to any sum(s) not exceeding *[insert:* ***amount(s) in figures and words****].* This remaining guarantee shall expire no later than *[insert:* ***number*** *and select:* ***of months/of years*** *(of the Warranty Period that needs to be covered by the remaining guarantee)]* from the date of the Operational Acceptance Certificate for the System,*[[9]](#footnote-9)* and any demand for payment under it must be received by us at this office on or before that date.

[***Issuing Bank to delete whichever is not applicable***] We confirm that [we are a financial institution legally authorized to provide this guarantee in the Beneficiary’s country] [OR] [we are a financial institution located outside the Beneficiary’s country but have a correspondent financial institution located in the Beneficiary’s country that will ensure the enforceability of this guarantee. The name of our correspondent bank and contact information is as follows: (provide name, address, phone number, and email address).

This guarantee is subject to the Uniform Rules for Demand Guarantees, 2010 Revision, ICC Publication No. 758, except that the supporting statement requirement of Article 15(a) is hereby excluded and as may otherwise be stated above.

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[Signature(s)]*

**Annex E: Advance Payment Security Form (Bank Guarantee)**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
[insert: **Bank’s Name, and Address of Issuing Branch or Office**]

**Beneficiary:** *[insert:* ***Name and Address of Purchaser****]*

**Date:** *[insert:* ***date****]*

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

We have been informed that on *[insert:* ***date of award****]* you awarded Contract No. *[insert:* ***Contract number****]* for *[insert:* ***title and/or brief description of the Contract****]* (hereinafter called "the Contract") to *[insert:* ***complete name of Supplier****]* (hereinafter called "the Supplier"). Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of *[insert:* ***amount in numbers and words, for each currency of the advance payment****]* is to be made to the Supplier 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 the amount of the advance payment referred to above, upon receipt by us of your first demand in writing declaring that the Supplier is in breach of its obligations under the Contract because the Supplier used the advance payment for purposes other than toward the proper execution of the Contract.

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

For each payment after the advance payment, which you will make to the Supplier under this Contract, the maximum amount of this guarantee shall be reduced by the ninth part of such payment[[10]](#footnote-10). At the time at which the amount guaranteed becomes nil, this guarantee shall become null and void, whether the original is returned to us or not.

[***Issuing Bank to delete whichever is not applicable***] We confirm that [we are a financial institution legally authorized to provide this guarantee in the Beneficiary’s country] **[OR]** [we are a financial institution located outside the Beneficiary’s country but have a correspondent financial institution located in the Beneficiary’s country that will ensure the enforceability of this guarantee. The name of our correspondent bank and contact information is as follows: (provide name, address, phone number, and email address).

This guarantee is subject to the Uniform Rules for Demand Guarantees, 2010 Revision, ICC Publication No. 758, except that the supporting statement requirement of Article 15(a) is hereby excluded and as may otherwise be stated above.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***[Signature(s)]***

**Annex F: Installation Certificate**

Date:***[****insert:* ***date]***

CB No: ***[****insert:* ***CB number]***

IFB: ***[****insert:* ***title and number of IFB]***

Contract: ***[****insert:* ***name of Information Systems]***

To: *[insert:* ***name and address of Supplier****]*

Dear Sir or Madam:

Pursuant to GCC Clause 26 (Installation of the System) of the Contract entered into between yourselves and the *[insert:* ***name of Purchaser****]*(hereinafter the “Purchaser”) dated *[insert:* ***date of Contract****],* relating to the *[insert:* ***brief description of the Information System****],* we hereby notify you that the System (or a Subsystem or major component thereof) was deemed to have been correctly installed on the date specified below.

1. Description of the System (or relevant Subsystem or major component): *[insert:* ***description****]*

2. Date of Installation: *[insert:* ***date****]*

Notwithstanding the above, you are required to complete the outstanding items listed in the attachment to this certificate as soon as practicable. This letter shall not relieve you of your obligation to achieve Operational Acceptance of the System in accordance with the Contract nor of your obligations during the Warranty Period.

For and on behalf of the Purchaser

Signed:

Date:

in the capacity of: *[state:* ***“Project Manager” or*** *state* ***the title of a higher level authority in the Purchaser’s organization****]*

**Annex G: Operational Acceptance Certificate**

Date: ***[****insert:* ***date]***

CB No: ***[****insert:* ***CB number]***

IFB: ***[****insert:* ***title and number of IFB]***

Contract: ***[****insert:* ***name of System or Subsystem and number of Contract]***

To: *[insert:* ***name and address of Supplier****]*

Dear Sir or Madam:

Pursuant to GCC Clause 27 (Commissioning and Operational Acceptance) of the Contract entered into between yourselves and the *[insert:* ***name of Purchaser****]* (hereinafter the “Purchaser”) dated *[insert:* ***date of Contract****],* relating to the *[insert:* ***brief description of the Information System****],* we hereby notify you the System (or the Subsystem or major component identified below) successfully completed the Operational Acceptance Tests specified in the Contract. In accordance with the terms of the Contract, the Purchaser hereby takes over the System (or the Subsystem or major component identified below), together with the responsibility for care and custody and the risk of loss thereof on the date mentioned below.

1. Description of the System (or Subsystem or major component): *[insert:* ***description****]*

2. Date of Operational Acceptance: *[insert:*  ***date****]*

This letter shall not relieve you of your remaining performance obligations under the Contract nor of your obligations during the Warranty Period.

For and on behalf of the Purchaser

Signed:

Date:

in the capacity of: *[state:* ***“Project Manager” or higher level authority in the Purchaser’s organization****]*

**Annex H: Change Order Procedures and Forms**

Date: *[insert:* ***date****]*

CB No***: [****insert:* ***CB number]***

IFB: *[insert:* ***title and number of IFB****]*

Contract: *[insert:* ***name or System or Subsystem and number of Contract****]*

**General**

This section provides samples of procedures and forms for carrying out changes to the System during the performance of the Contract in accordance with GCC Clause 39 (Changes to the System) of the Contract.

**Change Order Log**

The Supplier shall keep an up-to-date Change Order Log to show the current status of Requests for Change and Change Orders authorized or pending. Changes shall be entered regularly in the Change Order Log to ensure that the log is kept up-to-date. The Supplier shall attach a copy of the current Change Order Log in the monthly progress report to be submitted to the Purchaser.

**References to Changes**

(1) Request for Change Proposals (including Application for Change Proposals) shall be serially numbered CR-nnn.

(2) Change Estimate Proposals shall be numbered CN-nnn.

(3) Estimate Acceptances shall be numbered CA-nnn.

(4) Change Proposals shall be numbered CP-nnn.

(5) Change Orders shall be numbered CO-nnn.

On all forms, the numbering shall be determined by the original CR-nnn.

**Annexes**

8.1 Request for Change Proposal Form

8.2 Change Estimate Proposal Form

8.3 Estimate Acceptance Form

8.4 Change Proposal Form

8.5 Change Order Form

8.6 Application for Change Proposal Form

**Annex I: Request for Change Proposal Form**

(Purchaser’s Letterhead)

Date: *[insert:* ***date****]*

CB No***: [****insert:* ***CB number]***

IFB: *[insert:* ***title and number of IFB****]*

Contract: *[insert:* ***name of Information Systems****]*

To: *[insert:* ***name of Supplier and address****]*

Attention: *[insert:* ***name and title****]*

Dear Sir or Madam:

With reference to the above-referenced Contract, you are requested to prepare and submit a Change Proposal for the Change noted below in accordance with the following instructions within *[insert:* ***number****]* days of the date of this letter.

1. Title of Change: *[insert:* ***title****]*

2. Request for Change No. /Rev.: *[insert:* ***number****]*

3. Originator of Change: *[select* ***Purchaser / Supplier (by Application for Change Proposal)****, and add:* ***name of originator****]*

4. Brief Description of Change: *[insert:* ***description****]*

5. System (or Subsystem or major component affected by requested Change): *[insert:* ***description****]*

6. Technical documents and/or drawings for the request of Change:

Document or Drawing No. Description

7. Detailed conditions or special requirements of the requested Change: *[insert:* ***description****]*

8. Procedures to be followed:

(a) Your Change Proposal will have to show what effect the requested Change will have on the Contract Price.

(b) Your Change Proposal shall explain the time it will take to complete the requested Change and the impact, if any, it will have on the date when Operational Acceptance of the entire System agreed in the Contract.

(c) If you believe implementation of the requested Change will have a negative impact on the quality, operability, or integrity of the System, please provide a detailed explanation, including other approaches that might achieve the same impact as the requested Change.

(d) You should also indicate what impact the Change will have on the number and mix of staff needed by the Supplier to perform the Contract.

(e) You shall not proceed with the execution of work related to the requested Change until we have accepted and confirmed the impact it will have on the Contract Price and the Implementation Schedule in writing.

9. As next step, please respond using the Change Estimate Proposal form, indicating how much it will cost you to prepare a concrete Change Proposal that will describe the proposed approach for implementing the Change, all its elements, and will also address the points in paragraph 8 above pursuant to GCC Sub-Clause 39.2.1. Your Change Estimate Proposal should contain a first approximation of the proposed approach, and implications for schedule and cost, of the Change.

For and on behalf of the Purchaser

Signed:

Date:

in the capacity of: *[state:* ***“Project Manager”*** *or* ***higher level authority in the Purchaser’s organization****]*

**Annex J: Change Estimate Proposal Form**

(Supplier’s Letterhead)

Date: *[insert:* ***date****]*

CB No***: [****insert:* ***CB number]***

IFB: *[insert:* ***title and number of IFB****]*

Contract: *[insert:* ***name of Information Systems****]*

To: *[insert:* ***name of Purchaser and address****]*

Attention: *[insert:* ***name and title****]*

Dear Sir or Madam:

With reference to your Request for Change Proposal, we are pleased to notify you of the approximate cost of preparing the below-referenced Change in accordance with GCC Sub-Clause 39.2.1 of the Contract. We acknowledge that your agreement to the cost of preparing the Change Proposal, in accordance with GCC Sub-Clause 39.2.2, is required before we proceed to prepare the actual Change Proposal including a detailed estimate of the cost of implementing the Change itself.

* + - 1. Title of Change: *[insert:* ***title****]*
      2. Request for Change No. /Rev.: *[insert:* ***number****]*
      3. Brief Description of Change (including proposed implementation approach): *[insert:* ***description****]*
      4. Schedule Impact of Change (initial estimate): *[insert:* ***description****]*
      5. Initial Cost Estimate for Implementing the Change: *[insert:* ***initial cost estimate****]*
      6. Cost for Preparation of Change Proposal: *[insert:* ***cost in the currencies of the Contract****],* as detailed below in the breakdown of prices, rates, and quantities.

For and on behalf of the Supplier

Signed:

Date:

in the capacity of: *[state:* ***“Supplier’s Representative”*** *or* ***other higher level authority in the Supplier’s organization****]*

**Annex K: Estimate Acceptance Form**

(Purchaser’s Letterhead)

Date: *[insert:* ***date****]*

CB No***: [****insert:* ***CB number]***

IFB: *[insert:* ***title and number of IFB****]*

Contract: *[insert:* ***name of Information Systems****]*

To: *[insert:* ***name of Supplier and address]***

Attention:*[insert:* ***name and title]***

Dear Sir or Madam:

We hereby accept your Change Estimate and agree that you should proceed with the preparation of a formal Change Proposal.

* + - 1. Title of Change: *[insert:* ***title]***
      2. Request for Change No. /Rev.: [insert: **request number / revision]**
      3. Change Estimate Proposal No. /Rev.: *[insert:* ***proposal number / revision]***
      4. Estimate Acceptance No. /Rev.: [insert: **estimate number / revision]**
      5. Brief Description of Change: *[insert:* ***description]***
      6. Other Terms and Conditions:

In the event that we decide not to order the Change referenced above, you shall be entitled to compensation for the cost of preparing the Change Proposal up to the amount estimated for this purpose in the Change Estimate Proposal, in accordance with GCC Clause 39 of the General Conditions of Contract.

For and on behalf of the Purchaser

Signed:

Date:

in the capacity of: *[state:* ***“Project Manager”*** *or* ***higher level authority in the Purchaser’s organization]***

**Annex L: Change Proposal Form**

(Supplier’s Letterhead)

Date: *[insert:* ***date****]*

CB No***: [****insert:* ***CB number]***

IFB: *[insert:* ***title and number of IFB****]*

Contract: *[insert:* ***name of Information Systems****]*

To: *[insert:* ***name of Purchaser and address]***

Attention: *[insert:* ***name and title]***

Dear Sir or Madam:

In response to your Request for Change Proposal No. *[Insert:* ***number]****,*we hereby submit our proposal as follows:

* 1. Title of Change: *[insert:* ***name]***
  2. Change Proposal No. /Rev.: *[insert:* ***proposal number/revision]***
  3. Originator of Change: *[select:* ***Purchaser / Supplier****; and add:* ***name****]*
  4. Brief Description of Change: *[insert:* ***description]***
  5. Reasons for Change: *[insert:* ***reason]***
  6. The System Subsystem, major component, or equipment that will be affected by the requested Change: *[insert:* ***description]***
  7. Technical documents and/or drawings for the requested Change:  
     Document or Drawing No. Description
  8. Estimate of the increase/decrease to the Contract Price resulting from the proposed Change: *[insert:* ***amount in currencies of Contract]****,* as detailed below in the breakdown of prices, rates, and quantities.  
     Total lump sum cost of the Change:  
     Cost to prepare this Change Proposal (i.e., the amount payable if the Change is not accepted, limited as provided by GCC Sub-Clause 39.2.6):
  9. Additional Time for Achieving Operational Acceptance required due to the Change: *[insert:* ***amount in days / weeks]***
  10. Effect on the Functional Guarantees: *[insert:* ***description]***
  11. Effect on the other terms and conditions of the Contract: *[insert:* ***description]***
  12. Validity of this Proposal: for a period of [*insert****: number]*** days after receipt of this Proposal by the Purchaser
  13. Procedures to be followed:
  14. You are requested to notify us of your acceptance, comments, or rejection of this detailed Change Proposal within *[insert:* ***number]*** days from your receipt of this Proposal.
  15. The amount of any increase and/or decrease shall be taken into account in the adjustment of the Contract Price.

For and on behalf of the Supplier

Signed:

Date:

in the capacity of: *[state:* ***“Supplier’s Representative”*** *or* ***other higher level authority in the Supplier’s organization]***

**Annex M: Change Order Form**

(Purchaser’s Letterhead)

Date: *[insert:* ***date****]*

CB No***: [****insert:* ***CB number]***

IFB: *[insert:* ***title and number of IFB****]*

Contract: *[insert:* ***name of Information Systems****]*

To: *[insert:* ***name of Supplier and address]***

Attention: *[insert:* ***name and title]***

Dear Sir or Madam:

We hereby approve the Change Order for the work specified in Change Proposal No. *[ insert:* ***number*** *]*, and agree to adjust the Contract Price, Time for Completion, and/or other conditions of the Contract in accordance with GCC Clause 39 of the Contract.

* + - 1. Title of Change: *[insert:* ***name]***
      2. Request for Change No. /Rev.: [insert: **request number / revision]**
      3. Change Order No. /Rev.: [insert: **order number / revision]**
      4. Originator of Change: [select: **Purchaser / Supplier**; and add: **name]**
      5. Authorized Price for the Change:

Ref. No.: *[insert:* ***number]*** Date: *[insert:* ***date]***

*[ insert:* ***amount in foreign currency A****]* plus *[ insert:* ***amount in foreign currency B****]* plus *[ insert:* ***amount in foreign currency C****]* plus *[ insert:* ***amount in local currency****]*

* + - 1. Adjustment of Time for Achieving Operational Acceptance: *[insert:* ***amount and description of adjustment]***
      2. Other effects, if any: [state: **“none”** or insert **description**]

For and on behalf of the Purchaser

Signed:

Date:

in the capacity of: *[state:* ***“Project Manager”*** *or* ***higher level authority in the Purchaser’s organization]***

For and on behalf of the Supplier

Signed:

Date:

in the capacity of: *[state* ***“Supplier’s Representative”*** *or* ***higher level authority in the Supplier’s organization****]*

**Annex N: Application for Change Proposal Form**

(Supplier’s Letterhead)

Date: *[insert:* ***date****]*

CB No***: [****insert:* ***CB number]***

IFB: *[insert:* ***title and number of IFB****]*

Contract: *[insert:* ***name of Information Systems****]*

To: *[insert:*  ***name of Purchaser and address]***

Attention: *[insert:* ***name and title]***

Dear Sir or Madam:

We hereby propose that the below-mentioned work be treated as a Change to the System.

* + - 1. Title of Change: *[insert:* ***name]***
      2. Application for Change Proposal No. /Rev.: *[insert:* ***number / revision****]*dated: *[insert:* ***date****]*
      3. Brief Description of Change: *[insert:* ***description]***
      4. Reasons for Change: [insert: **description]**
      5. Order of Magnitude Estimation: [insert: **amount in currencies of the Contract]**
      6. Schedule Impact of Change: *[insert:* ***description]***
      7. Effect on Functional Guarantees, if any: *[insert:* ***description]***
      8. Appendix: [insert: **titles** (if any); otherwise state “**none”]**

For and on behalf of the Supplier

Signed:

Date:

in the capacity of: *[state:* ***“Supplier’s Representative”*** *or* ***higher level authority in the Supplier’s organization]***

1. Financial information provided by a Bidder shall be reviewed in its entirety to allow a truly informed judgment about the capacity of the Bidder to undertake the contract, and will not be limited strictly to substantiate the financial ratios indicated here. [↑](#footnote-ref-1)
2. “MCC-Funded Contract” is defined as a contract signed by an MCA Entity or Core Team, as opposed to a contract signed by MCC, under the provisions of MCC’s Program Procurement Guidelines, and using funding provided by MCC, through a Compact Program, a Threshold Program, or 609(g) funding. [↑](#footnote-ref-2)
3. “MCC Funding” is defined as funding provided by MCC, through a Compact Program, a Threshold Program, or 609(g) funding [↑](#footnote-ref-3)
4. Available at: <https://assets.mcc.gov/guidance/mcc-policy-gender.pdf> [↑](#footnote-ref-4)
5. The minutes of contract finalization do not form part of the contract but may be used to provide further clarity on technical details. [↑](#footnote-ref-5)
6. “MCC-Funded Contract” is defined as a contract signed by an MCA Entity or Core Team, as opposed to a contract signed by MCC, under the provisions of MCC’s Program Procurement Guidelines, and using funding provided by MCC, through a Compact Program, a Threshold Program, or 609(g) funding. [↑](#footnote-ref-6)
7. “MCC Funding” is defined as funding provided by MCC, through a Compact Program, a Threshold Program, or 609(g) funding [↑](#footnote-ref-7)
8. [↑](#footnote-ref-8)
9. *In this bidder form, the formulation of this paragraph reflects the usual PCC provisions for GCC* Sub-Clause *13.3. However, if the PCC GCC Sub-Clauses 13.3.1 and 13.3.4 varies from the usual provisions, the paragraph, and possibly the previous paragraph, need to be adjusted to precisely reflect the provisions specified in the PCC.* [↑](#footnote-ref-9)
10. *This sample formulation assumes an Advance Payment of 10% of the Contract Price excluding Recurrent Costs, and implementation of the main option proposed by this SBD in the PCC GCC* Sub-Clauses *13.2.2 for gradually reducing the value of the Advance Payment Security. If the Advance Payment is other than 10%, or if the reduction in amount of the security follows a different approach, this paragraph would need to be adjusted and edited accordingly.* [↑](#footnote-ref-10)