



**Ministry of Finance and Treasury**  
Republic of Maldives

**TENDER DOCUMENT**  
**for**

**TES/2016/W- 57 – Construction of Sh.Funadhoo Airport**

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Public Procurement Section  
Public Procurement Division  
Ministry of Finance and Treasury  
Republic of Maldives

# Standard Tendering Document

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# **PART 1 Tendering Procedures**

## Section I - Instructions to Tenderers

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## Section I - Instructions to Tenderers (ITT)

### A. General

#### 1. Scope of Tender

- 1.1 The Employer, as **indicated in the BDS**, issues this Tender Document for the procurement of the Works as specified in Section VI (Employer's Requirements). The name, identification, and number of contracts (lots) of this tendering are **provided in the BDS**.
- 1.2 Throughout this Tendering Document:
- (a) the term "in writing" means communicated in written form and delivered against receipt;
  - (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
  - (c) "day" means calendar day.

#### 2. Source of Funds

- 2.1 The Procuring Entity (Employer) has an approved budget from the Government of the Maldives which has been allocated towards the project indicated in the **BDS**. The Procuring Entity intends to apply the allocated funds to eligible payments under contract(s) for which this Tender Document is issued.
- 2.2 Payments will be made only at the request of the Procuring Entity in accordance with contract terms and conditions and in accordance with financial legislation in force.

#### 3. Fraud and Corruption

- 3.1 It is the Government's policy to require that Procuring Entities, as well as Tenderers, suppliers, contractors and their subcontractors observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Government:
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
    - (ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
    - (iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
    - (iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly

the actions of a party;

- (v) "obstructive practice" is
  - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Government investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
  - (bb) acts intended to materially impede the exercise of the Government's inspection and audit rights provided for under sub-clause 3.1 (e) below.
- (b) will reject a proposal for award if it determines that the Tenderer recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
- (c) will cancel in whole or in part a contract if it determines at any time that representatives of the Procuring Entity engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the Government having taken timely and appropriate action satisfactory to address such practices when they occur;
- (d) will suspend a firm or individual from participation in public procurement, by declaring it ineligible for a stated period of time, to be awarded a Government funded contract if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a Government funded contract. The list of suspended firms is available at the electronic address specified in the **BDS**; and
- (e) will have the right to require that a provision be included in tender documents and in contracts, requiring Tenderers, suppliers, and contractors and their sub-contractors to permit the Employer to inspect their accounts and records and other documents relating to the Tender submission and contract performance and to have them audited by auditors appointed by the Government.

3.2 Furthermore, tenderers shall be aware of the provision stated in GCC Sub-Clauses 22.2 and 56.2 (h).

#### 4. Eligible Tenderers

- 4.1 A Tenderer may be a natural person, private entity, or government-owned entity—subject to ITB 4.6—or any combination of them in the form of a joint venture, under an existing agreement, or with the intent to constitute a legally-enforceable joint venture. Unless otherwise **stated in the BDS**, all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms.
- 4.2 A Tenderer, and all parties constituting the Tenderer, shall have the nationality of an eligible country, in accordance with Section V (Eligible Countries). A Tenderer shall be deemed to have the nationality of a country if the Tenderer is a citizen or is constituted, or incorporated, and

operates in conformity with the provisions of the rules and regulation of Maldives. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.

4.3 A Tenderer shall meet the following criteria to be eligible to participate in public procurement:

- (a) have the legal capacity to enter into the contract;
- (b) not be insolvent, in receivership, bankrupt or being wound up, its affairs not being administered by a court or a judicial officer, its business activities not being suspended and not the subject of legal proceedings for any of the foregoing;
- (c) have fulfilled its obligations to pay taxes.
- (d) not have been, and its directors or officers not have been, convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a contract within a period of five years preceding the commencement of the procurement proceedings; and
- (e) not have a conflict of interest in relation to the procurement requirement in accordance with Sub-Clause 4.4.
- (f) shall be a contractor who falls in to the grades of National Contractors Registry as **specified in the BDS.**

4.4 A Tenderer shall not have a conflict of interest. All Tenderers found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this tendering process, if :

- (a) they have a controlling partner in common; or
- (b) they receive or have received any direct or indirect subsidy from any of them; or
- (c) they have the same legal representative for purposes of this Tender; or
- (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Tender of another Tenderer, or influence the decisions of the Employer regarding this tendering process; or
- (e) a Tenderer participates in more than one Tender in this tendering process. Participation by a Tenderer in more than one Tender will result in the disqualification of all Tenders in which the party is involved. However, this does not limit the inclusion of the same subcontractor in more than one Tender; or
- (f) a Tenderer or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Tender; or
- (g) a Tenderer, or any of its affiliates has been hired (or is proposed to be hired) by the Employer as Engineer for the contract.

4.5 A Tenderer that has been suspended from participation in public procurement by the Government



in accordance with ITB 3, at the date of the deadline for Tender submission or thereafter, shall be disqualified.

- 4.6 Government-owned enterprises in the Employer's country shall be eligible only if they can establish that they are legally and financially autonomous and operate under commercial law, and that they are not a dependent agency of the Employer.
- 4.7 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.
- 4.8 In case a prequalification process has been conducted prior to the tendering process, this tendering is open only to prequalified Tenderers.

## **5. Eligible Materials, Equipment and Services**

- 5.1 The materials, equipment and services to be supplied under the Contract shall have their origin in eligible source countries as defined in ITB 4.2 above and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Employer's request, Tenderers may be required to provide evidence of the origin of materials, equipment and services.
- 5.2 For purposes of ITB 5.1 above, "origin" means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components.

## **B. Contents of Tendering Document**

### **6. Sections of Tendering Document**

- 6.1 The Tendering Document consist 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 8.

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

Section I - Instructions to Tenderers (ITB)  
 Section II - Bid Data Sheet (BDS)  
 Section III - Evaluation and Qualification Criteria  
 Section IV - Tendering Forms  
 Section V - Eligible Countries

#### **PART 2 Requirements**

Section VI – Employer's Requirements

#### **PART 3 Conditions of Contract and Contract Forms**

Section VII - General Conditions of Contract (GCC)  
 Section VIII - Particular Conditions (PCC)  
 Section IX - Contract Forms

- 6.2 The Invitation for Tenders issued by the Employer is not part of the Tendering Document.
- 6.3 The Employer is not responsible for the completeness of the Tendering Document and their

Addenda, if they were not obtained directly from the source stated by the Employer in the Invitation for Tenders.

- 6.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tendering Document. Failure to furnish all information or documentation required by the Tendering Document may result in the rejection of the Tender.

## **7. Clarification of Tendering Document, Site Visit, Pre-Tender Meeting**

- 7.1 A prospective Tenderer requiring any clarification of the Tendering Document shall contact the Employer in writing at the Employer's address **indicated in the BDS** or raise his inquiries during the pre-Tender meeting if provided for in accordance with ITB 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received the number of days **given in the BDS** prior to the deadline for submission of Tenders. The Employer shall forward copies of its response to all Tenderers who have acquired the Tendering Document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Tendering Document as a result of a request for clarification, it shall do so following the procedure under ITB 8 and ITB 22.2.
- 7.2 The Tenderer is encouraged to visit and examine the Site of Works and its surroundings and obtain for itself, on its own risk and responsibility, all information that may be necessary for preparing the Tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Tenderer's own expense.
- 7.3 The Tenderer and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Tenderer, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 7.4 The Tenderer's designated representative is invited to attend a pre-Tender meeting, if **provided for in the BDS**. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.5 The Tenderer is requested, as far as possible, to submit any questions in writing, to reach the Employer not later than one week before the meeting.
- 7.6 Minutes of the pre-Tender meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tendering Document in accordance with ITB 6.3. Any modification to the Tendering Document that may become necessary as a result of the pre-Tender meeting shall be made by the Employer exclusively through the issue of an addendum pursuant to ITB 8 and not through the minutes of the pre-Tender meeting.
- 7.7 Nonattendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

## **8. Amendment of Tendering Document**

- 8.1 At any time prior to the deadline for submission of Tenders, the Employer may amend the Tendering Document by issuing addenda.
- 8.2 Any addendum issued shall be part of the Tendering Document and shall be communicated in writing to all who have obtained the Tendering Document from the Employer in accordance with ITB 6.3.
- 8.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Employer may, at its discretion, extend the deadline for the submission of Tenders, pursuant to ITB 22.2

## C. Preparation of Tenders

### 9. Cost of Tendering

- 9.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Employer shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

### 10. Language of Tender

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

### 11. Documents Comprising the Tender

- 11.1 The Tender shall comprise the following:
  - (a) Letter of Tender;
  - (b) completed Schedules, in accordance with ITB 12 and 14, or **as stipulated in the BDS**;
  - (c) Tender Security or Tender Securing Declaration, in accordance with ITB 19;
  - (d) alternative Tenders, at the Tenderer's option, and if permissible, in accordance with ITB 13;
  - (e) written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITB 20.2;
  - (f) documentary evidence in accordance with ITB 17 establishing the Tenderer's qualifications to perform the contract;
  - (g) Technical Proposal in accordance with ITB 16;
  - (h) In the case of a Tender submitted by a joint venture (JV), the JV agreement, or letter of intent to enter into a JV including a draft agreement, indicating at least the parts of the Works to be

executed by the respective partners; and

- (i) Any other document **required in the BDS**.

## 12. Letter of Tender and Schedules

- 12.1 The Letter of Tender, Schedules, and all documents listed under Clause 11, shall be prepared using the relevant forms in Section IV (Tendering Forms), if so provided. 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.

## 13. Alternative Tenders

- 13.1 Unless otherwise **indicated in the BDS**, alternative Tenders shall not be considered.
- 13.2 When alternative times for completion are explicitly invited, a statement to that effect will be **included in the BDS**. If permitted, the method for their evaluation will be stipulated in Section III (Evaluation and Qualification Criteria).
- 13.3 When specified in the **BDS** pursuant to ITB 13.1, and subject to ITB 13.4 below, Tenderers wishing to offer technical alternatives to the requirements of the Tendering Document must first price the Employer's design as described in the Tendering Document and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements shall be considered by the Employer.
- 13.4 When **specified in the BDS**, Tenderers are permitted to submit alternative technical solutions for specified parts of the Works. Such parts will be **identified in the BDS** and described in Section VI (Employer's Requirements). If permitted, the method for their evaluation will be stipulated in Section III (Evaluation and Qualification Criteria).

## 14. Tender Prices and Discounts

- 14.1 The prices and discounts quoted by the Tenderer in the Letter of Tender and in the Schedules shall conform to the requirements specified below.
- 14.2 The Tenderer shall submit a Tender for the whole of the works described in ITB 1.1 by filling in prices for all items of the Works, as identified in Section IV, Tendering Forms. In case of admeasurement contracts, the Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Tenderer will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.
- 14.3 The price to be quoted in the Letter of Tender shall be the total price of the Tender, excluding any discounts offered.
- 14.4 Unconditional discounts, if any, and the methodology for their application shall be quoted in the Letter of Tender, in accordance with ITB 12.1.

- 14.5 If so indicated in ITB 1.1, Tenders are invited for individual contracts (lots) or for any combination of contracts (packages). Tenderers wishing to offer any price reduction for the award of more than one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Price reductions or discounts shall be submitted in accordance with ITB 14.3, provided the Tenders for all contracts are submitted and opened at the same time.
- 14.6 Unless otherwise **provided in the BDS** and the Conditions of Contract, the prices quoted by the Tenderer shall be fixed. If the prices quoted by the Tenderer are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, the Tenderer shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data in Section IV (Tendering Forms) and the Employer may require the Tenderer to justify its proposed indices and weightings.
- 14.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender price submitted by the Tenderer.

## **15. Currencies of Tender and Payment**

- 15.1 The currency(ies) of the Tender shall be as **specified in the BDS**.
- 15.2 Tenderers may be required by the Employer to justify, to the Employer's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the prices shown in the appropriate form(s) of Section IV, in which case a detailed breakdown of the foreign currency requirements shall be provided by Tenderers.

## **16. Documents Comprising the Technical Proposal**

- 16.1 The Tenderer shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV (Tendering Forms), in sufficient detail to demonstrate the adequacy of the Tenderers' proposal to meet the work requirements and the completion time.

## **17. Documents Establishing the Qualifications of the Tenderer**

- 17.1 To establish its qualifications to perform the Contract in accordance with Section III (Evaluation and Qualification Criteria) the Tenderer shall provide the information requested in the corresponding information sheets included in Section IV (Tendering Forms).

## **18. Period of Validity of Tenders**

- 18.1 Tenders shall remain valid for the period **specified in the BDS** after the Tender submission deadline date prescribed by the Employer. A Tender valid for a shorter period shall be rejected by the Employer as nonresponsive.
- 18.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Employer may request Tenderers to extend the period of validity of their Tenders. The request and the

responses shall be made in writing. If a Tender security is requested in accordance with ITB 19, it shall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its Tender security. A Tenderer granting the request shall not be required or permitted to modify its Tender.

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

## 19. Tender Security

- 19.1 Unless otherwise **specified in the BDS**, the Tenderer shall furnish as part of its Tender, in original form, either a Tender Securing Declaration or a Tender security **as specified in the BDS**. In the case of a Tender security, the amount shall be **as specified in the BDS**.

- 19.2 A Tender Securing Declaration shall use the form included in Section IV Tendering Forms.

- 19.3 If a Tender security is specified pursuant to ITB 19.1, the Tender security shall be, at the Tenderer's option, in any of the following forms:

- (a) an unconditional guarantee, issued by a bank or surety;
- (b) a cashier's or certified check; or
- (c) another security **indicated in the BDS**.

from a reputable source from an eligible country. If the unconditional guarantee is issued by an insurance company or bonding company located outside the Employer's Country, it shall have a correspondent financial institution located in the Republic of Maldives. In the case of a bank guarantee, the Tender security shall be submitted either using the Tender Security Form included in Section IV (Tendering Forms) or in another substantially similar format approved by the Employer prior to Tender submission. In either case, the form must include the complete name of the Tenderer. The Tender security shall be valid for twenty-eight days (28) beyond the original validity period of the Tender, or beyond any period of extension if requested under ITB 18.2.

- 19.4 Any Tender not accompanied by an enforceable and substantially compliant Tender security or Tender Securing Declaration, if required in accordance with ITB 19.1, shall be rejected by the Employer as nonresponsive.

- 19.5 If a Tender security is specified pursuant to ITB 19.1, the Tender security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's furnishing of the performance security pursuant to ITB 41.

- 19.6 If a Tender security is specified pursuant to ITB 19.1, the Tender security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required performance security.

- 19.7 The Tender security may be forfeited or the Tender Securing Declaration executed:

- (a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the

Tenderer on the Letter of Tender, except as provided in ITB 18.2 or

- (b) if the successful Tenderer fails to:
  - (i) sign the Contract in accordance with ITB 40; or
  - (ii) furnish a performance security in accordance with ITB 41.

19.8 The Tender Security or the Tender Securing Declaration of a JV shall be in the name of the JV that submits the Tender. If the JV has not been constituted into a legally-enforceable JV, at the time of tendering, the Tender Security or the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent mentioned in ITB 4.1.

## 20. Format and Signing of Tender

20.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITB 11 and clearly mark it “ORIGINAL”. Alternative Tenders, if permitted in accordance with ITB 13, shall be clearly marked “ALTERNATIVE”. In addition, the Tenderer shall submit copies of the Tender in the number **specified in the BDS**, and clearly mark each of them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail.

20.2 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as **specified in the BDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature.

20.3 Any amendments such as interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the Tender.

## D. Submission and Opening of Tenders

### 21. Sealing and Marking of Tenders

21.1 Tenderers may always submit their Tenders by mail or by hand. When so **specified in the BDS**, Tenderers shall have the option of submitting their Tenders electronically. Procedures for submission, sealing and marking are as follows:

- (a) Tenderers submitting Tenders by mail or by hand shall enclose the original and each copy of the Tender, including alternative Tenders, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as “ORIGINAL”, “ALTERNATIVE” and “COPY.” These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB sub-Clauses 22.2 and 22.3.
- (b) Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures **specified in the BDS**.

21.2 The inner and outer envelopes shall:

- (a) bear the name and address of the Tenderer;
- (b) be addressed to the Employer as **provided in the BDS** pursuant to ITB 22.1;
- (c) bear the specific identification of this tendering process indicated in accordance with ITB 1.1;  
and
- (d) bear a warning not to open before the time and date for Tender opening.

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

## **22. Deadline for Submission of Tenders**

22.1 Tenders must be received by the Employer at the address and no later than the date and time indicated in the **BDS**.

22.2 The Employer may, at its discretion, extend the deadline for the submission of Tenders by amending the Tendering Document in accordance with ITB 8, in which case all rights and obligations of the Employer and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

## **23. Late Tenders**

23.1 The Employer shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITB 22. Any Tender received by the Employer after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

## **24. Withdrawal, Substitution, and Modification of Tenders**

24.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

- (a) prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” “MODIFICATION;” and
- (b) received by the Employer prior to the deadline prescribed for submission of Tenders, in accordance with ITB 22.

24.2 Tenders requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Tenderers.

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

## **25. Tender Opening**



- 25.1 The Employer shall open the Tenders in public at the address, date and time **specified in the BDS** in the presence of Tenderers' designated representatives and anyone who choose to attend. Any specific electronic Tender opening procedures required if electronic tendering is permitted in accordance with ITB 21.1, shall be as **specified in the BDS**.
- 25.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Tender shall not be opened, but returned to the Tenderer. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening. Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening. Envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening. Only envelopes that are opened and read out at Tender opening shall be considered further.
- 25.3 All other envelopes shall be opened one at a time, reading out: the name of the Tenderer and the Tender Price(s), including any discounts and alternative Tenders and indicating whether there is a modification; the presence of a Tender security or Tender securing Declaration, if required; and any other details as the Employer may consider appropriate. Only discounts and alternative offers read out at Tender opening shall be considered for evaluation. No Tender shall be rejected at Tender opening except for late Tenders, in accordance with ITB 23.1.
- 25.4 The Employer shall prepare a record of the Tender opening that shall include, as a minimum: the name of the Tenderer and whether there is a withdrawal, substitution, or modification; the Tender Price, per contract if applicable, including any discounts and alternative offers; and the presence or absence of a Tender security, if one was required. The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Tenderers.

## **E. Evaluation and Comparison of Tenders**

### **26. Confidentiality**

- 26.1 Information relating to the examination, evaluation, comparison, and post-qualification of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with such process until information on Contract award is communicated to all Tenderers.

- 26.2 Any attempt by a Tenderer to influence the Employer in the evaluation of the Tenders or Contract award decisions may result in the rejection of its Tender.
- 26.3 Notwithstanding ITB 25.2, from the time of Tender opening to the time of Contract award, if any Tenderer wishes to contact the Employer on any matter related to the tendering process, it may do so in writing.

## **27. Clarification of Tenders**

- 27.1 To assist in the examination, evaluation, and comparison of the Tenders, and qualification of the Tenderers, the Employer may, at its discretion, ask any Tenderer for a clarification of its Tender. Any clarification submitted by a Tenderer that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Tenders, in accordance with ITB 31.
- 27.2 If a Tenderer does not provide clarifications of its Tender by the date and time set in the Employer's request for clarification, its Tender may be rejected.

## **28. Deviations, Reservations, and Omissions**

- 28.1 During the evaluation of Tenders, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Tendering Document;
  - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tendering Document; and
  - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Tendering Document.

## **29. Determination of Responsiveness**

- 29.1 The Employer's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITB11.
- 29.2 A substantially responsive Tender is one that meets the requirements of the Tendering Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,
- (a) if accepted, would:
    - (i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
    - (ii) limit in any substantial way, inconsistent with the Tendering Document, the Employer's rights or the Tenderer's obligations under the proposed Contract; or
  - (b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.

- 29.3 The Employer shall examine the technical aspects of the Tender submitted in accordance with ITB 16, Technical Proposal, in particular, to confirm that all requirements of Section VI (Employer's Requirements) have been met without any material deviation, reservation or omission.
- 29.4 If a Tender is not substantially responsive to the requirements of the Tendering Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

### **30. Nonconformities, Errors, and Omissions**

- 30.1 Provided that a Tender is substantially responsive, the Employer may waive any nonconformities in the Tender.
- 30.2 Provided that a Tender is substantially responsive, the Employer may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Tender related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.
- 30.3 Provided that a Tender is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Tender Price. To this effect, the Tender Price may be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the methods indicated in Section III (Evaluation and Qualification Criteria).

### **31. Correction of Arithmetical Errors**

- 31.1 Provided that the Tender is substantially responsive, the Employer shall correct arithmetical errors on the following basis:
- (a) only for unit price contracts, 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 Employer 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;
  - (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
  - (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.
- 31.2 If the Tenderer that submitted the lowest evaluated Tender does not accept the correction of errors, its Tender shall be declared non-responsive.

### **32. Conversion to Single Currency**

32.1 For evaluation and comparison purposes, the currency(ies) of the Tender shall be converted into a single currency as **specified in the BDS**.

### **33. Margin of Preference**

33.1 A margin of preference shall not apply, **unless otherwise specified in the BDS**.

### **34. Evaluation of Tenders**

34.1 The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.

34.2 To evaluate a Tender, the Employer shall consider the following:

- (a) the Tender price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities for admeasurement contracts or Schedule of Prices for lump sum contracts, but including Day-work items, where priced competitively;
- (b) price adjustment for correction of arithmetic errors in accordance with ITB 31.1;
- (c) price adjustment due to discounts offered in accordance with ITB 14.3;
- (d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 32;
- (e) adjustment for nonconformities in accordance with ITB 30.3;
- (f) application of all the evaluation factors indicated in Section III (Evaluation and Qualification Criteria);

34.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in Tender evaluation.

34.4 If this Tendering Document allows Tenderers to quote separate prices for different contracts (lots), and to award multiple contracts to a single Tenderer, the methodology to determine the lowest evaluated price of the contract combinations, including any discounts offered in the Letter of Tender, is specified in Section III (Evaluation and Qualification Criteria).

34.5 If the lowest Evaluated Tender for an admeasurement contract is, in the opinion of the Employer, seriously unbalanced, front loaded or substantially below updated estimates, the Employer may require the Tenderer to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security be increased at the expense of the Tenderer to a level sufficient to protect the Employer against financial loss in the event of default of the successful Tenderer under the Contract.

### **35. Comparison of Tenders**

- 35.1 The Employer shall compare all substantially responsive Tenders in accordance with ITB 34.2 to determine the lowest evaluated Tender.

### **36. Qualification of the Tenderer**

- 36.1 The Employer shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated and substantially responsive Tender meets the qualifying criteria specified in Section III (Evaluation and Qualification Criteria).
- 36.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITB 17.1.
- 36.3 An affirmative determination of qualification shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Employer shall proceed to the next lowest evaluated Tender to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

### **37. Employer's Right to Accept Any Tender, and to Reject Any or All Tenders**

- 37.1 The Employer reserves the right to accept or reject any Tender, and to annul the tendering process and reject all Tenders at any time prior to contract award, without thereby incurring any liability to Tenderers. In case of annulment, all Tenders submitted and specifically, Tender securities, shall be promptly returned to the Tenderers.

## **F. Award of Contract**

### **38. Award Criteria**

- 38.1 Subject to ITB 37.1, the Employer shall award the Contract to the Tenderer whose offer has been determined to be the lowest evaluated Tender and is substantially responsive to the Tendering Document, provided further that the Tenderer is determined to be qualified to perform the Contract satisfactorily.

### **39. Notification of Award**

- 39.1 Prior to the expiration of the period of Tender validity, the Employer shall notify the successful Tenderer, in writing, via the Letter of Acceptance included in the Contract Forms, that its Tender has been accepted. At the same time, the Employer shall also notify all other Tenderers of the results of the tendering.
- 39.2 Until a formal contract is prepared and executed, the Letter of Acceptance shall constitute a binding Contract.
- 39.3 The Employer shall promptly respond in writing to any unsuccessful Tenderer who, after notification of award in accordance with ITB 39.1, requests in writing the grounds on which its Tender was not selected.
- 39.4 Any Tenderer may seek administrative review by a written inquiry to the Procuring Entity (Employer), which it considers to be in breach of the Financial Regulations. Any application for

review must be submitted in writing to the Accountable Officer of the Procuring Entity, within ten working days from the date the Tenderer knew, or should have known, of the circumstances giving rise to the complaint. If the Accountable Officer does not issue a decision within ten days, or the Tenderer is not satisfied with the decision, the Tenderer may submit a complaint to the Public Procurement Division.

#### **40. Signing of Contract**

40.1 Promptly upon notification, the Employer shall send the successful Tenderer the Contract Agreement.

40.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Employer.

#### **41. Performance Security**

41.1 Within twenty-eight (28) days of the receipt of notification of award from the Employer, the successful Tenderer shall furnish the performance security in accordance with the conditions of contract, subject to ITB 34.5, using for that purpose the Performance Security Form included in Section IX (Contract Forms), or another form acceptable to the Employer. If the performance security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to the Employer. A foreign institution providing a bond shall have a correspondent financial institution located in the Employer's Country.

41.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security or to sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender security. In that event the Employer may award the Contract to the next lowest evaluated Tenderer whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

#### **42. Adjudicator**

42.1 The Employer proposes the person **named in the BDS** to be appointed as Adjudicator under the Contract, at the hourly fee **specified in the BDS**, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in his Tender. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority designated in the Particular Conditions of Contract (PCC) pursuant to Clause 23.1 of the General Conditions of Contract (GCC), to appoint the Adjudicator.

## Section II - Bid Data Sheet (BDS)

ITT reference	Tender data that supplements the ITT
<b>A. Introduction</b>	
<b>ITT 1.1</b>	<p>The name of the tendering process is: <b>International Competitive Bidding (ICB)</b></p> <p>The procurement reference number of the tendering process is: (IUL)13-K1/2016/64</p> <p>The number and identification of lots comprising this tendering process is: TES/2016/W- 58 – <b>Construction of Sh. Funadhoo Airport</b></p>
<b>ITT 2.1</b>	The name of the Project is: <b>Construction of Sh.Funadhoo Airport.</b>
<b>ITT 3.1(d)</b>	A list of firms suspended from participating in Government funded projects is available at <a href="http://www.finance.gov.mv">http://www.finance.gov.mv</a>
<b>ITT 4.1</b>	The individuals or firms in a JV <b>shall</b> be jointly and severally liable.
<b>ITT 4.3 (f)</b>	<p>The following grades of contractors registered under National Contractors Registry will be eligible to participate in this tender.</p> <p><b>GC01-01, GC01-02, GC01-03, GC01-04 and GC01-05</b></p>
<b>B. Tendering Documents</b>	
<b>ITT 7.1</b>	<p>For <b>clarification purposes</b> only, the Employer's address is:</p> <p style="text-align: center;"><b>Aishath Nadheema</b>  <b>Project Officer</b>  Tender Evaluation Section  Public Procurement Division  Ministry of Finance and Treasury  Ameenee Magu, Male', 20379  Republic of Maldives  Tel: (960) 334 9296, (960) 334 9106, (960) 334 9115  Fax: (960) 3320706, (960) 3324432  E-mail: <a href="mailto:tender@finance.gov.mv">tender@finance.gov.mv</a>  <a href="mailto:Project.officer@finance.gov.mv">Project.officer@finance.gov.mv</a></p> <p>Requests for clarification should be received by the Employer no later than: <b>15<sup>th</sup> May 2016 13:30 hrs</b></p>
<b>ITT 7.4</b>	A Pre-Tender meeting <b>shall</b> take place. If a Pre-Tender meeting will take place, it

ITT reference	Tender data that supplements the ITT
	<p>will be at the following date, time and place:</p> <p>Date: 10<sup>th</sup> May 2015</p> <p>Time: 11:00hrs</p> <p>Place: Ministry of Finance and Treasury / Public Procurement Section Meeting</p>
<b>C. Preparation of Tenders</b>	
<b>ITT 10.1</b>	The language of the Tender is: <b>English</b>
<b>ITT 11.1(b)</b>	<p>The following schedules shall be submitted with the Tender:</p> <ul style="list-style-type: none"> <li>• Bill of Quantities</li> <li>• Work Schedule</li> </ul>
<b>ITT 11.1 (i)</b>	<p>The Tenderer shall submit with its Tender the following additional documents:</p> <ol style="list-style-type: none"> <li>1. The Tax Clearance Report which shall be obtained from Maldives Inland Revenue Authority. This document shall be dated no earlier than 10 (Ten) days prior to the bid submission date.</li> <li>2. GST Registration Certificate</li> <li>3. NCR Grade Certificate</li> </ol>
<b>ITT 12</b>	Prices should be quoted for all items in the Bills of Quantities.
<b>ITT 13.1</b>	Alternative Tenders <b>shall not</b> be permitted.
<b>ITT 13.2</b>	Alternative times for completion <b>shall not</b> be permitted.
<b>ITT 13.4</b>	Alternative technical solutions shall be permitted for the following parts of the Works: N/A
<b>ITT 14.6</b>	The prices quoted by the Tenderer shall not be subject to adjustment during the performance of the Contract.
<b>ITT 14.7</b>	Tender price should indicate amount of GST (Goods and Services Tax). Where GST amount is not indicated, quoted bid price shall be deemed to be



ITT reference	Tender data that supplements the ITT
	inclusive of GST.
ITT 15.1	The prices shall be quoted by the Tenderer in: <b>Maldivian Rufiya (MVR)</b>
ITT 18.1	The Bids shall be valid till <b>21<sup>st</sup> November 2016 i.e. 180 days from the date of bid submission.</b>
ITT 19.1	<p>The Tenderer shall furnish a Bid security in the amount of :</p> <p>TES/2016/W-58 Construction of Sh.Funadhoo Airport MVR 200,000.00</p> <p>The validity of the bid security shall be: <b>28 days beyond the validity of the Tender.</b></p>
ITT 19.3(d)	<b>None</b>
ITT 20.1	In addition to the <b>Original</b> of the Tender, the number of copies required is: <b>2 authentic hard copy (stamped) , 1 authentic soft copy (stamped &amp; scanned)</b>
ITT 20.2	<p>The written confirmation of authorization to sign on behalf of the Tenderer shall indicate:</p> <p>(a) The name and description of the documentation required to demonstrate the authority of the signatory to sign the Tender such as a Power of Attorney; and</p> <p>(b) In the case of Tenders submitted by an existing or intended JV an undertaking signed by all parties (i) stating that all parties shall be jointly and severally liable, if so required in accordance with ITB 4.1(a), and (ii) nominating a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JV during the tendering process and, in the event the JV is awarded the Contract, during contract execution.”]</p>
<b>D. Submission and Opening of Tenders</b>	
ITT 21.1	Tenderers shall not have the option of submitting their Tenders electronically.
ITT 22.1	<p>For Tender <b><u>submission purposes</u></b> only, the Employer’s address is:</p> <p>Mr. Ahmed Mujuthaba,  Director General,  Tender Evaluation Section  Public Procurement Division  Ministry of Finance and Treasury  Ameenee Magu, Male’, 20379  Republic of Maldives  Tel: (960) 334 9<b>296</b>, (960) 334 9106, (960) 334 9115  Fax: (960) 3320706, (960) 3324432</p>

ITT reference	Tender data that supplements the ITT
	<p>E-mail: <a href="mailto:tender@finance.gov.mv">tender@finance.gov.mv</a>  <a href="mailto:aishath.nadheema@finance.gov.mv">aishath.nadheema@finance.gov.mv</a></p> <p><b>The deadline for Tender submission is:</b></p> <p>Date: 25<sup>th</sup> May 2016</p> <p>Time: 1100hrs</p>
ITT 25.1	<p>The Tender opening shall take place at: Street Address:</p> <p>Public Procurement Section  Public Procurement Division  Ministry of Finance and Treasury  Ameenee Magu, Male', 20379  Republic of Maldives</p> <p>Date: 25<sup>th</sup> May 2016</p> <p>Time: 11:00hrs</p>
<b>E. Evaluation and Comparison of Tenders</b>	
ITT 32.1	Not applicable.
ITT 42.1	The Adjudicator proposed by the Employer is: <b>Ministry of Finance and Treasury</b>

## Section III - Evaluation and Qualification Criteria

This section contains all the criteria that the Employer shall use to evaluate Tenders, and qualify Tenderers if the tendering was not preceded by a prequalification exercise and post qualification is applied. In accordance with ITB 34 and ITB 36, no other methods, criteria and factors shall be used. The Tenderer shall provide all the information requested in the forms included in Section IV (Tendering Forms).

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## **Evaluation and Qualification Criteria**

### **1. Evaluation**

In addition to the criteria listed in ITB 34.1 (a) – (e) the following criteria shall apply;

- Past performance of the lowest evaluated bidder will be assessed prior to contract award.

#### **1.1 Adequacy of Technical Proposal**

Evaluation of the Tenderer's Technical Proposal will include an assessment of the Tenderer's technical capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing in sufficient detail and fully in accordance with the requirements stipulated in Section VI (Employer's Requirements).

#### **1.2 Multiple Contracts**

Not Applicable

#### **1.3 Completion Time**

An alternative Completion Time, if permitted under ITB 13.2, will be evaluated as follows:

Not Applicable

#### **1.4 Technical Alternatives**

Technical alternatives, if permitted under ITB 13.4, will be evaluated as follows:

Not Applicable

## 2. Qualification

Factor	2.1 Eligibility					
Sub-Factor	Criteria					Documentation Required
	Requirement	Tenderer				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.1.1 Nationality	Nationality in accordance with ITB 4.2.	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	N/A	Form ELI –1.1 and 1.2, with attachments
2.1.2 Conflict of Interest	No conflicts of interests as described in ITB 4.4.	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	N/A	Letter of Tender
2.1.3 Government Suspension	Not having been suspended from participation in public procurement by the Government as described in ITB 4.5.	Must meet requirement	Existing JV must meet requirement	Must meet requirement	N / A	Letter of Bid
2.1.4 Government Owned Entity	Compliance with conditions of ITB 4.6	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Form ELI –1.1 and 1.2, with attachments

Factor	2.2 Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Tenderer				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.3.1 Historical Financial Performance	Submission of audited balance sheets or if not required by the law of the Tenderer’s country, other financial statements acceptable to the Employer, for the last <b>three (3)</b> years to demonstrate the current soundness of the Tenderers financial position and its prospective long term profitability.	Must meet requirement	N/A	Must meet requirement	N/A	Form FIN – 2.1 with attachments
2.3.2. Average Annual Turnover	Minimum average annual turnover of MVR <b>28.5</b> million, calculated as total certified payments received for contracts in progress or completed, within the last <b>three (3)</b> years.	Must meet requirement	Must meet requirement	Must meet Five percent (5 %) of the requirement	Must meet Twenty percent (20 %) of the requirement	Form FIN –2.2

Factor	2.2 Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Tenderer				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.3.3. Financial Resources	The Tenderer 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: MVR 8.5 million ( Maldivian Rufiyaa)	Must meet requirement	Must meet requirement	Must meet Five percent (5 %) of the requirement	Must meet Twenty percent (20 %) of the requirement	Form FIN –2.3

Factor	2.3 Experience					
Sub-Factor	Criteria					Documentation Required
	Requirement	Tenderer				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.4.1 General Experience	Experience under contracts in the role of contractor, subcontractor, or management contractor for at least the last <b>3</b> years prior to the applications submission deadline.	Must meet requirement	N/A	Must meet requirement	N/A	Form EXP-2.4
2.4.2 Specific Experience	(a) Participation as contractor, management contractor, or subcontractor, in at least <b>2</b> contracts within the last <b>5</b> years , each with a value of at least <b>MVR 19.9 million</b> , that have been successfully and substantially completed and that are similar to the proposed Works. The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in Section VI, Employer’s Requirements.	Must meet requirement	Must meet requirements for all characteristics	N / A	Must meet requirement for one characteristic	Form EXP 2.4.2



## 2.4 Personnel

The Tenderer must demonstrate that it will have the personnel for the key positions that meet the following requirements:

	Position	No.s	Total Work Experience (years)	In Similar Works Experience (years)
1	Project Manager	1	5	3
2	Project Engineer	1	4	2
3	Site Supervisor	1	3	1
4	Quantity Surveyor	1	2	1

The Tenderer shall provide details of the proposed personnel and their experience records in the relevant Forms included in Section IV, Tendering Forms.

## 2.5 Equipment

The Tenderer must demonstrate that it will have access to the key Contractor's equipment listed hereafter:

No.	Equipment Type and Characteristics	Minimum Number required
1	Concrete Mixer/ Machine	1
2	Vibrator	1
3	Small Truck	1

The Tenderer shall provide further details of proposed items of equipment using the relevant Form in Section IV.

## Section IV - Tendering Forms

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# Letter of Tender

*{The Tenderer must prepare the Letter of Tender for each project separately and on stationery with its letterhead clearly showing the Tenderer's complete name and address}.*

***Note: All italicized text is for use in preparing these form and shall be deleted from the final products.***

Date: \_\_\_\_\_

Tenderer's Reference No.: \_\_\_\_\_

Procurement Reference No.: \_\_\_\_\_

To: Ahmed Mujuthaba,  
Director General,  
Public Procurement Division,  
Ministry of Finance and Treasury  
Male', Republic of Maldives

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Tendering Documents, including Addenda issued in accordance with Instructions to Tenderers (ITT) Clause 8;
- (b) We offer to execute in conformity with the Tendering Documents of the following Works:  
**Construction of Sh.Funadhoo Airport**
- (c) The total lump-sum fixed price of our Tender, **excluding Goods and Services Tax (GST) in item (d) and excluding any discounts** offered in item (e) below is:  
.....;*[amount in numbers & words]*
- (d) **The amount for Goods and Services Tax (GST) is** .....  
*[amount in numbers & words]*
- (e) The discounts offered and the methodology for their application are:  
.....;
- (f) We undertake, if our Bid is accepted, to commence the Works as soon as is reasonably possible and to complete the whole of the Works comprised in the Contract within .....  
*(days).*
- (g) Our Tender shall be valid for a period of \_\_\_\_\_ **{insert validity period as specified in ITB 18.1.}** days from the date fixed for the Tender submission deadline in accordance with the Tendering Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (h) If price adjustment provisions apply, the Table(s) of Adjustment Data shall be considered part of this Tender;<sup>1</sup>
- (i) If our Tender is accepted, we commit to obtain a performance security in accordance with the Tendering Document;

<sup>1</sup> *Include if price adjustment provisions apply in the Contract in accordance with PCC Sub-Clause 13.8 Adjustments for Changes in Cost.*

- (j) Our firm, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries;
- (k) We, including any subcontractors or suppliers for any part of the contract, are eligible in accordance with ITT Sub-Clause 4.3 and do not have any conflict of interest in accordance with ITB 4.4;
- (l) We are not participating, as a Tenderer or as a subcontractor, in more than one Tender in this tendering process in accordance with ITB 4.4, other than alternative offers submitted in accordance with ITB 13;
- (m) Our firm, its affiliates or subsidiaries, including any Subcontractors or Suppliers for any part of the contract, has not been suspended from public procurement by the Government, under the laws or official regulations of the Republic of Maldives;
- (n) **We are not a government owned entity/We are a government owned entity** but meet the requirements of ITB 4.6;<sup>2</sup>
- (o) We have paid, or will pay the following commissions, gratuities, or fees with respect to the tendering process or execution of the Contract:<sup>3</sup>

Name of Recipient	Address	Reason	Amount
.....			
.....			

- (p) We understand that this Tender, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (q) We understand that you are not bound to accept the lowest evaluated Tender or any other Tender that you may receive; and
- (r) If awarded the contract, the person named below shall act as Contractor's Representative:

.....

Signed:	.....{insert signature of authorised person}
Name:	.....{insert complete name of person signing}
In the capacity of:	.....{insert legal capacity of person signing}
Duly authorized to sign the tender for and on behalf of	.....{insert complete name of Tenderer and Company stamp}
Date:	..... day of ..... {DD/MM/YY}

<sup>2</sup> Use one of the two options as appropriate.

<sup>3</sup> If none has been paid or is to be paid, indicate "none".

## Price Schedules

### Bill of Quantities

[Note: Bidders shall submit fully priced Bills of Quantities for the projects mentioned below].

Each page of the Bills of Quantities or the Schedule of Activities should be signed by a person with the proper authority to sign documents for the Bidder].

The Bill of Quantities ( BoQ) attached with this Tender Document are;

Bill of Quantities	
Project Number	Project Name
TES/2016/W -58	Construction of Sh.Funadhoo Airport

## Work Schedule

Note: Bidders shall submit **work schedule** for **each project separately**. Project name, Project number, client and duration should be clearly indicated.

Each page of the Work Schedule should be signed by a person with the proper authority to sign documents for the Bidder.

The work schedule should be submitted for the following projects;

Work Schedule	
Project Number	Project Name
TES/2016/W -58	Construction of Sh.Funadhoo Airport

## Form of Tender Security (Bank Guarantee)

The Issuing Bank shall fill in this Bank Guarantee Form in accordance with the instructions indicated.

..... {Bank's Name, and Address of Issuing Branch or Office}

**Beneficiary:** {Name and Address of Employer}

**Date:**

**TENDER GUARANTEE No.:** \_\_\_\_\_

We have been informed that \_\_\_\_\_ {name of the Tenderer} (hereinafter called "the Tenderer") has submitted to you its Tender dated \_\_\_\_\_ (hereinafter called "the Tender") for the execution of \_\_\_\_\_ {name of contract} under Invitation for Tenders No. \_\_\_\_\_ ("the IFB").

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

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

- (a) has withdrawn its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender; or
- (b) having been notified of the acceptance of its Tender by the Employer during the period of Tender validity, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to furnish the performance security, in accordance with the ITB.

This guarantee will expire: (a) if the Tenderer is the successful Tenderer, upon our receipt of copies of the contract signed by the Tenderer and the performance security issued to you upon the instruction of the Tenderer; and (b) if the Tenderer is not the successful Tenderer, upon the earlier of (i) our receipt of a copy your notification to the Tenderer of the name of the successful Tenderer; or (ii) {insert date} twenty-eight days after the expiration of the Tenderer's Tender.

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

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

[signature(s)]

# **Technical Proposal**

## **Technical Proposal Forms**

**Personnel**

**Equipment**

**Site Organization**

**Method Statement**

**Mobilization Schedule**

**Construction Schedule**

**Others**



## Forms for Personnel

### Form PER – 1: Proposed Personnel

Tenderers should provide the names of suitably qualified personnel to meet the specified requirements for each of the positions listed in Section III (Evaluation and Qualification Criteria). The data on their experience should be supplied using the Form below for each candidate.

<b>1.</b>	<b>Title of position</b>
	<b>Name</b>
<b>2.</b>	<b>Title of position</b>
	<b>Name</b>
<b>3.</b>	<b>Title of position</b>
	<b>Name</b>
<b>4.</b>	<b>Title of position</b>
	<b>Name</b>
<b>5.</b>	<b>Title of position</b>
	<b>Name</b>
<b>6.</b>	<b>Title of position</b>
	<b>Name</b>
<b>7.</b>	<b>Title of position</b>
	<b>Name</b>

## Form PER – 2: Resume of Proposed Personnel

The Tenderer shall provide all the information requested below. Fields with asterix (\*) shall be used for evaluation.

<b>Position*</b>		
<b>Personnel information</b>	<b>Name *</b>	<b>Date of birth</b>
	<b>Professional qualifications:</b>	
<b>Present employment</b>	<b>Name of Employer</b>	
	<b>Address of Employer</b>	
	<b>Telephone</b>	<b>Contact (manager/personnel officer)</b>
	<b>Fax</b>	<b>E-mail</b>
	<b>Job title</b>	<b>Years with present Employer</b>

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From*	To*	Company, Project , Position, and Relevant Technical and Management Experience*

## Forms for Equipment

The Tenderer shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III (Evaluation and Qualification Criteria). A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Tenderer. The Tenderer shall provide all the information requested below, to the extent possible. Fields with asterisk (\*) shall be used for evaluation.

<b>Type of Equipment*</b>		
<b>Equipment Information</b>	<b>Name of manufacturer</b>	<b>Model and power rating</b>
	<b>Capacity*</b>	<b>Year of manufacture*</b>
<b>Current Status</b>	<b>Current location</b>	
	<b>Details of current commitments</b>	
<b>Source</b>	<b>Indicate source of the equipment</b> <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

The following information shall be provided only for equipment not owned by the Tenderer.

<b>Owner</b>	<b>Name of owner</b>	
	<b>Address of owner</b>	
	<b>Telephone</b>	<b>Contact name and title</b>
	<b>Fax</b>	<b>Telex</b>
<b>Agreements</b>	<b>Details of rental / lease / manufacture agreements specific to the project</b>	

## **Tenderer's Qualifications**

To establish its qualifications to perform the contract in accordance with Section III (Evaluation and Qualification Criteria) the Tenderer shall provide the information requested in the corresponding Information Sheets included hereunder

**Form ELI 1.1****Tenderer Information Sheet**

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

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

Tenderer's Reference No: [Insert reference no]

Procurement Reference No.: [insert reference number]

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

1. Tenderer's Legal Name	{insert Tenderer's legal name }
2. In case of JV, legal name of each party:	{insert legal name of each party in JV }
3. Tenderer's actual or intended Country of Registration:	{insert actual or intended Country of Registration }
4. Tenderer's Year of Registration:	{insert Tenderer's year of registration }
5. Tenderer's Legal Address in Country of Registration:	{insert Tenderer's legal address in country of registration }
6. Tenderer's Authorized Representative Information	
Name:	{insert Authorized Representative's name }
Address:	{insert Authorized Representative's Address }
Telephone/Fax numbers:	{insert Authorized Representative's tel/fax numbers }
Email Address:	{insert Authorized Representative's email address }
7. Attached are copies of original documents of: {check the box(es) of the attached original documents }	
<input type="checkbox"/> Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITB Sub-Clauses 4.1 and 4.2.	
<input type="checkbox"/> In case of JV, letter of intent to form JV including a draft agreement, or JV agreement, in accordance with ITB Sub-Clauses 4.1	
<input type="checkbox"/> In case of government owned entity from the Employer's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITB Sub-Clause 4.6.	

**Form ELI 1.2****Party to Joint Venture Information Sheet**

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

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

Tenderer's Reference No: [Insert reference no]

Procurement Reference No.: [insert reference]

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

1. Tenderer's Legal Name:	{insert Tenderer's legal name}
2. JV's Party legal name:	{insert JV's Party legal name}
3. JV's Party Country of Registration:	{insert JV's Party country of registration}
4. JV's Party Year of Registration:	{insert JV's Part year of registration}
5. JV's Party Legal Address in Country of Registration:	{insert JV's Party legal address in country of registration}
6. JV's Party Authorized Representative Information	
Name:	{insert name of JV's Party authorized representative}
Address:	{insert address of JV's Party authorized representative}
Telephone/Fax numbers:	{insert telephone/fax numbers of JV's Party authorized representative}
Email Address:	{insert email address of JV's Party authorized representative}
7. Attached are copies of original documents of: {check the box(es) of the attached original documents}	
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITB Sub-Clauses 4.1 and 4.2. <input type="checkbox"/> In case of government owned entity from the Purchaser's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITB Sub-Clause 4.6.	



**Form CCC****Current Contract Commitments/Works in Progress**

Tenderers and each partner to a JV 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.

<b>No</b>	<b>Name of contract</b>	<b>Employer, contact address/tel/fax</b>	<b>Value of outstanding work (current MVR equiv)</b>	<b>Estimated completion date</b>	<b>Average monthly invoicing over last six months (MVR/month)</b>
1.					
2.					
3.					
4.					
5.					



## Form FIN – 2.1

## Financial Situation

## Historical Financial Performance

To be completed by the Tenderer and, if JV, by each partner

Tenderer's Legal Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Partner Legal Name: \_\_\_\_\_

Tendering No.: \_\_\_\_\_

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

Financial information (US\$ equiv)	Historic information for previous ____ years (MVR equiv in ,000s)				
	2014	2013	2012	Avg.	Avg. Ratio
<b>Information from Balance Sheet</b>					
Total Assets (TA)					
Total Liabilities (TL)					
Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
<b>Information from Income Statement</b>					
Total Revenue (TR)					
Profits Before Taxes (PBT)					

☐ Attached are copies of financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following conditions:

- Must reflect the financial situation of the Tenderer or partner to a JV, 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)

**Form FIN – 2.2****Average Annual Turnover**

Tenderer's Legal Name: \_\_\_\_\_ Date: \_\_\_\_\_

JV Partner Legal Name: \_\_\_\_\_ Tendering No.: \_\_\_\_\_

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

<b>Annual turnover data</b>		
<b>Year</b>	<b>Amount and Currency</b>	<b>MVR equivalent</b>
2014		
2013		
2012		
*Average Annual Turnover		

\*Average annual turnover calculated as total certified payments received for work in progress or completed over the number of years specified in Section III (Evaluation and Qualification Criteria), Sub-Factor 2.3.2, divided by that same number of years.

**Form FIN2.3****Financial Resources**

Specify 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 construction cash flow demands of the subject contract or contracts as indicated in Section III (Evaluation and Qualification Criteria)

Source of financing	Amount (MVR equivalent)
1.	
2.	
3.	
4.	

*\*\*Credit reference letters should be attached with the form.*

## Experience

### General Experience

Tenderer's Legal Name: \_\_\_\_\_ Date: \_\_\_\_\_

JV Partner Legal Name: \_\_\_\_\_ Tendering No.: \_\_\_\_\_

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

Starting Month / Year	Ending Month / Year	Years*	Contract Identification	Role of Tenderer
			Contract name: Brief Description of the Works performed by the Tenderer: Name of Employer: Address:	
			Contract name: Brief Description of the Works performed by the Tenderer: Name of Employer: Address:	
			Contract name: Brief Description of the Works performed by the Tenderer: Name of Employer: Address:	
			Contract name: Brief Description of the Works performed by the Tenderer: Name of Employer: Address:	
			Contract name: Brief Description of the Works performed by the Tenderer: Name of Employer: Address:	
			Contract name: Brief Description of the Works performed by the Tenderer: Name of Employer: Address:	

\*List calendar year for years with contracts with at least nine (9) months activity per year starting with the earliest year

**Form EXP – 2.4.2(a) cont.****Specific Experience cont.**

Tenderer's Legal Name: \_\_\_\_\_ Date: \_\_\_\_\_

JV Partner Legal Name: \_\_\_\_\_ Procurement Ref No: \_\_\_\_\_

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

<b>Similar Contract</b> Number: ..... [insert specific number] of ..... [insert total number of contracts required].	<b>Information</b>		
<b>Contract Identification</b>			
<b>Award date</b>			
<b>Completion date</b>			
<b>Role in Contract</b>	Contractor	Management Contractor	Subcontractor
<b>Total contract amount</b>			MVR
<b>If partner in a JV or subcontractor, specify participation of total contract amount</b>	%		MVR
<b>Employer's Name:</b>			
<b>Address:</b>			
<b>Telephone/fax number:</b>			
<b>E-mail:</b>			

*\*\*Reference Letters shall be attached with the forms.*

**Form EXP – 2.4.2(a)****Specific Experience**

Tenderer's Legal Name: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_ pages

JV Partner Legal Name: \_\_\_\_\_

<b>Similar Contract</b> <b>No. .... [insert specific number]</b> <b>of ..... [insert total number of contracts] required</b>	<b>Information</b>
<b>Description of the similarity in accordance with Sub-Factor 2.4.2a) of Section III (Evaluation and Qualification Criteria):</b>	
<b>Amount</b>	
<b>Physical size</b>	
<b>Complexity</b>	
<b>Methods/Technology</b>	
<b>Physical Production Rate</b>	

***\*\*Reference Letters should be attached with the forms.***

## Section V - Eligible Countries

### Eligibility for the Provision of Works in Public Procurement

1. The Government of the Maldives permits firms and individuals from all countries to offer works for publically funded contracts.
2. As an exception, firms of a Country or goods manufactured in a Country may be excluded if:
  - i) as a matter of law or official regulation, the Republic of Maldives prohibits commercial relations with that Country, or
  - ii) 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 Republic of Maldives prohibits any import of goods from that Country or any payments to persons or entities in that Country.
2. For the information of Tenderers, at the present time firms, goods, works and services from the following countries are excluded from this tendering:

**No countries at excluded from tendering.**



## **PART 2 – Employer’s Requirements**

## **Section VI - Employer's Requirements**

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## **Scope of Works**

[The Employer should provide a description of the works, including approximate quantities of major items, which adequately describe the contract scope of work].

### **Brief Description of Works**

### **Location(s) of Works**

Additional information that may be included is:

- Site location
- Climate and weather information
- Site investigation studies and reports
- Topographical data
- Access details
- Details of other ongoing or future works to be carried out by other contractors during the Contract period
- Information regarding disposal, borrow and quarry areas including royalty payments as applicable
- any other pertinent information regarding the site and the works

A description of approximately 1-2 pages would be appropriate for most contracts].

## **Specifications**

## Drawings

[Insert here a list of Drawings. The actual Drawings, including site plans, should be attached to this section or annexed in a separate folder].

List of Drawings		
Project Number	Drawing Number	Drawing Title
TES/2016/W- 58		

## Bill of Quantities or Activity Schedule

[The following units of measurement and abbreviations are recommended for use].

Unit	Abbreviation	Unit	Abbreviation
cubic meter	m <sup>3</sup> or cu m	millimetre	mm
hectare	ha	month	mon
hour	h	number	nr
kilogram	kg	square meter	m <sup>2</sup> or sq m
lump sum	sum	square millimetre	mm <sup>2</sup> or sq mm
meter	m	week	wk
metric ton (1,000 kg)	t		

## **Supplementary Information**

## **PART 3 –Contract**



## Section VII. General Conditions of Contract for the Procurement of Works

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# General Conditions of Contract for the Procurement of for Works

## A. General

### 1. Definitions

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

- (a) The Accepted Contract Amount means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
- (b) The Activity Schedule is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
- (c) The Adjudicator is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC 23.
- (d) Bill of Quantities means the priced and completed Bill of Quantities forming part of the Tender.
- (e) Compensation Events are those defined in GCC Clause 41 hereunder.
- (f) The Completion Date is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Sub-Clause 52.1.
- (g) The Contract is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in the Contract Agreement.
- (h) The Contractor is the party whose Tender to carry out the Works has been accepted by the Employer.
- (i) The Contractor's Tender is the completed tendering document submitted by the Contractor to the Employer.
- (j) The Contract Price is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
- (k) Days are calendar days; months are calendar months.
- (l) Dayworks are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.
- (m) A Defect is any part of the Works not completed in accordance with the Contract.
- (n) The Defects Liability Certificate is the certificate issued by Project Manager upon correction of defects by the Contractor.
- (o) The Defects Liability Period is the period named in the PCC pursuant to Sub-Clause 33.1

and calculated from the Completion Date.

- (p) Adjudicator means the single person appointed under Clause 23.
- (q) Drawings means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract, include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
- (r) The Employer is the party who employs the Contractor to carry out the Works, as specified in the PCC.
- (s) Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- (t) "In writing" or "written" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (u) The Initial Contract Price is the Contract Price listed in the Employer's Letter of Acceptance.
- (v) The Intended Completion Date is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the PCC. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- (w) Materials are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (x) Plant is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- (y) The Project Manager is the person named in the PCC (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.
- (z) The Procuring Entity means the entity purchasing the Works as specified in the PCC, and shall be otherwise be referred to as the Employer.
- (aa) PCC means Particular Conditions of Contract.
- (bb) The Site is the area defined as such in the PCC.
- (cc) Site Investigation Reports are those that were included in the tendering documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (dd) Specification means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- (ee) The Start Date is given in the PCC. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.

- (ff) A Subcontractor is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
- (gg) Temporary Works are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (hh) A Variation is an instruction given by the Project Manager which varies the Works.
- (ii) The Works are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the PCC.

## 2. Interpretation

- 2.1 In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.
- 2.2 If sectional completion is **specified in the PCC**, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The Contract shall be either:
  - (a) an Admeasurement Contract with a Bill of Quantities, or
  - (b) a Lump Sum Contract with an Activity Schedule, as indicated in the PCC.
- 2.4 For Admeasurement Contracts:
  - (a) the Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.
  - (b) the Bill of Quantities will be used to calculate the Contract Price. The Contractor shall be paid for the quantity of the work actually done at the rate in the Bill of Quantities for each item.
- 2.5 For Lump Sum Contracts:
  - (a) the Activity Schedule shall contain items for the construction, installation, testing and commissioning of works to be carried out by the Contractor.
  - (b) the Activity Schedule will be used calculate the total Contract Price and the Contractor shall be paid the accepted lump sums amounts for each activity or the total lump sum price tendered for the activity or activities completed.

## 3. Language and Law

- 3.1 The language of the Contract and the law governing the Contract are **stated in the PCC**.

## 4. Project Manager's Decisions

- 4.1 Except where otherwise specifically stated in the PCC, the Project Manager shall decide contractual matters between the Employer and the Contractor in the role representing the

Employer.

## **5. Delegation**

- 5.1 Unless otherwise specified in the PCC, the Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may revoke any delegation after notifying the Contractor.

## **6. Communications**

- 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.

## **7. Subcontracting**

- 7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.

## **8. Other Contractors**

- 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as **referred to in the PCC**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.

## **9. Personnel and Equipment**

- 9.1 The Contractor shall employ the key personnel and use the equipment identified in its Tender, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Tender.
- 9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

## **10. Employer's and Contractor's Risks**

- 10.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

## **11. Employer's Risks**

- 11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks:
- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works,

Plant, Materials, and Equipment), which are due to

- (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or
  - (ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
- (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to

- (a) a Defect which existed on the Completion Date,
- (b) an event occurring before the Completion Date, which was not itself an Employer's risk, or
- (c) the activities of the Contractor on the Site after the Completion Date.

## 12. Contractor's Risks

12.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risks are Contractor's risks.

## 13. Insurance

13.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles **stated in the PCC** for the following events which are due to the Contractor's risks:

- (a) loss of or damage to the Works, Plant, and Materials;
- (b) loss of or damage to Equipment;
- (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
- (d) personal injury or death.

13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

13.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

13.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.

13.5 Both parties shall comply with any conditions of the insurance policies.

#### **14. Site Data**

14.1 The Contractor shall be deemed to have examined any Site Data **referred to in the PCC**, supplemented by any information available to the Contractor.

#### **15. Contractor to Construct the Works**

15.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.

#### **16. The Works to Be Completed by the Intended Completion Date**

16.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

#### **17. Approval by the Project Manager**

17.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.

17.2 The Contractor shall be responsible for design of Temporary Works.

17.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.

17.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.

17.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.

#### **18. Safety**

18.1 The Contractor shall be responsible for the safety of all activities on the Site.

#### **19. Discoveries**

19.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.

#### **20. Possession of the Site**

20.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date **stated in the PCC**, the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.



**21. Access to the Site**

- 21.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

**22. Instructions, Inspections and Audits**

- 22.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.
- 22.2 The Contractor shall permit the Government and/or persons appointed by the Government to inspect the Site and/or the accounts and records of the Contractor and its sub-contractors relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the Government if required by the Government. The Contractor's attention is drawn to Sub-Clause 57.1 which provides, inter alia, that acts intended to materially impede the exercise of the Government's inspection and audit rights provided for under Sub-Clause 22.2 constitute a prohibited practice subject to contract termination (as well as to a determination of suspension under Government Financial Regulations).

**23. Appointment of the Adjudicator**

- 23.1 The Adjudicator shall be appointed jointly by the Employer and the Contractor, at the time of the Employer's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority **designated in the PCC**, to appoint the Adjudicator within 14 days of receipt of such request.
- 23.2 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the PCC** at the request of either party, within 14 days of receipt of such request.

**24. Procedure for Disputes**

- 24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.
- 24.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 24.3 The Adjudicator shall be paid by the hour at the **rate specified in the PCC**, together with reimbursable expenses of the types **specified in the PCC**, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the

Adjudicator's decision shall be final and binding.

- 24.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place specified **in the PCC**.

## **B. Time Control**

### **25. Program**

- 25.1 Within the time **stated in the PCC**, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.
- 25.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 25.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period **stated in the PCC**. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount **stated in the PCC** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.
- 25.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

### **26. Extension of the Intended Completion Date**

- 26.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.
- 26.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

### **27. Acceleration**

- 27.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor.

- 27.2 If the Contractor's priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.

### **28. Delays Ordered by the Project Manager**

- 28.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.

### **29. Management Meetings**

- 29.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 29.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

### **30. Early Warning**

- 30.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 30.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

## **C. Quality Control**

### **31. Identifying Defects**

- 31.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.

### **32. Tests**

- 32.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

### **33. Correction of Defects**

- 33.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is **defined in the PCC**. The Defects

Liability Period shall be extended for as long as Defects remain to be corrected.

- 33.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

#### **34. Uncorrected Defects**

- 34.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

### **D. Cost Control**

#### **35. Contract Price**

- 35.1 In the case of an admeasurement contract, the Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.
- 35.2 In the case of a lump sum contract, the Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the Contractor will be paid. If payment for Materials on Site shall be made separately, the Contractor shall show delivery of Materials to the Site separately on the Activity Schedule.

#### **36. Changes in the Contract Price**

- 36.1 In the case of an admeasurement contract:
- (a) If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.
  - (b) The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer.
  - (c) If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.
- 36.2 In the case of a lump sum contract, the Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.

#### **37. Variations**

- 37.1 All Variations shall be included in updated Programs, and, in the case of a lump sum contract, also in the Activity Schedule, produced by the Contractor.

- 37.2 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
- 37.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.
- 37.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.
- 37.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 37.6 In the case of an admeasurement contract, if the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 38.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

### **38. Cash Flow Forecasts**

- 38.1 When the Program, or, in the case of a lump sum contract, the Activity Schedule, is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

### **39. Payment Certificates**

- 39.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 39.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- 39.3 The value of work executed shall be determined by the Project Manager.
- 39.4 The value of work executed shall comprise:
- (a) In the case of an admeasurement contract, the value of the quantities of work in the Bill of Quantities that have been completed; or
  - (b) In the case of a lump sum contract, the value of work executed shall comprise the value of completed activities in the Activity Schedule.
- 39.5 The value of work executed shall include the valuation of Variations and Compensation Events.

39.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

#### **40. Payments**

40.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.

40.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.

40.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.

40.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

#### **41. Compensation Events**

41.1 The following shall be Compensation Events:

- (a) The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 20.1.
- (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
- (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
- (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- (e) The Project Manager unreasonably does not approve a subcontract to be let.
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to Tenderers (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the

Contractor.

- (i) The advance payment is delayed.
- (j) The effects on the Contractor of any of the Employer's Risks.
- (k) The Project Manager unreasonably delays issuing a Certificate of Completion.

41.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

41.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager shall assume that the Contractor shall react competently and promptly to the event.

41.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.

## 42. Tax

42.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of Tenders for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC Clause 44.

## 43. Currencies

43.1 Where payments are made in currencies other than Maldivian Rufiya, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Tender.

## 44. Price Adjustment

44.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the PCC**. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c \text{ } I_{mc}/I_{oc}$$

where:

$P_c$  is the adjustment factor for the portion of the Contract Price payable in a specific currency

“c.”

$A_c$  and  $B_c$  are coefficients<sup>4</sup> **specified in the PCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency “c;” and

$I_{mc}$  is the index prevailing at the end of the month being invoiced and  $I_{oc}$  is the index prevailing 28 days before Tender opening for inputs payable; both in the specific currency “c.”

- 44.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

#### 45. Retention

- 45.1 The Employer shall retain from each payment due to the Contractor the proportion **stated in the PCC** until Completion of the whole of the Works.
- 45.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 51.1, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an “on demand” Bank guarantee.

#### 46. Liquidated Damages

- 46.1 The Contractor shall pay liquidated damages to the Employer at the rate per day **stated in the PCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the PCC**. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.
- 46.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 40.1.

#### 47. Bonus

- 47.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day **stated in the PCC** for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

#### 48. Advance Payment

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<sup>4</sup> *The sum of the two coefficients  $A_c$  and  $B_c$  should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient  $A_c$ , for the nonadjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency are added to the Contract Price.]*



- 48.1 The Employer shall make advance payment to the Contractor of the amounts **stated in the PCC** by the date **stated in the PCC**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.
- 48.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.
- 48.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

#### **49. Securities**

- 49.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount **specified in the PCC**, by a bank or surety acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.

#### **50. Dayworks**

- 50.1 If applicable, the Dayworks rates in the Contractor's Tender shall be used only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
- 50.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.
- 50.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

#### **51. Cost of Repairs**

- 51.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

### **E. Finishing the Contract**

#### **52. Completion**

- 52.1 The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the whole of the Works is

completed.

### **53. Taking Over**

- 53.1 The Employer shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.

### **54. Final Account**

- 54.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

### **55. Operating and Maintenance Manuals**

- 55.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates **stated in the PCC**.
- 55.2 If the Contractor does not supply the Drawings and/or manuals by the dates **stated in the PCC** pursuant to GCC Sub-Clause 55.1, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount **stated in the PCC** from payments due to the Contractor.

### **56. Termination**

- 56.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 56.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:
- (a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
  - (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
  - (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
  - (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager's certificate;
  - (e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;

- (f) the Contractor does not maintain a Security, which is required;
- (g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the PCC**; or
- (h) if the Contractor, in the judgment of the Employer, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, pursuant to GCC Clause 57.1.

56.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC Sub-Clause 56.2 above, the Project Manager shall decide whether the breach is fundamental or not.

56.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

56.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

## **57. Fraud and Corruption**

57.1 If the Employer determines that the Contractor has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 56 shall apply as if such expulsion had been made under Sub-Clause 56.5 [Termination by Employer].

57.2 Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Works, then that employee shall be removed in accordance with Clause 9.

57.3 For the purposes of this Sub-Clause:

- (i) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) “obstructive practice” is
  - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an Employer’s investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or

- from pursuing the investigation; or
- (bb) acts intended to materially impede the exercise of the Employer's inspection and audit rights provided for under Sub-Clause 22.2.

#### **58. Payment upon Termination**

- 58.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as **indicated in the PCC**. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.
- 58.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

#### **59. Property**

- 59.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's default.

#### **60. Release from Performance**

- 60.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

## Section VIII. Particular Conditions of Contract

GCC reference	Particular Conditions that amend or supplement the General Conditions of Contract for the Procurement of Works
<b>A. General</b>	
<b>1.1(r) &amp; 1.1(z)</b>	The Employer (Procuring Entity) is <b>Public Procurement Section, Public Procurement Division, Ministry of Finance and Treasury</b>
<b>1.1 (v)</b>	The Intended Completion Date for the whole of the Works shall be <b>[insert date]</b>  <b>[If different dates are specified for completion of the Works by section (“sectional completion” or milestones), these dates should be listed here]</b>
<b>1.1 (y)</b>	The Project Manager is <b>[insert name and address of Project Manager]</b> .
<b>1.1 (bb)</b>	The Site is located at <b>Sh.Funadhoo</b> and is defined in drawings No. <b>[insert numbers]</b>
<b>1.1 (ee)</b>	The Start Date shall be <b>[insert date]</b> .
<b>1.1 (ii)</b>	The Works consist of <b>Construction of Sh.Funadhoo Airport</b>
<b>2.2</b>	Sectional Completions are: <b>[insert nature and dates, if appropriate]</b>
<b>2.3</b>	This Contract is Lumpsum.
<b>3.1</b>	The language of the contract is <b>English</b>  The law that applies to the Contract is the law of the Republic of Maldives <b>[or amend if a different law applies]</b> .
<b>5.1</b>	The Project Manager <b>[insert may or may not]</b> delegate any of his duties and responsibilities.
<b>8.1</b>	Schedule of other contractors:  <b>[insert Schedule of Other Contractors, if appropriate]</b>
<b>13.1</b>	The minimum insurance amounts and deductibles shall be:  (a) for loss or damage to the Works, Plant and Materials: <b>[insert currency and amount]</b> .  (b) For loss or damage to Equipment: <b>[insert currency and amount]</b> .  (c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract <b>[insert currency and amount]</b> .

GCC reference	Particular Conditions that amend or supplement the General Conditions of Contract for the Procurement of Works
	(d) for personal injury or death: (i) of the Contractor's employees: [insert currency and amount]. (ii) of other people: [insert currency and amount].
14.1	Site Data are: [list Site Data]
20.1	The Site Possession Date(s) shall be: [insert location(s) and date(s)]
23.1 & 23.2	Appointing Authority for the Adjudicator: Ministry of Finance and Treasury
24.3	Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: N/A
24.4	Disputes shall be referred to arbitration in accordance with the Arbitration Act of the Republic of Maldives [10/2013].  The place of arbitration shall be: Republic of Maldives  In case, an Arbitration system is not yet established, Court of Law of Republic of Maldives shall prevail.
<b>B. Time Control</b>	
25.1	The Contractor shall submit for approval a Program for the Works within 14 days from the date of the Letter of Acceptance.
25.3	The period between Program updates is 30 days.  The amount to be withheld for late submission of an updated Program is 10% of the monthly progress bill.
<b>C. Quality Control</b>	
33.1	The Defects Liability Period is: 365 months.
<b>D. Cost Control</b>	
44.1	The Contract is not subject to price adjustment.
45.1	The proportion of payments retained is: 10% of each bill up to a limit of 5% of contract.
46.1	The liquidated damages for the whole of the Works are 0.1% per day. The maximum amount of liquidated damages for the whole of the Works is 15% of the final

GCC reference	Particular Conditions that amend or supplement the General Conditions of Contract for the Procurement of Works
	Contract Price.
47.1	Not applicable
48.1	The Advance Payments shall be: 15% (fifteen percent) and shall be paid to the Contractor no later than 15 days upon signing of the contract and as per the conditions of contract.
49.1	<p>The Performance Security amount is [insert amount(s) denominated in the types and proportions of the currencies in which the Contract Price is payable, or in a freely convertible currency acceptable to the Employer]</p> <p>(a) Performance Bank Guarantee: [insert percentage and amount(s)].</p>
<b>E. Finishing the Contract</b>	
55.1	<p>The date by which operating and maintenance manuals are required is one month after intended completion date.</p> <p>The date by which “as built” drawings are required is one month after intended completion date.</p>
55.2	The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required in GCC 58.1 is MVR 15,000.00 (Maldivian Rufiyaa Fifteen Thousand)
56.2 (g)	The maximum number of days is: sixty (60) days.
58.1	The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, is [insert percentage].

## **Section IX - Contract Forms**

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Tenderer after contract award.

### **Table of Forms**

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## Letter of Acceptance

[To be produced on letterhead paper of the Employer/Procuring Entity]

To:

[name and address of the Contractor ]

**Subject: Notification of Award of Contract:**

This is to notify you that your Tender dated..... [insert date] for the execution of the .....[insert name of the contract and procurement reference number, as given in the Invitation to Tender] for the Accepted Contract Amount of the equivalent of ..... [insert amount in numbers and words and name of currency], as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the of the Performance Security Form included in Section IX (Contract Forms) of the Tendering Document.

[Choose one of the following statements:]

We accept that ..... [insert the name of Adjudicator proposed by the Tenderer] be appointed as the Adjudicator.

[or]

We do not accept that ..... [insert the name of the Adjudicator proposed by the Tenderer] be appointed as the Adjudicator, and by sending a copy of this Letter of Acceptance to ..... [insert name of the Appointing Authority], the Appointing Authority, we are hereby requesting such Authority to appoint the Adjudicator in accordance with ITB 42.1 and GCC 23.1.

Signed:	.....{insert signature of authorised person}
Name:	.....{insert complete name of person signing}
In the capacity of:	.....{insert legal capacity of person signing}
Duly authorized to sign the tender for and on behalf of	.....{insert complete name of Procuring Entity}
Date:	..... day of ..... {DD/MM/YY}

Attachment: Contract Agreement

## Contract Agreement

THIS AGREEMENT made the [insert date] day of [insert month], [insert year], between [name of the Employer] (hereinafter “the Employer”), of the one part, and [name of the Contractor] (hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Works known as [name of the Contract] should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
  - (a) the Letter of Acceptance
  - (b) the Contractor’s Tender
  - (c) the Particular Conditions
  - (d) the General Conditions;
  - (e) the Specification
  - (f) the Drawings; and
  - (g) the completed Schedules,
3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of the Republic of Maldives on the day, month and year indicated above.

### For and on behalf of the Employer/Procuring Entity

Signed:	.....
Name:	
In the capacity of:	[Title or other appropriate designation]

### For and on behalf of the Contractor

Signed:	.....
Name:	
In the capacity of:	[Title or other appropriate designation]

~~~~~  
[Note: If the Consultant consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:]

**For and on behalf of each member of the Joint Venture**

|                     |                                          |
|---------------------|------------------------------------------|
| Signed:             | .....                                    |
| Name of member:     |                                          |
| In the capacity of: | [Title or other appropriate designation] |

|                     |                                          |
|---------------------|------------------------------------------|
| Signed:             | .....                                    |
| Name of member:     |                                          |
| In the capacity of: | [Title or other appropriate designation] |

## Performance Security

[The issuing bank, as requested by the successful Contractor, shall fill in this form in accordance with the instructions indicated]

Date: [insert date (as day, month, and year)]

Title of the procurement: [Insert general title of the procurement]

Procurement Reference No: [insert reference]

Bank's Branch or Office: [insert complete name of Guarantor]

**Beneficiary:** [insert complete name of Employer/Procuring Entity]

Performance Guarantee No:

We have been informed that ..... [name of the Contractor], (hereinafter called "the Contractor") has entered into Contract No. .... [procurement reference number of the Contract], dated [insert day and month], [insert year], with you, for the execution of ..... [name of contract and brief description of Works] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we ..... [name of the Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of ..... **[name of the currency and amount in figures]** <sup>1</sup>.... (..... [amount in words]) such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the ..... day of ....., <sup>2</sup>, and any demand for payment under it must be received by us at this office on or before that date. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed ...[six months][one year], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

.....  
[Seal of Bank and Signature(s)]

### **Note –**

All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

<sup>1</sup> The Guarantor shall insert an amount representing the percentage of the Contract Price specified in the Contract and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Employer.

<sup>2</sup> Insert the date twenty-eight days after the expected completion date. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.

## Advance Payment Security

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

Date: [insert date (as day, month, and year)]

Title of the procurement: [Insert general title of the procurement]

Procurement Reference No: [insert reference]

[Issuing bank's letterhead]

**Beneficiary:** [insert legal name and address of Procuring Entity]

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

**Advance Payment Guarantee No:**

We have been informed that ..... [name of the Contractor] (hereinafter called “the Contractor”) has entered into Contract No..... [procurement reference number of the Contract], dated [insert day and month], [insert year] with you, for the execution of ..... [name of contract and brief description of Works] (hereinafter called “the Contract”).

Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum ..... [name of the currency and amount in figures] <sup>1</sup> (..... [amount in words]) is to be made against an advance payment guarantee.

At the request of the Contractor, we ..... [name of the Bank]. hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of ..... [name of the currency and amount in figures]\* (..... [amount in words]) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on its account number .....[Contractor's account number]. at ..... [name and address of the Contractor's Bank].

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that eighty (80) percent of the Contract Price has been certified for payment, or on the ..... day of ..... <sup>2</sup>, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

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

..... [Seal of Bank and Signature(s)]. .....

**Note –**

All italicized text is for guidance in preparing this demand guarantee and shall be deleted from the final document.

1 The Guarantor shall insert an amount representing the amount of the advance payment denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.

2 Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee