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A. GENERAL

In Parts 1 (Bidding Procedures) and 2 (Employer's Requirements) of this Bidding Document, the following words and expressions shall have the meanings stated below. These definitions shall not apply to any words or expressions in the sections that make up Part 3 (Contract Documents) of this Bidding Document, in which such words and expressions shall have the meanings stated in GCC Sub-Clause 1.1 unless otherwise specified.

Throughout this Bidding Document if the context so requires, words indicating the singular also include the plural and vice versa, and the feminine means the masculine and vice versa.

- (a) "Accountable Entity" means the entity designated by the Government to implement the Compact or Threshold Program, **identified in the DS.**
- (b) "Activity Schedule", "Bill of Quantities" or "Schedule of Prices" means the schedule with the respective name in Section IV. Submission Forms, which contains itemized descriptions and listing of the quantities of Works to be performed or listing of the milestones or activities to be completed.
- (c) "Addendum" means a modification to this Bidding Document issued by the Employer.
- (d) "Appendix to Offer" means the completed pages of the form with the heading "Appendix to Offer" included in Section IV. Submission Forms, which are made a part of the Offer.
- (e) "Associate" means any entity that forms the Offeror or Contractor. A Subcontractor is not an Associate.
- (f) "Association" or "Joint Venture" or "JV" means an association of entities that forms the Offeror, with or without a legal status distinct from that of its members.
- (g) "Bid Security" means the security an Offeror may be required to furnish as part of its Offer.
- (h) "Bidding Document" means this document, including any Addenda that may be made by the Employer.
- (i) "CESMP" means the Contractor's Environmental & Social Management Plan prepared by the Contractor and approved by the Engineer under the Contract.
- (j) "Compact" means the Millennium Challenge Compact **identified in the DS.**
- (k) "Compact Development Funding Agreement" or "CDF-Agreement" means the Compact Development Funding Agreement **identified in the DS.**

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- (l) “Contract” means the contract proposed to be entered into between the Employer and the Contractor, including all the attachments, appendices, and all documents incorporated by reference therein.
- (m) “Contract Agreement” means the completed form with the heading “Form of Contract Agreement” included in Section VIII. Contract Forms and Annexes, which will be issued by the Employer with the Letter of Acceptance.
- (n) “Contract Price” means the price defined in the Contract and includes adjustments in accordance with the Contract.
- (o) “Contractor” means the entity(ies) responsible for providing the Works to the Employer under the Contract.
- (p) “CPPRS” or “Contractor Past Performance Reporting System” means MCC’s Contractor Past Performance Reporting System maintained and utilized in accordance with the MCC PPG.
- (q) “Data Sheet” or “DS” means Section II of this Bidding Document used to reflect specific requirements and/or conditions.
- (r) “days” refers to calendar days, unless otherwise specified as “business day”. A business day is any day that is an official working day in the Accountable Entity country and excludes the official public holidays.
- (s) “Employer” means the entity **identified in the DS**.
- (t) “Engineer” means the person appointed by the Employer to act as the Engineer for the purposes of the Contract.
- (u) “Force Account” has the definition given the term in the MCC PPG.
- (v) “General Conditions of Contract” or “GCC” means the Conditions of Contract included in Section VI of this document.
- (w) “Government” means the government **identified in the DS**.
- (x) “Government-Owned Enterprise” or “GOE” has the definition given the term in the MCC PPG.
- (y) “HSMP” means the Health and Safety Management Plan prepared by the Contractor and approved by the Engineer under the Contract.
- (z) “IFC Performance Standards” means the International Finance Corporation’s Performance Standards on Environmental and Social Sustainability.
- (aa) “Implementing Entity” means a Government affiliate **identified in the DS** engaged by the Accountable Entity for the purposes of Compact implementation.

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- (bb) "Instructions to Offerors" or "ITO" means Section I of this Bidding Document, including any Addenda, which provides Offerors with information needed to prepare their Offers.
- (cc) "in writing" means communicated in written form (e.g., by paper, mail, facsimile, e-mail or other electronic means).
- (dd) "Letter of Acceptance" means the completed form with the heading "Form of Letter of Acceptance" included in Section VIII. Contract Forms and Annexes, which will be issued by the Employer with the Contract Agreement.
- (ee) "Letter of Offer" means the completed form with the heading "Form of Letter of Offer" included in Section IV. Submission Forms, which are made a part of the Offer.
- (ff) "Millennium Challenge Corporation" or "MCC" means the Millennium Challenge Corporation, a United States Government corporation, acting on behalf of the United States Government.
- (gg) "*MCC AFC Policy*" means the policy identified in ITO Clause 3.
- (hh) "*MCC Counter-Trafficking in Persons Policy*" means the policy identified in ITO Sub-Clause 4.3.
- (ii) "MCC Funding" means the funding MCC has made available to the Government under the terms of the Compact.
- (jj) "*MCC Gender Policy*" means the MCC Gender Policy and its amendments updated from time to time on the MCC website at <https://www.mcc.gov/>
- (kk) "*MCC Procurement Policy and Guidelines*" or "MCC PPG" means the *MCC Accountable Entity Procurement Policy and Guidelines* and its amendments posted from time to time on the MCC website at www.mcc.gov.
- (ll) "Notice of Intent to Award" means the completed form with the heading "Notice of Intent to Award" which will be issued by the Employer in accordance with ITO Sub-Clause 39.1.
- (mm) "Offer" means an offer for the provision of the Works submitted by an Offeror in response to this Bidding Document. The words "Offer" and "Bid" may be used interchangeably.
- (nn) "Offeror" means any eligible entity or person, including any associate of such eligible entity or person that submits an Offer. The word "Bidder" may also be used to indicate the Offeror.
- (oo) "Performance Security" means the security the Contractor must furnish in accordance with the requirements of the Contract.
- (pp) "Provisional Sum" means an amount (if any) which may be specified by the Employer as a provisional estimate in cases in

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which the full extent or nature of the work is not yet known for the proposed execution of any part of the Works or for the supply of plant, materials or services as may be instructed by the Engineer.

- (qq) Sexual harassment is defined in the *Guidance Note to MCAs on Sexual Harassment* available at www.mcc.gov.
- (rr) "Site" means the place(s) identified in the Employer's Requirements where the Works are to be executed.
- (ss) "Social and Gender Integration Plan" means the Employer's plan to maximize the positive social impacts of the Compact projects, and address cross-cutting social and gender issues such as human trafficking, child and forced labor, sexual harassment, and HIV/AIDS.
- (tt) "Taxes" has the meaning given the term in the Compact, CDF Agreement or Threshold Program Grant Agreement, as applicable.
- (uu) "Technical Offer" means the technical information provided as part of the Offer in accordance with ITO Sub-Clause 17.1.
- (vv) "Threshold Program Grant Agreement" means the Threshold Program Grant Agreement **identified in the DS**.
- (ww) "Trafficking in Persons" or "TIP" has the definition given the term in the MCC PPG.
- (xx) "Ultimate Beneficial Owner" means an individual who (i) directly or indirectly controls more than 10% of the shares of the company; or (ii) directly or indirectly controls more than 10% of the voting rights of the company; or (iii) has the right to appoint a majority of the board of directors.
- (yy) "Works" means what the Contract requires the Contractor to construct, install, and turn over to the Employer.

1. Scope of bidding

- 1.1 The Employer has issued this Bidding Document for the procurement of Works as specified in Part 2 - Employer's Requirements. The awarded Offeror will be determined according to the selection method **specified in the DS**, according to the principles set out in the MCC PPG and in accordance with Section III. Qualification and Evaluation Criteria. The name and identification number of the Contract, and number and description of the lot(s) are **specified in the DS**.
- 1.2 The Employer will timely provide, at no cost to the Contractor, the inputs and facilities **specified in the DS**, assist the firm in obtaining licenses and permits needed to carry out the Works, and make available relevant project data and reports. No other inputs will be provided. Therefore, an Offeror shall plan to cover all incurred expenses that may be foreseen to initiate and sustain the Works in a timely manner, including but not limited to office space,

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communication, insurance, office equipment, travel, etc. not otherwise **specified in the DS**.

2. Source of Funds

2.1 The United States of America, acting through the MCC, and the Government have entered into the Compact. The Government, acting through the Accountable Entity, intends to apply a portion of the MCC Funding to eligible payments under the Contract. Any payments made under the Contract with MCC Funding will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use and distribution of MCC Funding. No party other than the Government and the Accountable Entity shall derive any rights from the Compact or have any claim to any proceeds of MCC Funding. The Compact and its related documents can be found on the MCC website (www.mcc.gov) or on the website of the Employer, if one exists.

3. Fraud and Corruption

3.1 MCC requires that all beneficiaries of MCC Funding, including the Accountable Entity and any Offerors, Suppliers, Contractors, Subcontractors, Consultants and Sub-consultants, and non-consulting services providers under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts. *MCC Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations* (“MCC AFC Policy”) is applicable to all procurements and contracts involving MCC Funding and can be found on the MCC website. This Policy requires that companies and entities receiving MCC funds acknowledge notice of MCC’s AFC Policy and certify to the Accountable Entity that they have acceptable commitments and procedures in place to address the potential for fraud and corruption.

(a) For the purposes of these provisions, the terms set forth below are defined as follows:

(i) **“coercion”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party, to influence improperly the actions of a party in connection with the implementation of any contract supported, in whole or in part, with MCC Funding, including such actions taken in connection with a procurement process or the execution of a contract;

(ii) **“collusion”** means a tacit or explicit agreement between two or more parties to engage in coercion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or a prohibited practice, including any such agreement designed to fix, stabilize, or manipulate prices or

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to otherwise deprive the Accountable Entity of the benefits of free and open competition;

- (iii) **“corruption”** means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of a public official, Accountable Entity staff, MCC staff, consultants, or employees of other entities engaged in work supported, in whole or in part, with MCC Funding, including such work involving taking or reviewing selection decisions, otherwise advancing the selection process or contract execution, or the making of any payment to any third party in connection with or in furtherance of a contract;
- (iv) **“fraud”** means any act or omission, including any misrepresentation, that knowingly or recklessly misleads or attempts to mislead a party in order to obtain a financial or other benefit in connection with the implementation of any contract supported, in whole or in part, with MCC Funding, including any act or omission designed to influence (or attempt to influence) improperly a selection process or the execution of a contract, or to avoid (or attempt to avoid) an obligation;
- (v) **“obstruction of investigation into allegations of fraud or corruption”** means any act taken in connection with the implementation of any contract supported, in whole or in part, with MCC Funding: (a) that results in the deliberate destroying, falsifying, altering or concealing of evidence or making false statement(s) to investigators or any official in order to impede an investigation into allegations of coercion, collusion, corruption, fraud, or a prohibited practice; or (b) that threatens, harasses, or intimidates any party to prevent him or her from either disclosing his or her knowledge of matters relevant to an investigation or from pursuing the investigation; or (c) that is intended to impede the conduct of an inspection and/or the exercise of audit rights of MCC and/or the Office of the Inspector General (OIG) responsible for MCC provided under a Compact, Threshold Program Grant Agreement, or related agreements;
- (vi) **“prohibited practice”** means any action that violates Section E (Compliance with Anti-Corruption Legislation), Section F (Compliance with Anti-Money Laundering Legislation), and Section G (Compliance with Terrorist Financing Legislation and Other Restrictions) of the Annex of Additional Provisions that will be made a part of MCC-funded contracts.

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- (b) The Employer will reject an Offer (and MCC will deny approval of a proposed Contract award) if it determines that the Offeror recommended for award has, directly or through an agent, engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices in competing for the Contract.
- (c) MCC and the Accountable Entity have the right to sanction an Offeror or Contractor, including declaring such party ineligible, either indefinitely or for a stated period of time, to be awarded any MCC-funded contract if at any time either the Accountable Entity or MCC determines that the Offeror or Contractor has, directly or through an agent, engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices in competing for, or in executing, such a contract.
- (d) According to the MCC PPG, MCC and the Accountable Entity have the right to require any Offeror or Contractor to permit the Accountable Entity, MCC, or any designee of MCC, to inspect the Offeror's or Contractor's, or any of the Contractor's suppliers or subcontractors on the Contract, accounts, records and other documents relating to the submission of an Offer or performance of an MCC-funded contract and to have them audited by auditors appointed by MCC or by the Accountable Entity with the approval of MCC.
- (e) In addition, MCC has the right to cancel any portion or all of the MCC Funding allocated to the Contract if it determines at any time that any representative of a beneficiary of MCC Funding engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or a prohibited practices during the selection process or the execution of any MCC-funded contract, without the Accountable Entity having taken timely and appropriate action satisfactory to MCC to remedy the situation.

4. Environmental and Social Requirements

- 4.1 MCC has a zero-tolerance policy with regard to Trafficking in Persons. Trafficking in Persons ("TIP") is the crime of using force, fraud and/or coercion to exploit another person. TIP can take the form of domestic servitude, peonage, forced labor, sexual servitude, bonded labor, and the use of child soldiers. This practice deprives people of their human rights and freedoms, increases global health risks, fuels growing networks of organized crime, and can sustain levels of poverty and impede development. MCC is committed to working with partner countries to ensure appropriate steps are taken to prevent, mitigate, and monitor TIP risks in the countries it partners with and projects it funds.

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- Trafficking in Persons**
- 4.2 Section V. Employer’s Requirements and the Additional Provisions (Annex A to the Contract) of this Bidding Document may set out certain prohibitions, Contractor requirements, remedies and other provisions that will be made a binding part of any Contract that may be entered into with respect to this procurement. As such, those provisions, if included, should be given careful consideration.
- 4.3 Additional information on MCC’s requirements aimed at combating trafficking in persons can be found in the *MCC Counter-Trafficking in Persons Policy* (“C-TIP Policy”) that can be found on MCC’s website (<https://www.mcc.gov/resources/doc/policy-counter-trafficking-in-persons-policy>). All contracts funded by MCC are required to comply with the C-TIP Policy’s Minimum Compliance Requirements. Contracts for projects categorized by MCC as high-risk for TIP are required to implement a TIP Risk Management Plan as provided for under the Policy (which is to be developed by the Employer and implemented by the corresponding Contractor).
- MCC Environmental Guidelines and IFC Performance Standards**
- 4.4 The Offerors and the Contractor shall ensure that their activities, including any activities carried out by their subcontractors, under the Contract comply with *MCC Environmental Guidelines* (as such term is defined in the Compact or related agreement, which are available at <http://www.mcc.gov>), and are not ‘likely to cause a significant environmental, health, or safety hazard’ as defined in such *MCC Environmental Guidelines*. The Offerors and the Contractor are also required to comply with the IFC Performance Standards for the purposes of the Contract. Additional information on the IFC Performance Standards can be found here:
http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards.
- 5. Eligible Offerors**
- 5.1 The eligibility criteria set forth in this Bidding Document will apply to the Offeror, including all parties constituting the Offeror, for any part of the Contract, including related services.
- 5.2 An Offeror may be a private entity, certain government-owned entities (in accordance with the MCC PPG as described in ITO Sub-Clause 5.6), or any combination of such entities supported by a letter of intent to enter into an agreement or under an existing agreement of association in the form of a joint venture or other association.
- 5.3 An Offeror, all parties constituting the Offeror, and any subcontractors and suppliers for any part of the Contract, including related services, may have the nationality of any country, subject to the nationality restrictions specified in this ITO Clause 5. An entity will be deemed to have the nationality of a country if such entity is constituted, incorporated, or registered in, and operates in

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conformity with, the provisions of the laws of that country.

- 5.4 Offerors or Contractors must also satisfy all other eligibility criteria contained in the MCC PPG. In the case where an Offeror or Contractor intends to join with an associate, then such associate will also be subject to the eligibility criteria set forth in this Bidding Document and the MCC PPG.
- 5.5 No full-time key professional personnel of an Offeror currently contracted by any accountable entity shall be proposed to work as, or on behalf of, any Offeror. In the case where an Offeror seeks to engage such full-time key professional personnel, it should seek the written approval from the Accountable Entity for the inclusion of such a person, prior to the Offeror's submission of its Offer.
- Government-Owned Enterprises**
- 5.6 Government-Owned Enterprises ("GOEs") are not eligible to compete for MCC-funded contracts for goods (which includes contracts for the supply and installation of information systems) or works. GOEs (a) may not be party to any MCC-funded contract for goods or works procured through an open solicitation process, limited bidding, direct contracting, or sole source selection; and (b) may not be prequalified or shortlisted for any MCC-funded contract for goods or works anticipated to be procured through these means. This prohibition does not apply to Government-owned Force Account units owned by the Government of the Accountable Entity's country, or Government-owned educational institutions and research centers, any statistical, mapping or other technical entities not formed primarily for a commercial or business purpose, or where a waiver is granted by MCC in accordance with the MCC PPG. All Offerors must certify their status as part of their Offer submission.
- Joint Venture or Association**
- 5.7 In the case where an Offeror is, or proposes to be, a joint venture or other association (a) all members of the joint venture or association must satisfy the legal, financial, litigation and other requirements set out in this Bidding Document; (b) all members of the joint venture or association will be jointly and severally liable for the execution of the Contract; (c) the joint venture or association will nominate a representative who will have the authority to conduct all business for and on behalf of any and all the members of the joint venture or the association during the bidding process and, in the event the joint venture or association is awarded the Contract, during Contract performance; and (d) if a prequalification process has taken place, additional conditions apply to joint venture or association members, **as specified in the DS.**
- Conflicts of Interest**
- 5.8 The Offerors and the Contractor shall not have a conflict of interest. All Offerors found to have a conflict of interest shall be disqualified, unless the conflict of interest has been mitigated and the mitigation is approved by the Accountable Entity after receiving a "no-

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objection" from MCC. The Employer requires that Offerors and Contractors hold the Accountable Entity's interests paramount at all times, strictly avoid conflicts of interest, including conflicts with other assignments or their own corporate interests, and act without any consideration for future work. Without limitation on the generality of the foregoing, an Offeror or Contractor, including all parties constituting the Offeror, or Contractor and any subcontractors and suppliers for any part of the Contract, including related services, and their respective personnel and affiliates, may be considered to have a conflict of interest and (i) in the case of an Offeror may be disqualified or (ii) in the case of a Contractor, the Contract may be terminated if they:

- (a) have at least one controlling partner in common with one or more other parties in the procurement process contemplated by this Bidding Document; or
- (b) have the same legal representative as another Offeror for purposes of this Offer; or
- (c) have a relationship, directly or through common third parties, that puts them in a position to have access to information about or influence over the Offer of another Offeror, or influence the decisions of the Employer regarding the selection process for this procurement; or
- (d) participate in more than one Offer in this process; participation by an Offeror or any party constituting the Offeror in more than one Offer will result in the disqualification of all Offers in which the party is involved; however, this provision does not limit the inclusion of the same subcontractor in more than one Offer; or
- (e) are, or have been associated in the past, with a person or entity, or any of their affiliates, which has been engaged to provide consulting services for the preparation of any preliminary design, specifications, requirements, or other documents to be used for the procurement and provision of the Works under the Contract; or
- (f) are themselves, or have a business or family relationship with,
 - (i) a member of the Accountable Entity's board of directors or staff, (ii) the project's Implementing Entity's staff, or (iii) the Procurement Agent or Fiscal Agent (as defined in the Compact or related agreements) hired by the Employer in connection with the Compact, any of whom is directly or indirectly involved in any part of (A) the preparation of this Bidding Document or any section thereof, (B) the selection process for this procurement, or (C) supervision of the Contract, unless the conflict stemming from this relationship has been resolved in a

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manner acceptable to MCC; or

(g) any of their affiliates have been or, at present, are engaged by the Accountable Entity in the capacity of the Implementing Entity, Procurement Agent, Fiscal Agent, or Auditor under the Compact; or

(h) any of their affiliates have been hired (or are proposed to be hired) by the Employer as the Engineer for the Contract.

5.9 An Offeror or a Contractor that has been engaged by the Accountable Entity to provide goods, works or non-consulting services for a project, and any of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, an Offeror hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods, works or non-consulting services resulting from or directly related to such consulting services for such preparation or implementation

5.10 Offerors and the Contractor have an obligation to disclose any situation of actual or potential conflict of interest. Failure to disclose said situations may lead to the disqualification of the Offeror or Contractor or the termination of the Contract.

**Government
Employees**

5.11 The following restrictions shall apply (in each case subject to the limited exception set forth in ITO Sub-Clause 5.11 (f) below):

(a) No member of the Accountable Entity's board of directors or current employees of the Accountable Entity (whether part time, or full time, paid or unpaid, in leave status, etc.) shall be proposed or work as, or on behalf of, any Offeror or Supplier.

(b) Except as provided in ITO Sub-Clause 5.11 (d), no current employees of the Government shall work on behalf of the Contractor under their own ministries, departments or agencies.

(c) Recruiting former Accountable Entity or Government employees to perform services for their former ministries, departments or agencies is acceptable provided no conflict of interest exists.

(d) If an Offeror proposes any Government employee as personnel in their Offer, such personnel must have written certification from the Government confirming that: (i) they will be on leave without pay from the time of their official Offer submission and will remain on leave without pay until the end of their assignment with the Offeror/Contractor and they are allowed to work full-time outside of their previous official position; or (ii) they will resign or retire from Government employment on or prior to the Contract award date. Under no circumstances shall any individuals described in (i) and (ii) be responsible for

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approving the award of this Contract. Such certification shall be provided to the Employer by the Offeror as part of its Offer.

- (e) No employee of any MCC-funded accountable entity in any other country that is responsible for managing or administering any contract, grant, or other agreement between the Offeror and such other MCC-funded accountable entity shall be proposed or work as, or on behalf of, the Offeror or Contractor.
- (f) In the case where an Offeror seeks to engage the services of any person falling under ITO Sub-Clauses 5.11 (a) – 5.11 (e), who may have left the Accountable Entity (or such other MCC-funded accountable entity, as the case may be) within a period of less than twelve (12) months of the date of this Bidding Document, it must obtain a “no-objection” from the Accountable Entity and MCC for the inclusion of such a person, prior to the Offeror’s submission of its Offer. The Accountable Entity must also obtain a "no-objection" from MCC before replying to the Offeror on any related correspondence.

Ineligibility and Debarment

- 5.12 An Offeror or Contractor, all parties constituting the Offeror, and any subcontractors and suppliers for any part of the Contract, including related services, and their respective personnel and affiliates, will not be any person or entity under
 - (a) a declaration of ineligibility for engaging in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices as contemplated by ITO Sub-Clause 3.1 above, or
 - (b) that has been declared ineligible for participation in a procurement in accordance with the procedures set out in the MCC PPG that can be found on MCC’s website. This would also remove from eligibility for participation in procurement any entity that is organized in or has its principal place of business or a significant portion of its operations in any country that is subject to sanctions or restrictions by law or policy of the United States.
- 5.13 An Offeror or Contractor, all parties constituting the Offeror or Contractor, and any subcontractors and suppliers for any part of the Contract, including related services, and their respective personnel and affiliates not otherwise made ineligible for a reason described in this ITO Clause 5 will nonetheless be excluded if:
 - (a) as a matter of law or official regulation, the Government prohibits commercial relations with the country of the Offeror or Contractor (including any associates, subcontractors, and suppliers and any respective affiliates); or
 - (b) by an act of compliance with a decision of the United Nations

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Security Council taken under Chapter VII of the Charter of the United Nations, the Government prohibits any import of goods from the country of the Offeror or Contractor (including any associates, subcontractors, and suppliers and any respective affiliates) or any payments to entities in such country; or

(c) such Offeror or Contractor, any parties constituting the Offeror or Contractor, any subcontractor or supplier or their respective personnel or affiliates are otherwise deemed ineligible by MCC pursuant to any policy or guidance that may, from time to time, be in effect as posted on MCC's website (www.mcc.gov).

- 5.14 For all procurements with an estimated value of US\$750,000 and above, the Accountable Entity may use the information on the Offerors' Ultimate Beneficial Owners (UBO) or corporate ownership structure to review if any UBOs are sanctioned or present a conflict of interest. Offerors are required to complete and submit the relevant Beneficial Ownership Disclosure Form using for this purpose the form included in Section IV. Offerors who fail to complete the form may have their Offers rejected. Offerors who fail to submit supporting documents at the request of the Accountable Entity will have their Offers rejected.
- Evidence of Continued Eligibility** 5.15 Offerors and the Contractor shall provide such evidence of their continued eligibility in a manner satisfactory to the Employer, as the Employer shall reasonably request.
- Commissions and Gratuities** 5.16 An Offeror or Contractor will furnish information on commissions and gratuities, if any, paid or to be paid relating to this procurement or its Offer and during performance of the Contract if the Offeror is awarded the Contract, as requested in this Bidding Document.
- 6. Eligible Materials, Equipment, and Services**
- 6.1 The origin of materials, equipment, and services is distinct from the nationality of the Offeror.
- 6.2 The materials, equipment, and services to be supplied under the Contract may have their origin in any country subject to the same restrictions specified for Offerors and their associates and personnel set forth in ITO Clause 5 above. At the Employer's request, Offerors will be required to provide evidence of the origin of materials, equipment, and services.
- 6.3 For purposes of ITO Sub-Clause 6.2 above, "origin" means the place where the materials and equipment are mined, grown, cultivated, produced, manufactured, or processed, and from where the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized article results that differs substantially in its basic characteristics, purposes or utility from its underlying components.

- 6.4 Country of origin for major items of plant, materials, goods, and services provided under the Contract must be indicated in the Appendix to Offer included in Section IV. Submission Forms. During the Contract implementation, the sources used will be verified by the Employer's Engineer.

B. CONTENTS OF BIDDING DOCUMENT

7. Sections of Bidding Document

- 7.1 This Bidding Document consists of Parts 1, 2, and 3, which include all the sections indicated below and should be read in conjunction with any Addenda issued in accordance with ITO Clause 9.

PART 1 Bidding Procedures

- Section I. Instructions to Offerors
- Section II. Data Sheet
- Section III. Qualification and Evaluation Criteria
- Section IV. Submission Forms

PART 2 Employer's Requirements

- Section V. Employer's Requirements

PART 3 Contract Documents

- Section VI. General Conditions of Contract
- Section VII. Particular Conditions of Contract
- Section VIII. Contract Forms and Annexes

- 7.2 Unless obtained directly from the Employer, the Employer is not responsible for the completeness of the Bidding Document, responses to requests for clarification, the Minutes of the pre-Offer conference (if any), or Addenda to the Bidding Document. In case of any contradiction, documents obtained directly from the Employer shall prevail.

- 7.3 The Offeror is expected to examine all instructions, forms, terms, and specifications in this Bidding Document. Failure to furnish all information or documentation required by this Bidding Document may result in the rejection of the Offer.

8. Clarification of Bidding Document, Site Visit, pre-Offer Conference

- 8.1 A prospective Offeror requiring any clarification of this Bidding Document shall contact the Employer in writing at the Employer's address as **indicated in the DS** or raise its inquiry during the pre-Offer conference if provided for in accordance with the DS. The Employer will respond in writing to any request for clarification, provided that such request is received no later than the date **indicated in the DS** prior to the deadline for submission of Offers.

Section I. Instructions to Offerors (Large Works, Design Build & Small Works-CB)

The Employer shall send written copies of the responses, including a description of the inquiry but without identifying its source, to Offerors who have registered or obtained the Bidding Document directly from the Employer. The Employer shall also post a copy of the responses and inquiry descriptions on its website, if one exists. Should the clarification result in changes to the essential elements of this Bidding Document, the Employer shall amend this Bidding Document following the procedure under ITO Clause 9 and ITO Sub-Clause 23.2.

- 8.2 The Offeror is advised to visit and examine the Site of Works and its surroundings and obtain for itself, on its own responsibility, all information that may be necessary for preparing the Offer and entering into the Contract. The costs of visiting the Site shall be at the Offeror's own expense. If a Site visit is organized by the Employer, this shall be **indicated in the DS**.
- 8.3 The Offeror and any of its personnel or agents will be granted permission by the Employer to enter its premises and lands for the purpose of such visit upon the express condition that the Offeror, its personnel, and agents shall 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.
- 8.4 The Offeror's designated representatives are invited to attend a pre-Offer conference, **if provided for in the DS**. The purpose of the conference will be to clarify issues and to answer questions on any matter that may be raised at that stage. Attending any pre-Offer conference is strongly advised, but not mandatory. Attending any pre-Offer conference and/or a site visit shall not be taken into account in the evaluation of Offers. The costs of participating at the pre-Offer conference shall be at the Offeror's own expense.
- 8.5 The Offeror is requested, as far as possible, to submit any questions in writing, to reach the Employer no later than the number of days before the pre-Offer conference as **specified in the DS**.
- 8.6 Minutes of the pre-Offer conference, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the conference, will be posted on the Employer's website, if one exists, and shall be transmitted in writing to all Offerors who have registered or obtained the Bidding Document directly from the Employer. Any modification to this Bidding Document that may become necessary as a result of the pre-Offer conference shall be made by the Employer exclusively through the issue of an Addendum and not through the minutes of the pre-Offer conference.

Section I. Instructions to Offerors (Large Works, Design Build & Small Works-CB)

- 9. Amendment of Bidding Document**
- 9.1 At any time prior to the deadline for submission of Offers, the Employer may amend this Bidding Document by issuing Addenda.
- 9.2 All Addenda issued shall be part of this Bidding Document and shall be communicated in writing to all Offerors that have registered or obtained the Bidding Document directly from the Employer, and shall be posted on the Employer's website, if one exists.
- 9.3 To give prospective Offerors reasonable time in which to take an Addendum into account in preparing their Offers, the Employer may extend the deadline for the submission of Offers at its sole discretion.

C. PREPARATION OF OFFERS

- 10. Cost of Bidding**
- 10.1 The Offeror shall bear all costs associated with the preparation and submission of its Offer and Contract finalization and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

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

- 12. Documents Comprising the Offer**
- 12.1 The Offer shall comprise the duly filled Submission Forms and any other document **required in the DS**.
- 12.2 The Offer shall include the Offeror's proposal for the construction of the Works as stipulated in Section IV. Submission Forms and Section V. Employer's Requirements, in sufficient detail to demonstrate the adequacy of the Offer to meet the Employer's requirements and the completion time.
- 12.3 In addition to the requirements above, Offers submitted by a joint venture or other association shall include a copy of the Joint Venture/Association agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture/Association agreement shall be signed by all members and submitted with the Offer, together with a copy of the proposed agreement.
- 12.4 If there is a change in the legal structure of the Offeror after the Offer submission, the Offeror is required to immediately inform the Employer. However, any change of legal structure shall not be used to satisfy a qualification requirement that was not satisfied as of the deadline of Offer submission.

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- 13. Letter of Offer and Schedules** 13.1 The Letter of Offer and Schedules, including Activity Schedule, Bill of Quantities or Schedule of Prices, shall be prepared using the relevant forms furnished in Section IV. Submission Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.
- 14. No Alternative Offers** 14.1 Alternative Offers shall not be considered.
- 15. Offer Prices and Discounts** 15.1 The prices and discounts quoted by the Offeror in the Letter of Offer shall conform to the requirements specified below. Discounts are permitted only when bidding for multiple lots and will be considered in the evaluation process as specified in Section III. Qualification and Evaluation Criteria.
- 15.2 Offerors shall quote for the entire scope of the Works on a “single responsibility” basis such that the total Offer price covers all the Contractor’s obligations mentioned in or to be reasonably inferred from the Bidding Document in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the Works. This includes all requirements under the Contractor’s responsibilities for testing, pre-commissioning and commissioning of the Works and, where so required by the Bidding Document, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training services and such other items and services as may be specified in the Bidding Document, all in accordance with the requirements of the General Conditions. The Offeror shall fill in rates and prices for all items of the Works described in the Activity Schedule, Bill of Quantities or Schedule of Prices. Omitted items and items against which no rate or price is entered by the Offeror will not be paid for by the Employer, and shall be deemed covered by the rates for other items as **specified in the DS**.
- 15.3 Offerors are required to quote the price for the commercial, contractual and technical obligations outlined in the Bidding Document. The price to be quoted in the Letter of Offer, in accordance with ITO Sub-Clause 13.1, shall be the total price of the Offer, including any discounts offered.
- 15.4 The Offeror shall quote any unconditional discounts and the methodology for their application in the Letter of Offer.
- 15.5 The prices shall be either fixed or adjustable **as specified in the DS**.
- 15.6 In the case of Fixed Price, prices quoted by the Offeror shall be fixed during the Offeror’s performance of the Contract and not subject to adjustment on any account. An Offer submitted with an adjustable price quotation will be treated as non-responsive and rejected.

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- 15.7 In the case of Adjustable Price, prices quoted by the Offeror shall be subject to adjustment during performance of the Contract to reflect changes in the cost elements such as labor, material, transport and Contractor's equipment in accordance with the procedures specified in the Appendix to Offer. An Offer submitted with a fixed price quotation will not be rejected, but the price adjustment will be treated as zero. Offerors are required to indicate the source of labor and material indices in the corresponding Form in Section IV. Submission Forms, so as to justify its the indices and weightings.
- 15.8 If so **specified in the DS 1.1**, Offers are being invited for individual contracts (lots) or for any combination of contracts (packages). Offerors wishing to offer any price reduction for the award of more than one lot shall specify in their Offer the price reductions applicable to each package, or, alternatively, to individual lots within the package. Price reductions or discounts shall be submitted in accordance with ITO Sub-Clause 15.4, provided the Offers for all lots are submitted and opened at the same time.
- 15.9 Section VI. General Conditions of Contract and Section VII. Particular Conditions of Contract, set forth the tax provisions of the Contract. Offerors should review these clauses carefully in preparing their Offer.
- 16. Currencies of Offer and Payment**
- 16.1 The currency(ies) of the Offer and the currency(ies) of payments shall be as **specified in the DS**.
- 17. Documents Comprising the Technical Offer**
- 17.1 The Offeror shall furnish a Technical Offer including a statement of work methods, equipment, personnel, schedule, and any other information as stipulated in Section IV. Submission Forms, in sufficient detail to demonstrate the adequacy of the Offeror's Technical Offer to meet the work requirements and the completion time.
- 18. Documents Establishing the Qualifications of the Offeror**
- 18.1 In accordance with Section III. Qualification and Evaluation Criteria, to establish that the Offeror's qualifications meet the requirements established in this section, the Offeror shall provide all information, requested in the corresponding information sheets and forms included in Section IV. Submission Forms.
- 19. Period of Validity of Offers**
- 19.1 Offers shall remain valid for the period **specified in the DS** after the Offer submission deadline date prescribed by the Employer. An Offer valid for a shorter period may be rejected by the Employer as non-responsive.
- 19.2 In exceptional circumstances, prior to the expiration of the Offer validity period, the Employer may request Offerors to extend the period of validity of their Offers. The request and the responses shall be made in writing. If a Bid Security is requested, it shall also be

Section I. Instructions to Offerors (Large Works, Design Build & Small Works-CB)

extended for twenty-eight (28) days beyond the deadline of the extended validity period. An Offeror may refuse the request without forfeiting its Bid Security. An Offeror granting the request shall not be required or permitted to modify its Offer, except as provided in ITO Sub-Clause 19.3.

19.3 If the award is delayed by a period exceeding eighty-four (84) days beyond the expiry of the initial Offer validity, the following conditions shall apply:

- (a) Rates quoted by Offerors in their priced Activity Schedule, Bill of Quantities or Schedule of Prices shall be adjusted by the factor **specified in the DS**;
- (b) Offer evaluation shall be based on the Offer price without taking into consideration any adjustment applied pursuant to paragraph (a) above;
- (c) If any of the Key Personnel become unavailable for the extended validity period, the Offeror shall provide a written adequate justification and evidence satisfactory to the Employer together with the substitution request. In such case, a replacement Key Personnel shall have equal or better qualifications and experience than those of the originally proposed Key Personnel. The technical evaluation, however, will remain to be based on the evaluation of the CV of the original Key Personnel; and
- (d) If the Offeror fails to provide a replacement Key Personnel with equal or better qualifications, or if the provided reasons for the replacement or justification are unacceptable to the Employer, such Offer may be rejected.

20. Bid Security

20.1 **If so required in the DS**, the Offeror shall furnish, as part of its Offer, a Bid Security in original form. If an Offeror is bidding on multiple lots, the Bid Security required shall be as **specified in the DS**.

20.2 The Bid Security shall be in the amount and currencies **specified in the DS** and shall:

- (a) at the Offeror's option, be in the form of either an unconditional bank guarantee substantially in the format of Form of Bid Security (Bank Guarantee) included in Section IV. Submission Forms, or another type of security **specified in the DS**;
- (b) be issued by a reputable institution selected by the Offeror and located in any eligible country (as determined in accordance with ITO Clause 5). If the Bid Security is issued by a financial institution located outside the Employer's country, the Bid Security must be confirmed by a correspondent financial

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institution located in the Employer's country, satisfactory to the Employer, to make the Bid Security enforceable. In the case of a bank guarantee, the Bid Security shall be submitted either using the Bid Security Form included in Section IV. Submission Forms, or another substantially similar format approved by the Employer prior to Offer submission. In either case, the form must include the complete name of the Offeror and identify the correspondent financial institution if the issuing financial institution is located outside the Employer's country;

- (c) be payable promptly upon written demand by the Employer;
 - (d) be submitted in its original form; copies will not be accepted; and
 - (e) remain valid for a period of twenty-eight (28) days beyond the original validity period of Offers, or beyond any period of extension subsequently requested under ITO Sub-Clause 19.2.
- 20.3 Any Offer not accompanied by an enforceable and compliant Bid Security (if required) shall be rejected by the Employer as non-responsive. Offerors are advised that a Bid-securing declaration or a Bid bond is not an acceptable form of Bid Security, and if a Bid-securing declaration or a Bid bond is provided as Bid Security, the Offer shall be deemed non-responsive and rejected.
- 20.4 The Bid Security of unsuccessful Offerors shall be returned as promptly as possible once the successful Offeror has signed the Contract and furnished the required Performance Security.
- 20.5 The Bid Security of the successful Offeror shall be returned as promptly as possible once the successful Offeror has signed the Contract and furnished the required Performance Security.
- 20.6 A Bid Security may be forfeited, at the Employer's sole discretion:
- (a) If an Offeror withdraws its Offer during the period of Offer validity specified by the Offeror in the Letter of Offer form, except as provided under ITO Sub-Clause 19.2 in case of Bid extension; or
 - (b) if the successful Offeror fails to sign the Contract in accordance with ITO Clause 41, or fails to furnish a Performance Security in accordance with the Contract, as described in ITO Clause 42.
- 20.7 The Bid Security of a Joint Venture or Association must be in the name of the association that submits the Offer. If the association has not been legally constituted at the time of bidding, the Bid Security shall be in the names of all future partners, or in the name of the designated representative (partner in charge or lead member) as named in the letter of intent or similar document in connection with

the formation of the Joint Venture or Association.

21. Format and Signing of Offer

- 20.8 The procedure for the submission of the Bid Security is provided for in ITO Sub-Clause 22.1.
- 21.1 Only one copy of the Offer shall be submitted. In all instances, this copy shall be construed to be the original. The signatures may be written or electronically signed by any applicable software.
- 21.2 The Offer shall contain no alterations or additions, except those made to comply with the instructions issued by the Employer, or as necessary to correct errors made by the Offeror, in which case such corrections shall be initialed by the person or persons signing the Offer.
- 21.3 The Offer shall be typed and shall be signed by a person duly authorized to sign on behalf of the Offeror. A letter of authorization shall consist of a written confirmation as **specified in the DS** and shall be attached to the Offer. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Offer where entries or amendments have been made shall be signed or initialed by the person(s) signing the Offer.
- 21.4 An Offer submitted by a joint venture or other association shall comply with the following requirements:
- (a) be signed so as to be legally binding on all partners; and
 - (b) include the Offeror's representatives' authorization and be signed by those legally authorized to sign on behalf of the joint venture or association.

D. SUBMISSION AND OPENING OF OFFERS

22. Offer Submission

- 22.1 Offerors shall submit their Offers via electronic means, as provided below.
- a) The Offer submission forms should be in the format shown in Section IV. Submission Forms.
 - b) If required in ITO Sub-Clause 21.3, the authorized representative of the Offerors signing the Offers shall provide within the Offer an authorization in the form of a written power of attorney demonstrating that the person signing has been duly authorized to sign on behalf of the Offeror, and its Associates, as applicable.
 - c) Offerors shall be provided with a File Request Link (FRL) **specified in the DS** upon requesting the Bidding Document which shall be used to submit their Offers and other Offer-related documents.

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- d) Submissions either by hard copy or by email are not acceptable and shall result in Offer rejection. The Employer shall not be responsible for misplaced or mis-sent Offers submitted not using the FRL. This circumstance may be cause for Offer rejection.
- e) The File Request Link shall expire on the Offer submission deadline, specified in ITO Sub-Clause 23.1. The Offer and any other related documents shall be submitted solely via the FRL, which can be used more than once to submit additional documents.
- f) All submitted documents (whether as standalone files or files in folders) shall be in Microsoft Office or PDF format. The documents comprising the Offer may be submitted in separate files, each of which not exceeding 10GB. Compressed files or folders are discouraged, thus the Employer assumes no responsibility for the partial or complete damage or failure to open or access documents submitted in any archived and/or compressed format (compressed by WinZip - including any application of the zip family -, WinRAR, 7z, 7zX, or any other similar formats).
- g) Offers are not required to be password-protected, but may be protected at the Offeror's discretion. Offerors who choose to password-protect their Offers can do so to protect against inadvertent untimely opening of their Offer, but at their own responsibility for providing the correct password as **specified in the DS**. If an Offeror fails to provide the correct password that opens the files so its relevant contents can be announced by the deadline **provided in the DS**, their Offer shall be rejected. Offerors should send this password to the email address **indicated in the DS**; the password cannot be sent via the File Request Link.
- h) Offerors should use the following filename format for Offers: [Offeror's Name] – Offer Title - Ref# [insert Bidding Document number].
- i) Offerors are informed that the capability of their internet bandwidth will determine the speed in which their Offers are uploaded via the File Request Link. Offerors are therefore advised to commence the process of uploading their Offers via the File Request Link in good time before the Offer submission deadline. As noted above, this link shall expire at the Offer submission deadline, and cannot be reopened except under the provision of ITO Sub-Clause 9.3 and ITO Sub-Clause 23.2.

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- j) The scanned copy of the Bid Security must be submitted by the deadline for submission of Offers in ITO Sub-Clause 23.1. The hard copy of the Bid Security shall be submitted by the date **specified in the DS**. Failure to submit the hard copy by that date shall result in rejection of the Offer.
- 23. Deadline for Submission of Offers**
- 23.1 Offers must be received by the Employer no later than the date and time **specified in the DS**, or any extension of this date in accordance with ITO Sub-Clause 23.2.
- 23.2 The Employer may, at its discretion, extend the deadline for the submission of Offers by amending this Bidding Document in accordance with ITO Clause 9, in which case all rights and obligations of the Employer and Offerors previously subject to the deadline shall thereafter be subject to the deadline as extended.
- 24. Late Offers**
- 24.1 The Employer shall not consider any Offer that arrives after the deadline for submission of Offers, in accordance with ITO Clause 23. Any Offer received by the Employer after the deadline for submission of Offers shall be declared late and rejected.
- 25. Withdrawal, Substitution, and Modification of Offers**
- 25.1 An Offeror may withdraw, substitute, or modify its Offer after it has been submitted, but before the deadline for submission of Offers, by sending a written notice - through the File Request Link indicated in ITO Sub-Clause 22.1 c) - duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITO Sub-Clause 21.3 (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Offer must accompany the respective written notice. All notices must be:
- a) prepared and submitted in accordance with ITO Clause 21 and ITO Clause 22 and, in addition, the respective submissions shall be clearly marked “Withdrawal,” “Substitution,” “Modification;” and
- b) received by the Employer prior to the deadline prescribed for submission of Offers, in accordance with ITO Clause 23.
- 25.2 Offers requested to be withdrawn in accordance with ITO Sub-Clause 25.1 shall not be opened.
- 25.3 No Offer may be withdrawn, substituted, or modified in the interval between the deadline for submission of Offers and the expiration of the period of Offer validity specified by the Offeror on the Letter of Offer or any extension thereof.
- 26. Offer Opening**
- 26.1 The Employer shall open the Offers in a public opening that will include Offerors’ representatives as well as anyone who chooses to attend at the time and in the manner **specified in the DS**.

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- 26.2 First, submissions marked WITHDRAWAL shall be opened and the name of the Offeror read out, while the Offers for which an acceptable notice of withdrawal has been submitted pursuant to ITO Clause 25 shall not be opened. No Offer withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Offer opening. Next, submissions marked SUBSTITUTION shall be opened and read out and exchanged with the corresponding Offer being substituted, and the substituted Offer shall not be opened. No Offer substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Offer opening. Submissions marked MODIFICATION shall then be opened and read out with the corresponding Offer. No Offer modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Offer opening. Only submissions that are opened and read out at Offer opening shall be considered further.
- 26.3 All other submissions shall be opened one at a time, and the official shall read aloud: the name of the Offeror and whether there is a modification; the Offer price(s), including any discounts; the presence of a Bid Security; and any other details as the Employer may consider appropriate. Only discounts read out at Offer opening shall be considered for evaluation. No Offer shall be rejected at Offer opening except for late Offers, in accordance with ITO Sub-Clause 24.1. Substitutions and modifications submitted pursuant to ITO Clause 25 that are not opened and read out at Offer opening shall not be considered for further evaluation regardless of the circumstances.
- 26.4 The Employer shall prepare a record of the Offer opening that shall include, at a minimum: the name of the Offeror, the existence of a signed Letter of Offer, whether there is a withdrawal, substitution, or modification; the Offer price, per lot if applicable, including any discounts; and the presence or absence of a Bid Security. A copy of the record shall be distributed to all Offerors who submitted Offers on time, and posted on the Employer's website, if one exists.

E. EVALUATION OF OFFERS

- 27. Confidentiality** 27.1 Information relating to the evaluation of Offers and recommendations of Contract award shall not be disclosed to Offerors or any other persons not officially concerned with such process until notification of the evaluation results has been issued pursuant to ITO Clause 39. The undue use by any Offeror or by any other individual of confidential information related to the process may result in the rejection of its Offer or may invalidate the entire procurement process.

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- 27.2 Any attempt or effort by an Offeror to influence the Employer in the evaluation of Offers or Contract award decisions may result in the rejection of its Offer and may subject the Offeror to the provisions of the Government's, the Employer's, and MCC's anti-fraud and corruption policies and the application of other sanctions and remedies to the extent applicable.
- 27.3 Notwithstanding the above, from the time of Offer opening to the time of Contract award, if any Offeror wishes to contact the Employer on any matter related to the bidding process, it may do so in writing, at the address **specified in the DS**.
- 28. Clarification of Offers**
- 28.1 To assist in the examination and evaluation of the Offers and qualification of the Offerors, the Employer may, at its discretion, ask any Offeror for a clarification of its Offer. Any clarification submitted by an Offeror that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the Offeror's response shall be in writing. No change in the prices or substance of the Offer shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Offers, in accordance with ITO Clause 32.
- 28.2 If an Offeror does not provide clarifications of its Offer by the date and time set in the Employer's request for clarification, its Offer may be rejected and its Bid Security shall be returned.
- 29. Deviations, Reservations, and Omissions**
- 29.1 During the evaluation of Offers, the following definitions apply:
- (a) "*deviation*" is a departure from the requirements specified in this Bidding Document;
 - (b) "*reservation*" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in this Bidding Document; and
 - (c) "*omission*" is the failure to submit part or all of the information or documentation required in this Bidding Document.
- 30. Offer Review, Evaluation of Offers, and Qualification of Offerors**
- 30.1 The Employer's review of the Offer is to be based on the contents of the Offer itself, as defined in ITO Clause 12, and will involve the following processes as detailed further in Section III. Qualification and Evaluation Criteria.
- (a) **Administrative review** is conducted to determine that the Offer is complete, including all required documents and forms. The Offeror may be requested to submit additional information or documentation and/or to correct nonmaterial nonconformities in the Offer related to documentation requirements. Failure of the Offeror to comply with the request to respond to a request

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within the deadline stated in the request may result in rejection of its Offer.

- (b) **Responsiveness determination** is conducted to determine the responsiveness of the Offer, as detailed in ITO Clause 31. This process will include a detailed technical review. The Employer may request any Offeror to clarify its Offer according to the procedures set out in ITO Clause 28. The Employer reserves the right at its sole discretion to conduct this responsiveness determination in sequence, beginning with the lowest priced Offer. If an Offer is not substantially responsive to the requirements of this Bidding Document, it shall be rejected and may not subsequently be made responsive by correction of a material deviation, reservation, or omission.
- (c) **Qualification review** shall be conducted to determine if the Offeror satisfies the qualification requirements as described in Section III. Qualification and Evaluation Criteria. The determination shall be based upon an examination of the documentary evidence of the Offeror's qualifications submitted by the Offeror, pursuant to ITO Sub-Clause 18.1, the Offeror's record of past performance, a review of references, and any other source at the Employer's discretion. An affirmative determination of qualification shall be a prerequisite for award of the Contract to the Offeror. Offerors shall provide such evidence of their continued qualification to perform the Works (including any changes in their litigation history) in a manner satisfactory to the Employer, as the Employer shall reasonably request at any time prior to the award of contract.
- (d) **Price review** is conducted to review the price forms for arithmetical errors, omissions or clarifications and to rank the Offers from lowest to highest price. The procedures for correcting arithmetical errors are set out in ITO Sub-Clause 32.1. Offer prices shall also be reviewed for price reasonableness as required by the MCC PPG and ITO Clause 34.

30.2 **Sequence of review:** The Employer reserves the right to carry out the review process in any sequence and the right not to review higher priced Offers unless a lower priced Offer is rejected.

31. Determination of Responsiveness and Nonmaterial Nonconformities

- 31.1 The Employer's determination of an Offer's responsiveness is to be based on the contents of the Offer itself, as defined in ITO Clause 12.
- 31.2 A substantially responsive Offer is one that meets the requirements of this Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,

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(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 this Bidding Document, the Employer's rights or the Offeror's obligations under the proposed Contract; or

(b) if rectified, would unfairly affect the competitive position of other Offerors presenting substantially responsive Offers.

31.3 The Employer shall examine the technical aspects of the Offer submitted in accordance with ITO Clause 17, Technical Offer, in particular, to confirm that all requirements of Part 2 - Employer's Requirements, have been met without any material deviation, reservation or omission.

31.4 If an Offer is not substantially responsive to the requirements of this Bidding Document, it shall be rejected by the Employer and may not be subsequently made responsive by correction of the material deviation, reservation or omission.

31.5 Provided that an Offer is substantially responsive, the Employer may waive any nonconformities in the Offer that do not constitute a material deviation, reservation or omission.

31.6 Provided that an Offer is substantially responsive, the Employer may request that the Offeror submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Offer related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Offer. Failure of the Offeror to comply with the request may result in the rejection of its Offer.

**32. Correction of
Arithmetical
Errors**

32.1 During the price review as per ITO Sub-Clause 30.1(d), the Employer shall correct arithmetical errors on the following basis:

- (a) 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

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in words shall prevail, unless the amount expressed in words is related to an arithmetical error, in which case the amount in figures shall prevail subject to (a) and (b) above.

- 32.2 If the Offeror does not accept the correction of errors, its Offer shall be rejected and its Bid Security shall be returned as described in ITO Sub-Clause 43.1.
- 33. Conversion to Single Currency** 33.1 For evaluation and comparison purposes, the currency(ies) of the Offer shall be converted into a single currency as **specified in the DS**.
- 34. Price Reasonableness** 34.1 The Employer shall conduct a verification of the market reasonableness of the prices offered. If the price reasonableness analysis suggests that an Offer is significantly unbalanced or front loaded, the Employer may require the Offeror to produce a detailed price analysis for any or all items of the Activity Schedule, Bill of Quantities or Schedule of Prices that demonstrates the internal consistency of prices with the construction methods and schedule proposed. The Employer reserves the right to seek clarification; however, the clarification will not be used to change the Offer price.
- 34.2 After the evaluation of the information and detailed price analyses presented by the Offeror, the Employer may, as appropriate:
- (a) accept the Offer; or
 - (b) require that the total amount of the Performance Security be increased at the expense of the Offeror to a level not exceeding the percentage **specified in the DS**; or
 - (c) reject the Offer.
- 34.3 If the Offeror declines to increase the Performance Security as required in ITO Sub-Clause 34.2 (b), its Offer shall be rejected and its Bid Security shall be returned as described in ITO Sub-Clause 43.1.
- 34.4 A negative determination of price reasonableness (either unreasonably high or unreasonably low) may be a reason for rejection of the Offer at the discretion of the Employer. The Offeror shall not be permitted to revise its Offer after this determination.
- 35. No Margin of Preference** 35.1 In accordance with the MCC PPG, a margin of preference for domestic Offerors shall not be used.
- 36. Past Performance and Reference Check** 36.1 In accordance with the MCC PPG, the Offeror's performance on earlier contracts will be considered a factor in the Employer's qualification of the Offeror. The Employer reserves the right to check the performance references provided by the Offeror or to use any other source at the Employer's discretion. If the Offeror (including any of its associates or joint venture/association members) is or has been a party to an MCC-funded contract (either

with MCC directly or with any Accountable Entity, anywhere in the world), whether as a lead contractor, affiliate, associate, subsidiary, subcontractor, or in any other role, the Offeror must identify the contract in its list of references submitted with its Offer using Bidding Form REF-1: References of MCC Funded Contracts. Failure to include any such contracts may be used to form a negative determination by the Employer on the Offeror's record of performance in prior contracts. However, the failure to list any contracts because the Offeror (including any of its associates or joint venture/association members) has not been a party to any such contract will not be grounds for a negative determination by the Employer on the Offeror's record of performance in prior contracts. That is, prior performance in connection with an MCC-funded contract is not required. The Employer will check the references, including the Offeror's past performance reports filed in MCC's Contractor Past Performance Reporting System ("CPPRS"). A negative determination by the Employer on the Offeror's record of performance in prior contracts may be a reason for disqualification of the Offeror at the discretion of the Employer.

37. Employer's Right to Accept Any Offer, and to Reject Any or All Offers

37.1 The Employer reserves the right to accept or reject any Offer, and to annul the bidding process and reject all Offers at any time prior to Contract award, without thereby incurring any liability to Offerors. In case of annulment, Bid Securities shall be promptly returned to the Offerors at the Employer's expense. If all Offers are rejected, the Employer shall review the causes justifying the rejection and consider making revisions to the conditions of Contract, design and specifications, scope of the Contract, or a combination of these, before inviting new Offers. The Employer reserves the right to cancel the procurement if this is no longer in the interest of the Employer.

F. AWARD OF CONTRACT

38. Award Criteria

38.1 Subject to ITO Sub-Clause 37.1, the Employer shall award the Contract to the Offeror whose Offer has been determined to be the lowest evaluated Offer and is substantially responsive to this Bidding Document, provided further that the Offeror is determined to be qualified to perform the Contract satisfactorily.

39. Notification of Evaluation Results

39.1 Prior to the expiration of the period of Offer validity, the Employer shall send the Notice of Intent to Award to the successful Offeror. The Notice of Intent to Award shall include a statement that the Employer shall issue a formal Letter of Acceptance and draft Contract Agreement after expiration of the period for filing a Bid challenge and the resolution of any Bid challenges that are submitted. Delivery of the Notice of Intent to Award **shall not constitute the formation of a contract** between the Employer and

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the successful Offeror and no legal or equitable rights will be created through the delivery of the Notice of Intent to Award.

39.2 At the same time it issues the Notice of Intent to Award, the Employer shall also notify, in writing, all other Offerors of the results of the evaluation. The Employer shall promptly respond in writing to any unsuccessful Offeror who, after receiving notification of the bidding results, makes a written request for a debriefing as provided in the MCC PPG, or submits a formal Bid challenge.

40. Bid Challenges 40.1 Offerors may challenge the results of a procurement only according to the rules established in the Bid Challenge System developed by the Employer and approved by MCC. The rules and provisions of the Bid Challenge System are as published on the Employer's website **indicated in the DS.**

41. Signing of Contract 41.1 Upon expiration of the period for timely filing of Bid challenges and the resolution of any Bid challenges that are submitted, the Employer shall send the Letter of Acceptance to the successful Offeror. The Letter of Acceptance shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Works and the requirement for the Contractor to remedy any defects therein as prescribed by the Contract. Until a formal Contract is prepared and executed, the Letter of Acceptance shall constitute a binding Contract between the Employer and the Contractor.

41.2 The Letter of Acceptance shall include the Contract Agreement for the review and signature of the successful Offeror.

41.3 Within twenty-eight (28) days of issuance from the Employer of the Contract Agreement, the successful Offeror shall sign, date, and return it to the Employer, along with a Performance Security as per ITO Clause 42 and the completed Compliance with Sanctions Certification Form and PS-2 Supplier Self-Certification Form included in Section VIII. Contract Forms and Annexes.

41.4 If any negotiations or clarifications are required either by the Employer or by the successful Offeror, they shall be completed within the same twenty-eight (28) days of receipt of the Letter of Acceptance by the successful Offeror, unless otherwise agreed in writing by both parties. Failure to conclude negotiations or clarifications does not excuse the successful Offeror from timely submission of the Performance Security as described in ITO Clause 42, and submission of the Compliance with Sanctions Certification Form and the PS-2 Self-Certification Form for Contractors included in Section VIII. Contract Forms and Annexes.

42. Performance Security 42.1 Within twenty-eight (28) days of the receipt of the Letter of Acceptance, the successful Offeror shall furnish the performance

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security as required in the Contract, using for that purpose the Form of Performance Security included in Section VIII. Contract Forms and Annexes, or another form acceptable to the Employer. A foreign institution providing a performance security shall have a correspondent financial institution located in the Employer's country.

42.2 Failure of the successful Offeror to submit the above-mentioned performance security or to sign the Contract within twenty-eight (28) days of the receipt of the Letter of Acceptance shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Employer may award the Contract to the next lowest evaluated Offer that is substantially responsive, provided that the Offeror is determined by the Employer to be qualified to perform the Contract satisfactorily.

43. Posting of Award Notice

43.1 Upon receipt of the signed Contract Agreement, of a valid Performance Security and certification forms required under ITO Sub-Clause 41.3, the Employer shall return the Bid Securities of unsuccessful Offerors and shall publish on the Employer's website and in any other places as may be **specified in the DS**, the results identifying the Offer and lot numbers, if applicable, and the following information:

(a) the name of the winning Offeror;

(b) the price of the winning Offer and the price of Contract award if different; and

(c) the duration and the summary scope of the Contract awarded.

44. Inconsistencies with MCC PPG

44.1 The procurement that is the subject of this Bidding Document is being conducted in accordance with and is subject in all respects to the MCC PPG. In the event of any conflict between any section or provision of this Bidding Document (including any Addenda that may be issued to this Bidding Document) and the MCC PPG, the terms and requirements of the MCC PPG shall prevail, unless MCC has granted a waiver of the guidelines.

45. Applicable Compact Conditions

45.1 Offerors are advised to examine and consider carefully the provisions that are set forth in Annex A (Additional Provisions) to the Contract, as these are part of the Government's and the Employer's obligations under the Compact and related documents which, under the terms of the Compact and related documents, are required to be transferred onto any Offeror, Contractor or subcontractor who partakes in procurement or subsequent contracts in which MCC funding is involved.

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**46. Contractor
Past Performance
Reporting System**

46.1 During the performance of the Contract, the Employer shall maintain a performance record of the Contractor in accordance with MCC's Contractor Past Performance Reporting System as described on MCC's website.