

BIDDING DOCUMENTS

(PROCUREMENT OF WORKS FOR LARGE PROJECTS)

SUPPLY and CONSTRUCTION OF

Transitional Shelters for 840 HHs in many sites in Al-Mokha, Al-Khukhah and Al-Tuhayta - West Cost - with delivery to the sites Taiz – Yemen

Prepared by



IOM International Organization for Migration
OIM Organisation Internationale pour les Migrations
OIM Organización Internacional para las Migraciones

IOM sub-office Aden

12-May- 2021



IOM International Organization for Migration
OIM Organisation Internationale pour les Migrations
OIM Organización Internacional para las Migraciones

INVITATION TO BID

ITB No.: **ADE-SFI-2021-20628**

Date: 12 May 2021

The International Organization for Migration (**IOM**) is an intergovernmental humanitarian organization established in 1951 and is committed to the principle that humane and orderly migration benefits both migrants and society.

In the framework of [Supply and construction of Transitional Shelters for 840 HHs in many sites in Al-Mokha, Al-Khukhah and Al-Tuhayta - West Cost - with delivery to the sites Taiz – Yemen](#) with delivery to the sites in attached list.

No #	Item Description	Unit	Annexes	Notes
1	<u><i>Supply and construction of Transitional Shelters for 840 HHs in many sites in Al-Mokha, Al-Khukhah and Al-Tuhayta - West Cost - with delivery to the sites Taiz – Yemen</i></u>	L/S	Annex B-1- BOQ _Plywood Transitional shelter, West Coast	Please submit samples upon submission of Quotation.

The IOM Bids Evaluation and Award Committee (“**BEAC**”) now invites those Interested contractors to bid for the proposed [Supply and construction of Transitional Shelters for 840 HHs in many sites in Al-Mokha, Al-Khukhah and Al-Tuhayta - West Cost - with delivery to the sites Taiz, Yemen - with delivery to the sites.](#)

Bids shall be valid for a period of 4 Months after submission of Bids and must be accompanied by a **Bid Security in the amount of 2.0 (%)** of the total Bid price in the form of Bank Guarantee or certified cheque valid for four (4) months from last date of submission and shall be delivered to the BEAC at IOM Aden sub-office, UN Enclave, Khormaksar, Aden on or before **23rd May 2021 by 04:00 pm.**

Late bids shall be rejected.

Interested bidders should come for a **PRE-CONFERENCE MEETING on May 19, 2021, 2:00 PM** at IOM Aden Office.

For new vendors kindly register to IOM Vendor Management Portal and use the following link.

[*Vendor Registration Platform*](#)

IOM reserves the right to accept or reject any bids, and to cancel the procurement process and reject all bids at any time prior to award of Contract, without obligation to inform the affected Bidder/s of the ground for IOM action.

Very truly yours,
BEAC Chairperson

IOM is encouraging companies to use recycled materials or materials coming from sustainable resources or produced using a technology that has lower ecological footprints.

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Section I. Instructions to Bidders

Instructions to Bidders

A. General

1. Scope of Bid

1. IOM Mission in Yemen invites bidders for the *Supply and construction of Transitional Shelters for 840 HHs in many sites in Al-Mokha, Al-Khukhah and Al-Tuhayta - West Cost - with delivery to the sites Taiz – Yemen.* [RFQ # ADE-SFI-2021-20628](#). hereto referred as Works.

1.2 The successful Bidder will be expected to complete the Works by the Intended Completion Date **Maximum Two (2) months calendar days**

2. Source of Funds (optional clause)

3. Eligible Bidders

3.1 This Invitation for Bids is open to **all bidders** from eligible suppliers in YEMEN.

3.2 All bidders shall provide in Section 2, Forms of Bid and Qualification Information, a statement that the Bidder (including all members of a joint venture and subcontractors) is not associated, nor has been associated in the past, directly or indirectly, with the consultant or any other entity that has prepared the design, specifications, and other documents for the Project or being proposed as Project Manager for the Contract. A firm that has been engaged by IOM to provide consulting services for the preparation or supervision of the Works, and any of its affiliates, shall not be eligible to bid.

3.3 Government-owned enterprises in the IOM Mission's country may only participate if they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of IOM.

3.4 Bidders shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by IOM in accordance with sub-clause 37.1.

4. Qualification of the Bidder

4.1 All bidders shall provide in Section 2, Forms of Bid and Qualification Information, and a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.

4.2 In the event that pre-qualification of potential bidders has been undertaken, only bids from pre-qualified bidders will be considered for award of Contract. These qualified bidders should submit with their bids any information updating their original pre-qualification applications or, alternatively, confirm in their bids that the originally submitted pre-qualification information remains essentially correct as of the date of bid submission. The update or confirmation should be provided in Section 2.

4.3 If IOM has not undertaken pre-qualification of potential bidders, all bidders shall include the following information and documents with their bids in Section 2.

- (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Bid to commit the Bidder.
- (b) total monetary value of construction work performed for each of the last **five years**.
- (c) experience in works of a similar nature and size for each of the last **five years**, and details of work under way or contractually committed; and clients who may be contacted for further information on those contracts.
- (d) major items of construction equipment proposed to carry out the Contract.
- (e) qualifications and experience of key site management and technical personnel proposed for the Contract.
- (f) reports on the financial standing of the Bidder, such as profit and loss statements and auditor's reports for the past **five years**.
- (g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources).
- (h) authority to seek references from the Bidder's Banks.
- (i) information regarding any litigation, current or during the last **five years**, in which the Bidder is involved, the parties concerned, and disputed amount; and
- (j) proposals for subcontracting components of the Works amounting to more than 10 percent of the Contract Price.

4.4 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements **(if joint venture is allowed)**:

- (a) the Bid shall include all the information listed in Sub-Clause 4.3 above for each joint venture partner.
- (b) the Bid shall be signed so as to be legally binding on all partners.
- (c) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms.
- (d) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
- (e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

4.5 To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria:

- (a) annual volume of construction work of at least *500,000 USD*;
- (b) experience as prime contractor in the construction of at least *2* works of a nature and complexity equivalent to the Works over the last *5* years, to comply with this requirement, cost of works cited should be at least equivalent to *80 to 100%* of the estimated project cost and should be at least 70 percent complete;
- (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed in the Qualification Information.
- (d) a Contract Manager with *five* years' experience in works of an equivalent nature and volume, including no less than three years as Manager; and
- (e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, is no less than *50% of estimated project cost*.

A consistent history of litigation or arbitration awards against the Applicant or any partner of a Joint Venture may result in disqualification.

4.6 The figures for each of the partners of a joint venture shall be added together to determine the Bidder's compliance with the minimum qualifying criteria of Sub-Clause 4.5(a) and (e); however, for a joint venture to qualify, each of its partners must meet at least 25 percent of minimum criteria 4.5(a), (b), and (e) for an individual Bidder, and the partner in charge at least 40 percent of those minimum criteria. Failure to comply with this requirement will result in rejection of the joint venture's Bid. Subcontractors' experience and resources will not be taken into account in determining the Bidder's compliance with the qualifying criteria, unless otherwise stated in the Bidding Data.

5. One Bid per Bidder

5.1 Each Bidder shall submit only one Bid, either individually or as a partner in a joint venture. A Bidder who submits or participates in more than one Bid (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the Bidder's participation to be disqualified.

6. Cost of Bidding

6.1 The Bidder shall bear all costs associated with the preparation and submission of his Bid, and IOM will in no case be responsible or liable for those costs.

7. Site Visit

7.1 The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine the Site of Works and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.

Site visit details: On separate email will be sent only to eligible contractors that will follow Eligibility notice email. Pre-conference and site visit will be indicated.

B. The Bidding Documents

8. Content of Bidding Documents

8.1 The set of bidding documents comprises the documents listed in the table below and addenda issued in accordance with Clause 10:

Section

- 1 Instructions to Bidders
- 2 Forms of Bid, Qualification Information, Letter of Acceptance, Contract Agreement
- 3 Contract for Construction works
- 4 Construction Drawings
- 5 Technical Specifications
- 6 Forms of Securities

8.2 Complete copies of the bidding documents are supplied to the prospective Bidder. The number of copies to be completed and returned with the Bid shall be *[one(1) original]*.

9. Clarification of Bidding Documents

9.1 A prospective Bidder requiring any clarification of the bidding documents may notify IOM in writing or by cable ("cable" includes telex and facsimile) at IOM's address indicated in the invitation to bid. IOM will respond to any request for clarification received *[3 days]* prior to the deadline for submission of bids. Copies of IOM's response will be forwarded to all purchasers of the bidding documents, including a description of the inquiry, but without identifying its source no later than *[3 days]* before submission of bids.

10. Amendment of Bidding Documents

10.1 Before the deadline for submission of bids, IOM may modify the bidding documents by issuing addenda.

10.2 Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing or by cable to all purchasers of the bidding documents. Prospective bidders shall acknowledge receipt of each addendum by cable to IOM.

10.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, IOM shall extend, as necessary, the deadline for submission of bids, in accordance with Sub-Clause 20.2 below.

C. Preparation of Bids

11. Language of Bid

11.1 All documents relating to the Bid shall be in *English* language.

12. Documents Comprising the Bid

12.1 The Bid submitted by the Bidder shall comprise the following:

12.1.1 Technical Documents –

- Furnish Bid Security
- Submitted detailed documents showing experience with similar works (including year and contract amount) in the last 5 years
- Submitted detailed documents showing general construction experience (including year and contract amount) in the last 5 years
- Submitted financial documents and current bank statements showing available funds
- Submitted detailed list of equipment and staff
- Submitted detailed Work Plan and Schedule
- Any other documents as specified.

12.1.2 Financial Documents –

- a) Contractors Bid and priced Bill of Quantities in the prescribed Bid Form.
- b) Detailed estimates including a summary sheet indicating the unit prices of construction materials, labor rates and equipment rentals used in coming up with the Bid.
- c) Cash flow by the quarter and payments schedule; and
- d) Any other documents as specified.

13. Bid Prices

13.1 The Contract shall be for the whole Works, as described in Sub-Clause 1.1, based on the priced Bill of Quantities submitted by the Bidder.

13.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items for which no rate or price is entered by the Bidder will not be paid for by IOM when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities.

13.3 IOM enjoys the same tax/duty privilege like UN specialized agencies. IOM is VAT exempted.

13.4 The rates and prices quoted by the Bidder shall not be subjected to adjustment during the performance of the Contract unless provided for in the Conditions of Contract.

14. Currencies of Bid and Payment

14.1 The unit rates and prices shall be quoted by the Bidder entirely in the *USD US dollar* currency.

15. Bid Validity

15.1 Bids shall remain valid for *4 Months from the bid submission*.

15.2 In exceptional circumstances, IOM may request that the bidders extend the period of validity for a specified additional period **but in no case more than 60 days**. The request and the bidders' responses shall be made in writing or by cable. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid but will be required to extend the validity of Bid Security for the period of the extension, and in compliance with Clause 16 in all respects.

16. Bid Security

16.1 The Bidder shall furnish, as part of the Bid, a Bid Security in in the amount of **2.0% of the total bid amount**.

16.2 The Bid Security shall, at the Bidder's option, be in the form of a certified check, bank draft, letter of credit, or a bank guarantee from a reputable bank located in the country of IOM Mission or abroad. The format of the Bid Security should be in accordance with the form of Bid Security included in Section 8 or another form acceptable to IOM. Bid Security shall be valid for **Four months beyond** the validity of the Bid.

16.3 Any bid not accompanied by an acceptable Bid Security shall be rejected by IOM. The Bid Security of a joint venture must define as "bidder" all joint venture partners and list them in the following manner: a joint venture consisting of "_____", "_____", and "_____".

16.4 The Bid Security of unsuccessful bidders will be returned within 28 days of the end of the Bid validity period specified in Sub-Clause 15.1.

16.5 The Bid Security of the successful Bidder will be discharged when the Bidder has signed the Agreement and furnished the required Performance Security.

16.6 The Bid Security may be forfeited

- (a) if the Bidder withdraws the Bid after Bid opening during the period of Bid validity;

- (b) if the Bidder does not accept the correction of the Bid price, pursuant to Clause 27; or
- (c) in the case of a successful Bidder, if the Bidder fails within the specified time limit to
 - (i) sign the Agreement; or
 - (ii) furnish the required Performance Security.

17. Alternative Proposals by Bidders

17.1 Alternative proposals to the requirements of the bidding documents will not be permitted.

18. Format and Signing of Bid

18.1 The Bidder shall prepare one original of the documents comprising the Bid as described in Clause 12 of these Instructions to Bidders, bound with the volume containing the Form of Bid, and clearly marked "ORIGINAL." In addition, the Bidder shall submit a photocopy of the Bid, and clearly marked as "COPIES." In the event of discrepancy between them, the original shall prevail.

18.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder, pursuant to Sub-Clauses 4.3(a) or 4.4(b), as the case may be. All pages of the Bid where entries or amendments have been made shall be initialed by the person or persons signing the Bid.

18.3 The Bid shall contain no alterations or additions, except those to comply with instructions issued by the Mission, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Bid.

18.4 The Bidder shall furnish information as described in the Form of Bid on commissions or gratuities, if any, paid or to be paid to agents relating to this Bid, and to contract execution if the Bidder is awarded the contract.

D.Submission of Bids

19. Sealing and Marking of Bids

19.1 The Bidder shall seal the original copies of the Bid in one outer envelope, duly marking the envelopes as “ORIGINAL”

19.2 The inner and outer envelopes shall

(a) be addressed to:

*The Chairperson
Bids Evaluation and Award Committee (BEAC)
IOM Aden sub Office, UN Enclave Khormaksar, Aden, Yemen*

(b) bear the name and identification number of the Contract **reference number ADE-SFI-2021-20628** and

(c) provide a warning not to open before the specified time and date for Bid opening as defined in Sub-clause 20.1

19.3 In addition to the identification required in Sub-Clause 19.2, the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to Clause 21.

19.4 If the outer envelope is not sealed and marked as above, IOM will assume no responsibility for the misplacement or premature opening of the Bid.

20. Deadline for Submission of Bids

20.1 Bids shall be delivered to IOM at the address specified above no later than **04 :00 PM, 23 May 2021.**

20.2 IOM may extend the deadline for submission of bids by issuing an amendment in accordance with Clause 10, in which case all rights and obligations of IOM and the bidders previously subject to the original deadline will then be subject to the new deadline.

21. Late Bids

21.1 Any Bid received by IOM after the deadline prescribed in Clause 20 will be returned unopened to the Bidder.

22. Modification and Withdrawal of Bids

22.1 Bidders may modify or withdraw their bids by giving notice in writing before the deadline prescribed in Clause 20.

22.2 Each Bidder’s modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clauses 18 and 19, with the outer and inner envelopes additionally marked “MODIFICATION” or “WITHDRAWAL,” as appropriate.

22.3 No Bid may be modified after the deadline for submission of Bids.

22.4 Withdrawal of a Bid between the deadline for submission of bids and the expiration of the period of Bid validity or as extended pursuant to Sub-Clause 15.2 may result in the forfeiture of the Bid Security pursuant to Clause 16.

22.5 Bidders may only offer discounts to, or otherwise modify the prices of their bids by submitting Bid modifications in accordance with this clause or included in the original Bid submission.

E. Bid Opening and Evaluation

23. Bid Opening

23.1 IOM will open the bids, including modifications made pursuant to Clause 22.

23.2 Envelopes marked “WITHDRAWAL” shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause 22 shall not be opened.

23.3 The bidders’ names, the Bid prices, the total amount of each Bid, any discounts, Bid modifications and withdrawals, the presence or absence of Bid Security, and such other details as IOM may consider appropriate, will be announced by IOM at the opening.

23.4 IOM will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with Sub-Clause 23.3.

24. Process to be Confidential

24.1 Information relating to the examination, clarification, evaluation, and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful Bidder has been announced. Any effort by a Bidder to influence IOM’s processing of bids or award decisions may result in the rejection of his Bid

25. Clarification of Bids and Contacting the IOM

25.1 To assist in the examination, evaluation, and comparison of bids, IOM may, at IOM’s discretion, ask any Bidder for clarification of the Bidder’s Bid, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, telex, or facsimile, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by IOM in the evaluation of the bids in accordance with Clause 27.

25.2 Subject to Sub-Clause 25.1, no bidder shall contact IOM on any matter relating to its bid from the time of bid opening to the time the contract is awarded. If the bidder wishes to bring additional information to the notice of IOM, it should do so in writing.

25.3 Any effort by the Bidder to influence IOM in the bid evaluation, bid comparison or contract award decisions may result in the rejection of the Bidders’ bid.

26. Examination of Bids and Determination of Responsiveness

26.1 Prior to the detailed evaluation of bids, IOM will determine whether each Bid (a) meets the eligibility criteria defined in Clause 3; (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the bidding documents.

26.2 A substantially responsive Bid is one which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Works; (b) which limits in any substantial way, inconsistent with the bidding documents, the IOM's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

26.3 If a Bid is not substantially responsive, it will be rejected by IOM, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

27. Correction of Errors

27.1 Bids determined to be substantially responsive will be checked by IOM for any arithmetic errors. Errors will be corrected by IOM as follows:

(a) where there is a discrepancy between the amounts in figures and in words, the amount in words will govern; and

(b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern, unless in the opinion of IOM there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern, and the unit rate will be corrected.

27.2 The amount stated in the Bid will be adjusted by IOM in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security may be forfeited in accordance with Sub-Clause 16.6(b).

28. Currency for Bid Evaluation

28.1 Bids will be evaluated as quoted in the currency of the IOM's country as defined in Sub-Clause 14.1.

29. Evaluation and Comparison of Bids

29.1 IOM will evaluate and compare only the bids determined to be substantially responsive in accordance with Clause 26.

29.2 In evaluating the bids, IOM will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:

- (a) making any correction for errors pursuant to Clause 27;
- (b) excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities, but including Daywork, where priced competitively;
- (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with Clause 17; and
- (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with Sub-Clause 22.5.

29.3 IOM reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the bidding documents or otherwise result in unsolicited benefits for IOM will not be taken into account in Bid evaluation.

29.4 The estimated effect of any price adjustment conditions during the period of implementation of the Contract, will not be taken into account in Bid evaluation.

F. Award of Contract

30. Award Criteria

30.1 Subject to Clause 32, IOM will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest evaluated Bid price, provided that such Bidder has been determined to be (a) eligible in accordance with the provisions of Clause 3, and (b) qualified in accordance with the provisions of Clause 4.

31. IOM's Right to Accept any Bid and to Reject any or all Bids

31.1 Notwithstanding Clause 31, IOM reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the IOM's action.

32. Notification of Award and Signing of Agreement

32.1 The Bidder whose Bid has been accepted will be notified of the award by IOM prior to expiration of the Bid validity period by cable, telex, or facsimile confirmed by registered letter. This letter (hereinafter called the "Letter of Acceptance") will state the sum that IOM will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").

32.2 The Letter of Acceptance will constitute the formation of the Contract, subject to the Bidder furnishing the Performance Security in accordance with Clause 34 and signing the Agreement in accordance with Sub-Clause 33.3.

32.3 The Agreement will incorporate all agreements between IOM and the successful Bidder. It will be signed by IOM and sent to the successful Bidder, within 28 days following the notification of award along with the Notice of Award. Within 21 days of receipt, the successful Bidder will sign the Agreement and deliver it to IOM.

32.4 Upon the furnishing by the successful Bidder of the Performance Security, IOM will promptly notify the other bidders that their bids have been unsuccessful.

33. Performance Security

33.1 Within 3 days after receipt of the Notice of Award, the successful Bidder shall deliver to IOM a Performance Security in the amount stipulated in the [Contract Data] and in the form of *[a Bank Guarantee]*, denominated in the type and proportions of currencies in the Notice of Award and in Accordance with the Conditions of Contract.

33.2 If the Performance Security is provided by the successful Bidder in the form of a Bank Guarantee, it shall be issued either (a) at the Bidder's option, by a bank located in the country of IOM or a foreign bank through a correspondent bank located in the country of IOM, or (b) with the agreement of IOM directly by a foreign bank acceptable to IOM.

33.3 Failure of the successful Bidder to comply with the requirements of Sub-Clause 33.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security.

34. Advance Payment and Security

34.1 IOM may provide an Advance Payment on the Contract Price as stipulated in the Conditions of Contract, subject to a maximum amount *[10% of the Contract Price]* upon posting of prescribed Security equivalent to the amount advance subject to recoument.

35. Adjudicator

35.1 Any dispute or difference in view regarding the Agreement shall be settled in so far as it is possible, by mutual consultation and consent.

35.2 If both parties fail to come to an agreement, the dispute shall be settled by arbitration under the auspices of United Nations Commission of International Trade Law (UNCITRAL).

36. Corrupt or Fraudulent Practice

36.1 IOM requires that all IOM Staff, Bidders/Contractors, manufacturers, suppliers or distributors, observe the highest standard of ethics during procurement and execution of all contracts. IOM shall reject any Bids put forward by Bidders or where applicable terminate their contract, if it is determined that they have engaged in corrupt, fraudulent, collusive or coercive practices. In pursuance of this policy, IOM :

(a) defines, for the purposes of this provision, the terms set forth below as follows:

- (i) “corrupt practice” means the offering, giving, receiving or soliciting directly or indirectly any thing of value to influence the action of the Procuring/Contracting Entity in the procurement process or in contract execution;
 - (ii) “fraudulent practice” is any acts or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, the Procuring/Contracting Entity in the procurement process or the execution of a contract, to obtain a financial gain or other benefit to avoid an obligation;
 - (iii) “collusive practice” is an undisclosed arrangement between two or more contractors designed to artificially alter the results of the tender procedure to obtain a financial gain or benefit;
 - (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any participant in the tender process to influence improperly its activities in a procurement process, or after the execution of a contract.
- (b) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
 - (c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded an IOM financed contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, an IOM financed contract.

36.2 Furthermore, Bidders shall be aware of the provision stated in sub-clause 23.2 and sub-clause 59.2 of the Conditions of Contract.

Section 2. Forms of Bid and Bill of Quantities, Qualification Information, Letter of Acceptance, and Contract Agreement

Table of Standard Forms

Standard Form: Contractor's Bid and Bill of Quantities

Standard Form: Qualification Information,

Standard Form: Letter of Acceptance,

Standard Form: Construction Contract

Standard Form: Contractor's Bid

BID FORM

Date :

To: **The Chairperson**
Bids Evaluation and Award Committee (BEAC)
International Organization for Migration
[insert Mission address]

We, the undersigned, declare that;

Having examined the Bidding Document for the *[insert project name and IAEB No.]*, issued on *[insert date]*, the receipt of which is hereby duly acknowledge, I, representing *[insert name of company]* offer to execute the WORKS and complete the construction in conformity with the Bidding Document for the total fixed lump sum price of *[insert total bid amount in words and figures and currency]* accordance with the Bill of Quantities and Detailed Estimate which is herewith attached and form part of this Bid.

I undertake, if my Bid is accepted, to deliver, install and execute the WORKS in accordance with the construction timetable/schedule set out in the "Instruction to Bidders" of the Bidding Document.

If my Bid is accepted, I will obtain the guarantee of a bank in a sum equivalent to 10% of the total amount of the Contract Price for the due performance of the Contract, in the form prescribed by the IOM.

I agree to abide by this Bid for the Bid Validity Period specified in the Bidding Document which may be accepted at any time before the expiration of that period.

Until a formal contract is prepared and executed, the Bid, together with your written acceptance thereof and the Notice of Award, shall constitute a binding agreement between us.

I hereby certify that the Bid complies with the requirements stipulated in the Bidding Document.

Dated this _____ day of _____ 20____.

[signature over printed name]

[in the capacity of]

Duly authorized to sign Bid for and on behalf of *[name of company]*

BILL OF QUANTITIES FORM

PROJECT TITLE : *Supply and construction of Transitional Shelters for 840 HHs in many sites in Al-Mokha, Al-Khukhah and Al-Tuhayta - West Cost - with delivery to the sites Taiz – Yemen* _____

LOCATION : _____

Contractors authorized signature over printed name

ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
	Annex B 1				
GRAND TOTAL					

Standard Form: Qualification Information

1. Individual Bidders or Individual Members of Joint Ventures

1.1 Constitution or legal status of Bidder: _____

Place of registration: _____

Principal place of business: _____

Power of attorney of signatory of Bid: _____

1.2 Total annual volume of construction work performed in five years, internationally traded currency _____.

1.3 Work performed as prime Contractor on works of a similar nature and volume over the last **five years**. The values should be indicated in the same currency used for Item 1.2 above. Also list of details of work under way or committed, including expected completion date.

Project Name and Country	Name of Client and Contact Person	Type of Work Performed and Year of Completion	Value of Contract
(a)			
(b)			

1.4 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data. Refer also to Sub-Clause 4.3 (e) of the Instructions to Bidders and Sub-Clause 9.1 of the Conditions of Contract.

Position	Name	Years of experience (general)	Years of experience in proposed position
(a)			
(b)			

1.5 Financial reports for the last **five years**: balance sheets, profit and loss statements, auditors' reports, etc. List below and attach copies.

Year	Financial and/or Auditor's Report
(a)	
(b)	

1.6 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of support documents.

Financial Resources	Support Documents
(a)	
(b)	

1.7 Name, address, and telephone, telex, and facsimile number of banks that may provide references if contacted by IOM.

Name of Bank	Address	Telephone/telex/fax Number
(a)		
(b)		

1.8 Information on current litigation in which the Bidder is involved.

Other party (ies)	Cause of dispute	Amount involved
(a)		
(b)		

1.9 Statement of compliance with the requirements of Sub-Clause 3.2 of the Instructions to Bidders. _____

1.10 Proposed Program (work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the bidding documents.

2. Joint Ventures (if applicable)

2.1 The information listed in 1.1- 1.9 above shall be provided for each partner of the joint venture.

2.2 The information in 1.10 above shall be provided for the joint venture.

2.3 Attach the power of attorney of the signatory(ies) of the Bid authorizing signature of the

Bid on behalf of the joint venture.

2.4 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that

- (a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
- (b) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
- (c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

3. Additional Requirements

3.1 Bidders should provide any additional information required or to fulfill the requirements of Sub-Clause 4.1 and Clause 30 of the Instructions to Bidders, if necessary.

NOTE:

All required Government Licenses/Permit prevailing in the country where the procurement is conducted should be submitted and other needed documents as per the VIS Requirement Checklist (SF 19.06)

Standard Form: Letter of Acceptance

[Letterhead of IOM]

[insert Date]

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

This is to notify you that your Bid dated *[insert date]* for execution of the *[insert Project Title and location]* for the Contract Price of the equivalent of *[insert amount in numbers and words]* *[insert name of currency]* as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by IOM.

You are hereby instructed to come to our office located at *[insert address]* to sign the formal agreement on *[date]* at *[time]*.

Authorized

Signature:

Name:

Title

of

Signatory:

IOM office-specific Ref. No.:	
IOM Project Code:	
LEG Approval Code / Checklist Code	

CONSTRUCTION AGREEMENT
Between
the International Organization for Migration
And
[Name of the Contractor]

This Construction Agreement is entered into between the **International Organization for Migration**, Mission in [XXX], [Address of the Mission], represented by [Name, Title of Chief of Mission etc.] (hereinafter referred to as “**IOM**”), and [name of company] of [address], in [country], represented by [Name, Title of the representative of the Contractor], (hereinafter referred to as the “**Contractor**”). IOM and the Contractor are also referred to individually as a “**Party**” and collectively as the “**Parties.**”

1. Introduction and Integral Documents

- 1.1 IOM intends to engage the services of [company’s name] for the construction of [name of project and project code/ WBS Element] located at [address] (the “**Works**”). The Works are what this Agreement requires the Contractor to construct, install and turn over to IOM, as defined in the plans, specifications and BoQ).
- 1.2 The following documents form part of this Agreement and are attached as Annexes: [add/delete as necessary]
 - (a) **Annex A** - Detailed Instruction to Bidders dated [insert date], with annexed Scope of Work, Technical Specifications, Drawings, and General Conditions of Tender;
 - (b) **Annex B** - Bid Form including Contractor's firm and final proposal/bid dated [insert date], with detailed Bill of Quantities (“**BoQ**”) and unit cost;

- (c) **Annex C** - Approved Work Schedule;
- (d) **Annex D** - Accepted Notice of Award (“**NoA**”); and
- (e) **Annex E** - Payment Schedule.

- 1.3 Any other Project documentation, agreed and signed by both Parties during the implementation of this Agreement, shall form part of this Agreement.
- 1.4 All correspondence, instructions, notes and other communications relating in any way to the performance of this Agreement will be in the English language. The English language version of the Agreement will at all times be the version of the Agreement which binds the Parties. Translations of the Agreement into languages other than English may be prepared for working purposes but will have no legally binding effect on the Parties.
- 1.5 If either Party finds any discrepancy or ambiguity in this Agreement, that Party must notify the other Party in writing. The Parties agree to consult with each other to attempt to resolve the discrepancy or ambiguity.
- 1.6 Unless otherwise advised by IOM in writing, all Project reports and other issues arising under this Agreement shall be addressed to IOM’s designated Chief of Mission / authorized Agreement signatory.

2. **Scope of Work**

- 2.1 The Contractor shall furnish all the necessary materials, tools and equipment, labor, supervision, and other services, for the satisfactory and timely completion of the Works in accordance with this Agreement .
- 2.2 Only IOM may approve any changes, modifications, deviations, and substitutions, in the Scope of Work in accordance with Article 7 (“**Work Variation**”).
- 2.3 IOM reserves the right to supply any materials, equipment, or resources, and to delete or reduce any work item, whether in whole or in part and update Annexes as necessary and a reduced Contract Price shall be agreed.

3. **Contract Price**

- 3.1 The total contract price (the “**Contract Price**”) shall be [*currency code*] [*insert figure*] (*insert amount of money in words + currency in words*) only inclusive of all applicable fees, taxes and permits that may be imposed by any Government entity in connection with the execution, completion, and turnover of the Works pursuant to this Agreement .
- 3.2 The Contract Price and unit prices as outlined in Annex B shall be binding and shall not be altered in any event. The Contract Price will be modified only in cases of IOM-approved Work Variations and IOM-supplied materials as outlined in Articles 2.2 and 2.3 of this Agreement and shall be reflected in writing.
- 3.3 The liability of IOM to the Contractor is STRICTLY LIMITED to the Contract Price outlined in Article 3.1, regardless of any increase in wage or labor cost or fluctuation

in the cost of materials and equipment, occurring at any time. The Contractor shall be liable for its under-estimation of the requirements of this Agreement, inflation or currency devaluation, if any.

4. Manner of Payment

- 4.1 Payments for the Works will be done in installments in accordance with the Payment Schedule in Annex E.
- 4.2 The Contractor's Progress Claims shall be submitted to and certified by IOM's appointed Project Manager who will verify the value of the work done with regard to the value of the quantities of items completed in the Bill of Quantities. The Contractor shall submit all Progress Claims with the following attachments:
 - (a) Updated Financial Statement of the Project;
 - (b) Statement of Completed Works;
 - (c) Progress Photos; and
 - (d) Contractor's Sales Invoice.
- 4.3 Within 7 (seven) calendar days of Contractor's submission of the Progress Claims and Statement of Completed Works and all required attachments to the Project Manager. The Project Manager shall evaluate the said Progress Claim(s). Evaluated and approved Progress Claims shall be due and payable within 10 (ten) working days from date of approval of Progress Claim. During this period of evaluation and processing of payments, the Contractor shall continue progress of the work in accordance with the Approved Work Schedule.
- 4.4 Any progress payment/s made by IOM does not imply nor signify acceptance of any portion of the accomplished work and does not waive IOM's right to enforce the Contractor's warranty as provided in Article 14.2 of this Agreement, nor to enforce penalties for delay.
- 4.5 The Contractor can only submit the final Progress Claim as per the Payment Schedule when the Contractor has satisfactorily completed and submitted:
 - (a) All works, including Work Variation Orders, as stipulated in the annexed documents;
 - (b) Rectification of all reported non-conforming works;
 - (c) Completed demobilization and clean-up of site;
 - (d) Applicable materials and work test certificate/s;
 - (e) Approval duly signed by the Project Manager and by the Contractor's authorized representative that the Work is completed in accordance with drawings and specifications and in compliance with applicable laws, rules and regulations of the local and/or national government of the location where the Project is to be implemented;
- 4.6 A Certificate of Provisional Acceptance of completed Works shall be issued by IOM when each of the requirements under Article 4.5 have been fulfilled to its satisfaction.

- 4.7 A Certificate of Provisional Acceptance of terminated Works shall be issued by IOM if IOM terminates the contract in accordance with Article 25. This Certificate will indicate the Completion Rate as per Article 6.2 and the Contractor shall remain responsible for the rectification of non-conforming or defective portions of the Works in accordance with Article 14.2.
- 4.8 A Certificate of Final Acceptance shall be issued by IOM 12 (twelve) months after the date a Certificate of Provisional Acceptance of the completed or terminated Works is issued provided that any works required during the warranty period have been completed to its satisfaction.

5. Completion Period

- 5.1 The Contractor shall mobilize all necessary and appropriate resources and coordinate all work activities with IOM to ensure commencement of the Works on [date] and completion and turn-over of the Works to IOM by [date] (“**Completion Date**”).
- 5.2 Where the Contractor is unable to complete the Works by the date specified in Article 5.1, the Contractor may request a time extension in writing explaining the reasons for the delay.
- 5.3 IOM shall not approve requests for time extension for reasons such as but not limited to:
- (a) Project location, conditions and restrictions identified during time of tender and award of the Agreement ;
 - (b) Normal weather and climatic conditions prevailing at the site location;
 - (c) Logistics, implementation, coordination problems and other reasons within the control of the Contractor;
 - (d) Financial, operational and labor difficulties of the Contractor or any of its sub-Contractor/s or supplier/s;
 - (e) Any required rectification of non-conforming work items; and
 - (f) Nature and condition of terrain.
- 5.4 IOM may revise the Completion Date as stated in Article 5.1 in response to the Contractor’s request for time extension caused by any of the following:
- (a) Force Majeure as described in Article 16;
 - (b) Approved Work Variation Order/s requiring additional time for completion by the Contractor, as agreed between the Parties;
 - (c) IOM’s failure to make timely payments for the Works completed to IOM’s satisfaction;

Provided, the requested extension shall not exceed the duration of the work stoppage or delay caused by the foregoing.

- 5.5 If the Works are not completed by the Completion Date specified in Article 5.1 the Contractor shall be liable to IOM for liquidated damages equivalent to 0.1% (one-tenth of one per cent) of the total Contract Price for each day of delay until the whole Works are completed and accepted by IOM according to Article 4.6. IOM may, at its discretion, grant a conditional time extension whereby the Works are not considered to be in delay during the time extended, but in case of non-completion within the extended period, the calculation of liquidated damages for delay outlined herein shall be from the original completion date before extension. If the Agreement is terminated by either Party after the Completion Date due to non-completion of the Works, the Contractor shall be liable to IOM for liquidated damages equivalent to 0.1% (one-tenth of one per cent) of the total Contract Price for each day from the Completion Date to the date of termination.

6. Work Schedule

- 6.1 Within the timeframe specified in the NoA and no later than the date of signature of this Agreement, the Contractor shall submit to IOM a work schedule (the “**Work Schedule**”) showing the order and timing for all the activities in the Works.
- 6.2 The Contractor shall keep and update a daily logbook on all progress and matters relating to the Works in accordance with industry standards. The logbook shall be inspected and verified for accuracy, daily or at an interval designated by IOM, by a designated IOM staff or its authorized representatives. The logbook shall be the authoritative source of information for determining the extent of the Works completed (the “**Completion Rate**”). In case the Contractor fails to update the logbook properly with the required verification, IOM shall have the right to solely determine the Completion Rate which cannot be challenged by the Contractor.
- 6.3 The Contractor shall submit an updated Work Schedule as and when requested by IOM or its Project Manager.
- 6.4 The Contractor shall notify IOM through its Project Manager of any proposed change in the Work Schedule. Any change shall be subject to prior written approval by IOM. The Contractor shall also submit to the Project Manager for approval a revised schedule within 7 (seven) calendar days from the date of proposing the change.
- 6.5 If at any time IOM deems that Contractor’s actual progress is inadequate to meet the requirements of this Agreement, IOM may notify the Contractor to take such steps as may be necessary to improve its progress. If after a reasonable period, as determined by IOM, the Contractor still does not improve its performance, IOM may require an increase in Contractor’s labour force, the number of shifts, workdays per week, overtime hours, amount of equipment, or require expedited shipment of equipment and materials, all at the Contractor’s cost and without additional cost to IOM.
- 6.6 If at any time the Contractor’s labour force is inactive due to unpaid wages, the Contractor shall be liable to IOM for liquidated damages equivalent to 0.1% (one-

tenth of one percent) of the total Contract Price for each day of work stoppage until the entire labour force resumes work on the Project. This penalty shall be applied independently of any other sanction or penalty allowed for in this Agreement.

7. **Work Variation**

- 7.1 At any time during the implementation and execution of this Project, IOM reserves the right to request any alteration in any aspect of the work, as deemed necessary or appropriate by IOM in the best interest of the Project.
- 7.2 Alterations and/or modifications, whether additive or deductive, shall be conveyed to the Contractor in the form of a work variation order (the “**Work Variation Order**”) duly approved and signed by IOM or its authorized representative. The Contractor shall immediately implement any Work Variation Order issued by IOM.
- 7.3 All variations shall be included in an updated Work Schedule.
- 7.4 If any work in the Work Variation Order corresponds with an item description in the BoQ, the rate in the BoQ shall be used to calculate the value of the variation. In other cases, the cost of such Work Variation Order shall be evaluated and compensated as agreed between the Parties. IOM may request the Contractor to provide a quotation for the cost of the variation.

8. **Bank Guarantee for Advance Payment (if applicable)**

- 8.1 The Contractor shall, within the timeframe specified in the NoA and no later than the date of signature of this Agreement, furnish IOM with an unconditional bank guarantee in the amount equivalent to [percentage] of the Contract Price (the “**Bank Guarantee**”).
- 8.2 The Bank Guarantee shall be in a form and by a bank acceptable to IOM in an amount and currency equal to the advance payment.
- 8.3 The amount of the Bank Guarantee shall not be construed as the limit of the Contractor’s liability to IOM in any event.
- 8.4 The Bank Guarantee shall be effective from the date of the release of cash advance as per Article 4.1 of this Agreement until the date of the provisional acceptance as per Articles 4.6 or 4.7.

9. **Performance Security (applicable where the contract price is over USD 250,000)**

- 9.1 The Contractor shall, within the timeframe specified in the NoA, furnish IOM with a performance bond in the amount equivalent to 10% (ten percent) of the Contract Price, to be issued by a reputable bank or surety company in a form acceptable to IOM (the “**Performance Bond**”).
- 9.2 The Performance Bond shall serve as the guarantee for the Contractor’s faithful performance and compliance with the terms and conditions of this Agreement.

- 9.3 The amount of the Performance Bond shall not be construed as the limit of the Contractor's liability to IOM in any event.
- 9.4 The Performance Bond shall be effective from the date of commencement of the Works until the date of Provisional Acceptance as per Articles 4.6 or 4.7.

10. Retention

10.1 Upon issuance of the Certificate of Provisional Acceptance for completed Works as per Article 4.6, an amount equivalent to 10% (ten per cent) of the Contract Price shall be retained by IOM to be used for repairs or reconstruction of defective works due to poor workmanship and/or inferior quality of material used which are discovered within a period of 12 (twelve) months from the date of Provisional Acceptance.

10.2 In case a Certificate of Provisional Acceptance for terminated Works has been issued as per Article 4.7, an amount equivalent to 10% (ten per cent) of the Contract Price corresponding to the Completion Rate as per Article 6.2 shall be retained by IOM to use for repairs and reconstruction of defective works due to poor workmanship and/or inferior quality of material used for which the Contractor was responsible under this Agreement which are discovered within a period of 12 (twelve) months from the date of Provisional Acceptance.

10.3 The Contractor may, from the date of Provisional Acceptance and until the expiration of Retention period, request IOM to release the amount retained as per Article 10.1 or Article 10.2 by submitting an unconditional bank guarantee. Such bank guarantee shall be in a form and by a bank acceptable to IOM and in an amount and currency equal to the amount retained and effective until the expiration of Retention period..

11. Contractor's Responsibility

11.1 All government permits and licenses required for the execution of the Works under this Agreement shall be obtained prior to the commencement of the Works and paid for by the Contractor.

11.2 The Contractor shall comply with local and national building regulations imposed by appropriate government agencies, and shall keep IOM indemnified against all fines, penalties and losses incurred by reason of any breach of this clause.

11.3 The Contractor shall assume full responsibility for the Works under this Agreement until its final acceptance by IOM as per Article 4.8. The Contractor shall have entire control and supervision of the Works and services herein agreed upon and shall be solely liable for the salaries, wages and other employment benefits of all employees and sub-contractors. Should the Contractor breach this clause, IOM has the right to proceed against the Performance Bond or Bank Guarantee or to use the Retention Amount, without prejudice to demanding direct reimbursement from the Contractor in the event that the amount of the Performance Bond Bank Guarantee or Retention Amount is insufficient.

- 11.4 The Contractor shall be responsible for the safety of all activities on the site and for ensuring that relevant occupational health and safety laws and regulations are followed.
- 11.5 The Contractor shall be solely and fully accountable for ANY claim for losses, liabilities, injuries, or damages arising out of or in connection with the work done or to be performed under this Agreement including but not limited to any accident or injury of any of its employees or sub-contractors during the term of this Agreement , or for any injury to any person or damages or loss of properties arising from the construction or any act or omission of the Contractor or anyone in its employment, or its subcontractors.
- 11.6 The Contractor shall comply with local laws on wages and such other labor laws including all other laws, orders and regulations of any government authority in connection with the Works.
- 11.7 The Contractor shall at all times defend, indemnify, and hold harmless IOM, its officers, employees, and agents from and against all losses, costs, damages and expenses (including legal fees and costs), claims, suits, proceedings, demands and liabilities of any kind or nature to the extent arising out of or resulting from acts or omissions of the Contractor or its employees, officers, agents or subcontractors, in the performance of this Agreement. IOM shall promptly notify the Contractor of any written claim, loss, or demand for which the Contractor is responsible under this clause.

12. Inspection of Works

- 12.1 IOM reserves the right for itself and its representatives to inspect the Works, while in progress, so as to give IOM the opportunity to reject the whole or any portion thereof, which in the opinion of IOM's representative is defective or substandard.
- 12.2 The Contractor shall allow the Project Manager and other IOM representatives to access to the work site at any time.

13. Insurance

- 13.1 Without limiting the Contractor's liability pursuant to Article 11 (Contractor's Responsibility), the following insurance cover is to be provided and maintained by the Contractor for the entire duration of this Agreement:
- (a) Third party liability for any one claim or series of claims arising out of any one accident or event;
 - (b) Workmen's compensation and/or employer's liability insurance which complies with applicable legislation;
 - (c) Automobile public liability and property damage insurance; and
 - (d) Cover against loss or damage to the Works and materials during the construction.
- 13.2 The amount of coverage for each type of insurance is to be in line with relevant industry standards and in an amount acceptable to IOM.

13.3 Policies and certificates of insurance are to be provided to IOM prior to the commencement of the Works.

14. Warranties

14.1 The Contractor represents and warrants that it is financially sound and duly licensed, with the adequate labor/human resources, equipment and tools, competence, expertise and skills necessary to carry out fully and satisfactorily, within the stipulated completion period, the Works in accordance with this Agreement .

14.2 The Contractor guarantees and warrants the performance and completion of the design and construction work to the full and complete satisfaction of IOM. The Contractor remains responsible for the damages caused or identified within 12 (twelve) months from the date of IOM's Provisional Acceptance of the Works as per Articles 4.6 or 4.7, on account of defects in the construction, or the use of materials of inferior quality furnished by it, or due to any violation of the terms of the Agreement.

14.3 In case of any defect in workmanship or materials, which may become apparent in the course of construction, the Contractor shall, within 7 (seven) calendar days from IOM's demand, at Contractor's own cost and expense, remedy such portion of the Works done by the Contractor as in the opinion or judgment of IOM is unsound, incorrect or defective or not in accordance with the plans and specifications.

14.4 In case of Contractor's default, failure or refusal to carry out such order to remove and replace the unsound, incorrect or defective portion of the Works within 7 (seven) days as required by the previous clause, IOM may terminate this Agreement and/or engage the services of other persons to carry out the same. The Contractor shall bear all expenses arising there from or incidental thereto. IOM may require direct reimbursement for the cost of such action from the Contractor, deduct the expenses from any amount due to the Contractor, or deduct the amount from Performance Bond, the Bank Guarantee or the Retention Amount.

14.5 If any defects or imperfections are discovered by IOM and communicated to the Contractor after provisional acceptance but prior to final acceptance of the Works due to defective or improper workmanship and/or inferior quality of the material used, the Contractor shall immediately correct such defects within a period of 5 (five) days of receipt of written notice from IOM. Where the Contractor fails to act within this period, IOM may engage the services of a third party to correct the defect and hold the Contractor liable for the cost of such services. In such circumstances the Contractor shall reimburse IOM the cost of such repair, with interest at 2% (two per cent) per month from the time such expenses were incurred until fully reimbursed. The Performance Bond, Bank Guarantee and Retention, if not yet released at the time the said defects are found, may be used for this purpose.

14.6 The Contractor shall perform repair work with the utmost care and diligence to protect existing facilities and prevent damage thereto. In the event that damage to existing facilities is caused by such repairs, the Contractor shall repair such damage at its own expense and to IOM's satisfaction and acceptance.

14.7 The Contractor further warrants that:

- a) In all circumstances it shall act in the best interests of IOM;
- b) It shall comply with all applicable laws, ordinances, rules and regulations when performing its obligations under this Agreement ;
- c) No official or employee of IOM or any third party has received or will receive from, will be offered by, the Contractor any direct or indirect benefit arising from the Agreement or award thereof;
- d) It has not misrepresented or concealed any material facts in the procuring of this Agreement;
- e) All materials used are new, legally sourced and fit for their particular purpose;
- f) No asbestos or any other health hazard materials (lead paints etc.) will be used in the course of the construction;
- g) The Contractor, its staff or shareholders have not previously been declared by IOM ineligible to be awarded contracts by the IOM;
- h) It shall abide by the highest ethical standards in the performance of this Agreement, which includes not engaging in any discriminatory or exploitative practice or practice inconsistent with the rights set forth in the Convention on the Rights of the Child;
- i) The remuneration of the Contractor under this Article 3.1 shall constitute the sole remuneration in connection with this Agreement. The Contractor, its officers and employees shall not accept for their own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or the discharge of its obligations thereunder. The Contractor shall ensure that any subcontractors, as well as the officers, personnel and agents of either of them, similarly, shall not receive any such additional remuneration.

14.8 The Contractor further warrants that it shall:

- (a) Take all appropriate measures to prohibit and prevent actual, attempted and threatened sexual exploitation and abuse (SEA) by its employees or any other persons engaged and controlled by it to perform activities under this Agreement ("other personnel"). For the purpose of this Agreement, SEA shall include:
 1. Exchanging any money, goods, services, preferential treatment, job opportunities or other advantages for sexual favours or activities, including humiliating or degrading treatment of a sexual nature; abusing a position of vulnerability, differential power or trust for sexual purposes, and physical intrusion of a sexual nature whether by force or under unequal or coercive conditions.
 2. Engaging in sexual activity with a person under the age of 18 ("child"), except if the child is legally married to the concerned employee or other personnel and is over the age of majority or consent both in the child's country of citizenship and in the country of citizenship of the concerned employee or other personnel.

- (b) Strongly discourage its employees or other personnel having sexual relationships with IOM beneficiaries.
- (c) Report timely to IOM any allegations or suspicions of SEA, and investigate and take appropriate corrective measures, including imposing disciplinary measures on the person who has committed SEA.
- (d) Ensure that the SEA provisions are included in all subcontracts.
- (e) Adhere to above commitments at all times. Failure to comply with (a)-(d) shall constitute grounds for immediate termination of this Agreement.

14.9 The above warranties survive the expiration or termination of this Agreement.

15. Assignment of Agreement and Subcontracting

15.1 The Contractor shall not assign or subcontract the Agreement or any work under this Agreement in part or all, unless agreed upon in writing in advance by IOM. Any subcontract entered into by the Contractor without approval in writing by IOM may be cause for termination of the Agreement.

15.2 In certain exceptional circumstances by prior written approval of IOM, specific jobs and portions of the Project may be assigned to a subcontractor. Notwithstanding the said written approval, the Contractor shall not be relieved of any liability or obligation under this Agreement nor shall it create any contractual relation between the subcontractor and IOM. The Contractor remains bound and liable thereunder and it shall be directly responsible to IOM for any faulty performance under the subcontract. The subcontractor shall have no cause of action against IOM for any breach of the sub-contract.

16. Force Majeure

Neither Party will be liable for any delay in performing or failure to perform any of its obligations under this Agreement if such delay or failure is caused by force majeure, such as civil disorder, military action, natural disaster and other circumstances which are beyond the control of the Party in question. In such event, the Party will give immediate notice in writing to the other Party of the existence of such cause or event and of the likelihood of delay.

17. Independent Contractor

The Contractor shall perform all Services under this Agreement as an independent contractor and not as an employee, partner, or agent of IOM.

18. Audit

The Contractor agrees to maintain records, in accordance with sound and generally accepted accounting procedures, of all direct and indirect costs of whatever nature involving transactions related to the provision of services under this Agreement. The Contractor shall make all such records available to IOM or IOM's designated

representative at all reasonable times until the expiration of 7 (seven) years after the date of final payment, for inspection, audit, or reproduction. On request, employees of the Contractor shall be available for interview.

19. Confidentiality

All information which comes into the Contractor's possession or knowledge in connection with this Agreement is to be treated as strictly confidential. The Contractor shall not communicate such information to any third party without the prior written approval of IOM. The Contractor shall comply with IOM Data Protection Principles in the event that it collects, receives, uses, transfers or stores any personal data in the performance of this Agreement. This obligation shall survive the expiration or termination of this Agreement.

20. Notices

Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and received by the other Party at the following address:

International Organization for Migration (IOM)

Attn: [Name of IOM contact person]

[IOM's address]

Email: [IOM's email address]

[Full name of the Contractor]

Attn: [Name of the Contractor's contact person]

[Contractor 's address]

Email: [Contractor 's email address]

21. Dispute Resolution

21.1. Any dispute, controversy or claim arising out of or in relation to this Agreement, or the breach, termination or invalidity thereof, shall be settled amicably by negotiation between the Parties.

21.2. In the event that the dispute, controversy or claim has not been resolved by negotiation within 3 (three) months of receipt of the notice from one party of the existence of such dispute, controversy or claim, either Party may request that the dispute, controversy or claim is resolved by conciliation by one conciliator in accordance with the UNCITRAL Conciliation Rules of 1980. Article 16 of the UNCITRAL Conciliation Rules does not apply.

21.3. In the event that such conciliation is unsuccessful, either Party may submit the dispute, controversy or claim to arbitration no later than 3 (three) months following the date of termination of conciliation proceedings as per Article 15 of the UNCITRAL Conciliation Rules. The arbitration will be carried out in accordance with the 2010 UNCITRAL arbitration rules as adopted in 2013. The number of arbitrators shall be one and the language of arbitral proceedings shall be English,

unless otherwise agreed by the Parties in writing. The arbitral tribunal shall have no authority to award punitive damages. The arbitral award will be final and binding.

21.4. The present Agreement as well as the arbitration agreement above shall be governed by internationally accepted general principles of law and by the terms of the present Agreement, to the exclusion of any single national system of law that would defer the Agreement to the laws of any given jurisdiction. Internationally accepted general principles of law shall be deemed to include the UNIDROIT Principles of International Commercial Contracts. Dispute resolution shall be pursued confidentially by both Parties. This Article survives the expiration or termination of the present Agreement.

22. Use of IOM Name

The use of the official logo and name of IOM may not be used by the Contractor without the prior written approval of IOM.

23. Status of IOM

Nothing in this Agreement affects the privileges and immunities enjoyed by IOM as an intergovernmental organization.

24. No Waiver Clause

IOM's failure to insist upon a strict performance of any of the terms and conditions of this Agreement shall not be deemed a relinquishment of any right or remedy that IOM may have, nor shall it be construed as a waiver of Contractor's subsequent breach of this Agreement which shall continue to be in full force and effect. No waiver by IOM of any of its rights under this Agreement shall be deemed to have been made unless expressed in writing and signed by IOM.

25. Termination of Agreement

25.1 IOM may, at its option, terminate for convenience any of the work under this Agreement in whole or in part, at any time by 7 (seven) days written notice to Contractor. Such notice shall specify the Completion Rate upon termination as established by Article 6.2 and the effective date of termination. Upon receipt of such notice Contractor shall:

- (a) Immediately discontinue the Works on the date and to the extent specified in the notice and place no further purchase orders or subcontracts for materials, services, or facilities other than as may be required for completion of such portion of the Works that is not terminated;
- (b) Promptly cancel upon terms satisfactory to IOM all purchase orders, subcontracts, rentals, or any other agreement existing for the performance of the terminated work, or assign those agreements as directed by IOM;
- (c) Assist IOM in the maintenance and protection of work in progress, plant, tools, equipment, property and materials acquired by Contractor or furnished by IOM under this Agreement;

- (d) Complete performance of such portion of the Works which are not terminated; and
- (e) Perform other related tasks, which IOM may reasonably instruct, in order to effect the termination of the work.

25.2 Upon termination as per the previous clause, as the sole right and remedy of Contractor, IOM shall pay in accordance with the following:

- (a) The Contract Price corresponding to the Works performed in accordance with this Agreement prior to the date of such notice of termination;
- (b) Costs corresponding to the portion of the Works thereafter performed as specified in such notice of termination, subject to IOM's acceptance of such work;
- (c) Reasonable and documented administrative costs of settling and paying claims arising out of the termination of work under purchase orders or subcontracts, as agreed by IOM; and
- (d) Reasonable costs incurred in demobilization and the disposition of residual material and equipment, as agreed by IOM.

The Contractor shall submit within 7 (seven) calendar days after receipt of notice of termination, a written statement setting forth its proposal for an adjustment to the Contract Price to include only the incurred costs described in this clause. IOM shall review the proposal, and negotiate an equitable adjustment of the Contract Price. Other amounts paid in advance by IOM will be refunded by the Contractor within 7 (seven) days.

25.3 IOM may terminate this Agreement or any of the work under this Agreement at any time by immediate written notice to the Contractor, for causes which include but are not limited to:

- (a) The Contractor's violation of the terms and conditions of this Agreement;
- (b) Contractor's default, failure or refusal to carry out order to remove and replace the unsound, incorrect or defective portion of the Works as per Article 14.5;
- (c) Non-completion of the Works within the time agreed upon or the expiration of extension agreed upon, or delayed progress of the Works as stated in Article 6 or sub-standard work;
- (d) Institution of insolvency or receivership proceedings involving the Contractor;
- (e) If, in the judgment of IOM, the Contractor has engaged in corrupt or fraudulent practices in competing for and/or implementing the Agreement.

The written notice shall specify the Completion Rate as established by Article 6.2 upon termination, the effective date of termination, and any additional tasks that need to be performed including but not limited to those enumerated in Articles 25.1 and 25.2. Such termination shall be without prejudice to IOM's other rights and remedies in this Agreement, in law and in equity. Amounts paid in advance by IOM will be refunded by the Contractor within 7 (seven) days from the date of IOM's request.

25.4 Where IOM terminates this Agreement as per Article 25.3 above, all materials, plant, equipment and works financed under this Agreement shall be deemed to be the

property of IOM, and the Contractor shall be liable for all the direct replacement cost incurred to IOM for the completion of the Works. The Contractor shall pay IOM the required amount within 30 (thirty) days from receipt of an invoice from IOM. The direct replacement cost shall be the difference between the remaining amount in Contract Price not paid to the Contractor upon termination including the retention amount (after the settlement of all remaining debts and obligations) and the actual cost spent by IOM for completion of the remainder of the Works plus overhead of 10% (ten per cent) for additional administrative efforts of IOM.

25.5 Upon any termination, the Contractor shall waive any claims for damages including loss of anticipated profits on account thereof.

26. Severability

If any part of this Agreement is found to be invalid or unenforceable, that part will be severed from this Agreement and the remainder of the Agreement shall remain in full force.

27. Entirety

This Agreement and its Annexes embody the entire agreement between the Parties and supersedes all prior agreements and understandings, if any, relating to the subject matter of this Agreement.

28. Special Provisions (Optional)

Due to the requirements of the Donor financing the Project, the Implementing Partner shall agree and accept the following provisions:

[Insert all donor requirements which must be flown down to IOM's implementing partners and subcontractors. In case of any doubt, please contact LEGContracts@iom.int]

29. Final clauses

29.1 This Agreement will enter into force upon signature by both Parties. It will remain in force until completion of all obligations of the Parties under this Agreement unless terminated earlier in accordance with Article 25.

29.2 Amendments may be made by mutual agreement in writing between the Parties.

Signed in duplicate in English, on the dates and at the places indicated below.

For and on behalf of
The International Organization
for Migration

Signature

Name
Position
Date
Place

For and on behalf of
[Full name of the Contractor]

Signature

Name
Position
Date
Place

ANNEX E: PAYMENT SCHEDULE

1. (Applicable if an advance payment is made) IOM shall release an advance payment equivalent to [percentage] of the Contract Price in the amount of [currency] [insert amount in numbers] (amount in words and currency in words) within 7 (seven) calendar days from the Contractor's signature of this Agreement and Contractor's submission of and IOM's approval of the following items:
 - a. Drawings and Technical Documents for Permit Purposes;
 - b. Approved Detailed Construction and Workings Drawings;
 - c. Work Schedule;
 - d. List of Sub-Contractors and Suppliers (if applicable);
 - e. Unconditional Bank Guarantee equivalent to [percentage to match advance payment] percent of the Contract Price to guarantee the advance payment, if applicable;
 - f. Performance Security if required under Article 9.

[currency code] amount in numbers (amount in words) shall be withheld by IOM as Retention as per Article 10 of the Agreement.
2. IOM will pay the Contractor [currency code] amount in numbers (amount in words) on confirmation by IOM of satisfactory progress toward the completion of (amount)% ([amount in words] per cent) actual measured work as per Bill of Quantities at Annex B and logbook. [currency code] amount in numbers (amount in words) shall be withheld by IOM as Retention as per Article 10 of the Agreement.
3. IOM will pay the Contractor [currency code] amount in numbers (amount in words) after the completion of 100% (one hundred per cent) of the Works and inspection and provisional acceptance of the completed Works . [currency code] amount in numbers (amount in words) shall be withheld by IOM as Retention as per Article 10 of the Agreement.
4. The balance of 10% (ten per cent) of the total Contract Price in the amount of [currency code] amount in numbers (amount in words) will be held for 12 (twelve) months after provisional acceptance of the completed Works in accordance with Article 10 of this Agreement .

Section 3. Construction Drawings

[Annex C]

(The Construction Drawings for Bidding can be issued on separate Volume)

Section 4. Technical Specifications

[Insert Table of Contents]

(The Technical Specifications can be issued on separate Volume together with the Construction Drawings for Bidding)

Section 5. Security Forms

Annex A Form: Bid Security (Bank Guarantee)

WHEREAS, *[name of Bidder]* (hereinafter called “the Bidder”) has submitted his Bid dated *[date]* for the construction of *[name of Contract]* (hereinafter called “the Bid”).

KNOW ALL PEOPLE by these presents that We *[name of Bank]* of *[name of country]* having our registered office at *[address]* (hereinafter called “the Bank”) are bound unto name of IOM] (hereinafter called “the Employer”) in the sum of *[amount]*ⁱ for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors, and assigns by these presents.

SEALED with the Common Seal of the said Bank this *[day]* day of *[month]*, *[year]*.

THE CONDITIONS of this obligation are:

- (1) If, after Bid opening, the Bidder withdraws his Bid during the period of Bid validity specified in the Form of Bid; or
- (2) If the Bidder having been notified of the acceptance of his Bid by the Employer during the period of Bid validity:
 - (a) fails or refuses to execute the Form of Agreement in accordance with the Instructions to Bidders, if required; or
 - (b) fails or refuses to furnish the Performance Security, in accordance with the Instruction to Bidders; or
 - (c) does not accept the correction of the Bid Price pursuant to Clause 27,

we undertake to pay to the Employer up to the above amount upon receipt of his first written demand, without the Employer’s having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him owing to the occurrence of one or any of the two conditions, specifying the occurred condition or conditions.

This Guarantee will remain in force up to and including the date 28 days after the date of the expiration of the Bid Validity, as stated in the Instructions to Bidders or as it may be extended by the Employer, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date.

DATE _____ SIGNATURE OF THE BANK _____

WITNESS _____ SEAL _____

[signature, name, and address]

Annex B Form: Performance Bank Guarantee

To: *[name and address of Employer]*

WHEREAS *[name and address of Contractor]* (hereinafter called “the Contractor”) has undertaken, in pursuance of Contract No. *[number]* dated *[date]* to execute *[name of Contract and brief description of Works]* (hereinafter called “the Contract”);

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee;

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of *[amount of Guarantee]* *[amount in words]*, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of *[amount of Guarantee]* as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between you and the Contractor shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Guarantee shall be valid until a date 28 days from the date of issue of the Certificate of Completion.

Signature and seal of the Guarantor _____

Name of Bank _____

Address _____

Date _____

Annex C Form: Bank Guarantee for Advance Payment

To: *[name and address of Employer]*

[name of Contract]

Gentlemen:

In accordance with the provisions of the Conditions of Contract, Clause 51 (“Advance Payment”) of the above-mentioned Contract, *[name and address of Contractor]* (hereinafter called “the Contractor”) shall deposit with *[name of Employer]* a Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of *[amount of Guarantee] [amount in words]*.

We, the *[Bank or Financial Institution]*, as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to *[name of Employer]* on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding *[amount of Guarantee] [amount in words]*.

We further agree that no change or addition to or other modification of the terms of the Contract or of Works to be performed thereunder or of any of the Contract documents which may be made between *[name of Employer]* and the Contractor, shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until *[name of Employer]* receives full repayment of the same amount from the Contractor.

Yours truly,

Signature and seal: _____

Name of Bank/Financial Institution: _____

Address: _____

Date: _
