



Technical Assistance Consultant's Report

Volume 6: Annexes AF - AJ
(Chapter 12)

Project Number: 47085
September 2015

Lao People's Democratic Republic: Road Sector Governance and Maintenance Project (Financed by the Asian Development Bank)

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For Ministry of Public Works and Transport
Department of Roads

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Asian Development Bank

Lao Peoples Democratic Republic (Lao PDR)

Ministry of Public Works and Transport

**ADB TA-8492 LAO:
ROAD SECTOR GOVERNANCE
AND MAINTENANCE PROJECT
(47085-001)**

Final Report

**Volume 6: Annexes AF - AJ
[Chapter 12]**

September, 2015

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Annex AF – Procurement Plan

PROCUREMENT PLAN

Basic Data

Project Name: Road Sector Governance and Maintenance Project	
Project Number:	Approval Number:
Country: LAO PEOPLE'S DEMOCRATIC REPUBLIC	Executing Agency: Ministry of Public Works and Transportation
Project Procurement Classification: B	Implementing Agency: Department of Roads
Procurement Risk: Moderate	
Project Financing Amount: \$ 29.9 Million ADB Financing: \$ 27.0 million Non-ADB Financing: \$ 2.9 million	Project Closing Date: 30 September 2021
Date of First Procurement Plan : xx February 2015	Date of this Procurement Plan: xx April 2015

A. Methods, Thresholds, Review and 18-Month Procurement Plan

1. Procurement and Consulting Methods and Thresholds

Except as the Asian Development Bank (ADB) may otherwise agree, the following process thresholds shall apply to procurement of goods and works.

Procurement of Goods and Works		
Method	Threshold	Comments
International Competitive Bidding (ICB) for Works	\$3,000,000	Prior review by ADB
National Competitive Bidding (NCB) for Works	Beneath that stated for ICB, Works	The first NCB is subject to prior review by ADB, thereafter post review
International Competitive Bidding for Goods	\$1,000,000	
National Competitive Bidding for Goods	Beneath that stated for ICB, Goods	The first NCB is subject to prior review by ADB, thereafter post review
Shopping for Goods	Below \$100,000	Post review by ADB

Consulting Services	
Method	Comments
Quality and Cost Based Selection (QCBS)	Prior review by ADB
Least Cost Selection	Prior review by ADB

2. Goods and Works Contracts Estimated to Cost \$1 Million or More

The following table lists goods and works contracts for which the procurement activity is either ongoing or expected to commence within the next 18 months.

Package Number	General Description	Estimated Value (\$ Million)	Procurement Method	Review [Prior / Post/Post (Sample)]	Bidding Procedure	Advertisement Date (quarter/year)	Comments
CW 1 Sal-NR 20	Rehabilitation and Maintenance Works of NR 20 (56km)	2.161	NCB	Prior	1S2E	2 nd Quarter 2017	Performance based contracting (PBC)
CW 2 Sal-LR 6901	Rehabilitation and Maintenance Works of LR 6901 (27.5km)	2.063	NCB	Prior	1S2E	2 nd Quarter 2017	Performance based contracting (PBC)
CW 3 Xek-NR 16	Rehabilitation and Maintenance Works of NR 16 (54km)	1.002	NCB	Prior	1S2E	2 nd Quarter 2017	Performance based contracting (PBC)
CW 4 Xek-LR 7615	Rehabilitation and Maintenance Works of LR 7615 (22.73km)	2.894	NCB	Prior	1S2E	2 nd Quarter 2017	Performance based contracting (PBC)
CW 5 Att-NR 18B	Rehabilitation and Maintenance Works of NR 18B (111.9km)	3.225	ICB	Prior	1S2E	2 nd Quarter 2017	Performance based contracting (PBC)
CW 6 Att-LR 9001	Rehabilitation and Maintenance Works of LR 9001 (54km)	5.974	ICB	Prior	1S2E	2 nd Quarter 2017	Performance based contracting (PBC)

Note: All civil works contract using Performance Based Contracting will be procured following a pre-qualification procedure to ensure that only Contractors with adequate experience and resources implement and complete the contract.

3. Consulting Services Contracts Estimated to Cost \$100,000 or More

The following table lists consulting services contracts for which the recruitment activity is either ongoing or expected to commence within the next 18 months.

Package Number	General Description	Estimated Value (\$ Million)	Recruitment Method	Review (Prior / Post)	Advertisement Date (quarter/year)	Type of Proposal	Comments
CS1	Project Management Consultant	6.156	QCBS	Prior	3 rd Quarter 2015	FTP	90:10 Quality cost ratio International / National consulting firm Advance action
CS2	Independent Financial Auditor	0.150	LCS	Prior	3 rd Quarter 2016	BTP	National consulting firm

4. Goods and Works Contracts Estimated to Cost Less than \$1 Million and Consulting Services Contracts Less than \$100,000 (Smaller Value Contracts)

The following table groups smaller-value goods, works and consulting services contracts for which the activity is either ongoing or expected to commence within the next 18 months.

Package Number	General Description	Estimated Value (\$ Million)	Number of Contracts	Procurement Method	Review [Prior / Post/Post (Sample)]	Bidding Procedure	Advertisement Date (quarter/year)	Comments
G-1	Maintenance Tools	0.100	1	Shopping	Post (Sample)	Request for Quotation	1 st Quarter 2017	Standard RFQ
G-2	Road Asset Management System	0.450	1	NCB	Prior	1S1E	4 th Quarter 2018	SBD for Goods

B. Indicative List of Packages Required Under the Project

The following table provides an indicative list of goods, works and consulting services contracts over the life of the project, other than those mentioned in previous sections (i.e., those expected beyond the current period).

Goods and Works							
Package Number	General Description	Estimated Value (cumulative)	Estimated Number of Contracts	Procurement Method	Review [Prior / Post/Post (Sample)]	Bidding Procedure	Comments

Consulting Services							
Package Number	General Description	Estimated Value (cumulative)	Estimated Number of Contracts	Recruitment Method	Review (Prior / Post)	Type of Proposal ⁸	Comments ⁹

E. National Competitive Bidding

1. General

The procedures to be followed for National Competitive Bidding (NCB) shall be those set forth for “Public Bidding” in Prime Minister’s Decree No. 03/PM of the Lao People’s Democratic Republic, effective 09 January 2004, and Implementing Rules and Regulations effective 12 March 2004, with the clarifications and modifications described in the following paragraphs required for compliance with the provisions of the Procurement Guidelines.

2. Application

Contract packages subject to NCB procedures will be those identified as such in the project Procurement Plan. Any changes to the mode of procurement from those provided in the Procurement Plan shall be made through updating of the Procurement Plan, and only with prior approval of ADB.

3. Eligibility

Bidders shall not be declared ineligible or prohibited from bidding on the basis of barring procedures or sanction lists, except individuals and firms sanctioned by ADB, without prior approval of ADB.

4. Advertising

Bidding of NCB contracts estimated at \$500,000 or more for goods and related services or \$1,000,000 or more for civil works shall be advertised on ADB’s website via the posting of the Procurement Plan.

5. Procurement Documents

The standard procurement documents provided with Ministry of Finance, Procurement Monitoring Office shall be used to the extent possible. The first draft English language version of the procurement documents shall be submitted for ADB review and approval, regardless of the estimated contract amount, in accordance with agreed review procedures (post and prior review). The ADB-approved procurement documents will then be used as a model for all procurement financed by ADB for the project, and need not be subjected to further review unless specified in the procurement plan.

6. Preferences

- (i) No preference of any kind shall be given to domestic bidders or for domestically manufactured goods.
- (ii) Suppliers and contractors shall not be required to purchase local goods or supplies or materials.

7. Rejection of all Bids and Rebidding

Bids shall not be rejected and new bids solicited without ADB’s prior concurrence.

8. National Sanctions List

National sanctions lists may be applied only with prior approval of ADB.

9. Corruption Policy

A bidder declared ineligible by ADB, based on a determination by ADB that the bidder has engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing an ADB-financed contract shall be ineligible to be awarded ADB-financed contract during the period of time determined by ADB

10. Disclosure of Decisions on Contract Awards

At the same time that notification on award of contract is given to the successful bidder, the results of the bid evaluation shall be published in a local newspaper or well-known freely accessible website identifying the bid and lot numbers and providing information on (i) name of each Bidder who submitted a Bid, (ii) bid prices as read out at bid opening, (iii) name of bidders whose bids were rejected and the reasons for their rejection, (iv) name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded. The executing agency/implementing agency shall respond in writing to unsuccessful bidders who seek explanations on the grounds on which their bids are not selected.

11. Member Country Restrictions

Bidders must be nationals of member countries of ADB, and offered goods, works and services must be produced in and supplied from member countries of ADB.

Annex AG – Procurement Risk Assessments

PROJECT PROCUREMENT RISK ASSESSMENT - Ministry of Public Works and Transport, Department of Roads

Question	Response	Risk ¹
A. Organizational and Staff Capacity		
Procurement Department/Unit		
A.1 Does the agency or Government have a Procurement Committee that is independent from the head of the agency?	Yes	
A.2 Does the agency have a procurement department/unit, including a permanent office that performs the function of a Secretariat of the Procurement Committee?	No, the procurement committee/secretariat is set as an ad-hoc for project	
A.3 If yes, what type of procurement does it undertake?	All types Goods, Works and Service	
A.4 How many years' experience does the head of the procurement department/unit have in a direct procurement role?	More than 10 year – usually the DG and DDG of the department	
A.5 How many staff in the procurement department/unit are: 1. full time 2. part time 3. seconded	Part time 3 to 5 people, i.e. DoR, DPC, DoF (members are mostly involved other departments as well and depends on the department doing the procurement)	
A.6 Do the procurement staff have a high level of English language proficiency (verbal and written)?	Yes.	
A.7 Are the number and qualifications of the staff sufficient to undertake the additional procurement that will be required under the proposed project?	Yes	
A.8 Does the unit have adequate facilities, such as PCs, internet connection, photocopy facilities, printers etc. to undertake the planned procurement?	Yes	
A.9 Does the agency have, or have ready access to, a procurement training program?	Yes	
A.10 At what level does the department/unit report (to the head of agency, deputy etc.)?	The Department report directly to the Minister	
A.11 Do the procurement positions in the agency have job descriptions, which outline specific roles, minimum technical requirements and career routes?	Additional functions on top of their regular mandate as regular government staff/officials	
A.12 Is there a procurement process manual for goods and works?	Yes	
A.13 If there is a manual, is it up to date and does it cover foreign-assisted projects?	Yes	
A.14 Is there a procurement process manual for consulting services?	Yes	
A.15 If there is a manual, is it up to date and does it cover foreign-assisted projects?	Yes	
Procurement Unit		
A.16 Is there a fully (or almost fully) staffed PMU for this project currently in place?	Yes, it's normal practice that PMU is established/appointed by Minister for management of a project (project basis only)	
A.17 Are the number and qualifications of the staff sufficient to undertake the additional procurement that will be required under the proposed project?	Yes,	
A.18 Does the unit have adequate facilities, such as PCs, internet connection, photocopy facilities, printers etc. to undertake the planned procurement?	Yes,	
A.19 Are there standard documents in use, such as Standard	Yes, NCB standard bidding documents for	

¹ Questions indicated with * are associated with potentially 'High' or 'Substantial' risks due to the impact being 'High', therefore the strategy for managing those risks should be addressed in the Project Procurement Risk Analysis (Appendix 3)

Question	Response	Risk ¹
Procurement Documents/Forms, and have they been approved for use on ADB funded projects?	procurement of goods and work with thresholds set by ADB.	
A.20 Does the agency follow the national procurement law, procurement processes, guidelines?	Yes	
A.21 Do ToRs for consulting services follow a standard format such as background, tasks, inputs, objectives and outputs?	Yes.	
A.22 Who drafts the procurement specifications?	DoR	
A.23 Who approves the procurement specifications?	MPWT/Donors	
A.24 Who in the PMU has experience in drafting bidding documents?	Project manager and some staff from DoR	
A.25 Are records of the sale of bidding documents immediately available?	Yes,	
A.26 Who identifies the need for consulting services requirements?	Donors/MPWT	
A.27 Who drafts the Terms of Reference (ToR)	DoR	
A.28 Who prepares the request for proposals (RFPs)	Consultant Selection Committee/PMU established by appointment	
B. INFORMATION MANAGEMENT		
B.1 Is there a referencing system for procurement files?	Yes	
B.2 Are there adequate resources allocated to record keeping infrastructure, which includes the record keeping system, space, equipment and personnel to administer the procurement records management functions within the agency?	Not really	
B.3 Does the agency adhere to a document retention policy (i.e. for what period are records kept)?	Yes, at least two year after completion project	
B.4 Are copies of bids or proposals retained with the evaluation?	Yes	
B.5 Are copies of the original advertisements retained with the pre- contract papers?	Yes	
B.6 Is there a single contract file with a copy of the contract and all subsequent contractual correspondence?	Yes, DOR PMU for each project	
B.7 Are copies of invoices included with the contract papers?	Mostly in Budgeting Division of the DoR/ some with Dept. of Finance	
B.8 Is the agency's record keeping function supported by IT?	Yes	
C. PROCUREMENT PRACTICES		
Goods and Works		
C.1 Has the agency undertaken procurement of goods or works related to foreign assistance recently (last 12 months or last 36 months)? If yes, indicate the names of the development partner/s and project/s.	Ye, e.g. WB - LRSP, JICA – Rehabilitation and Improvement of National Road No. 9, ADB – ADB12...	
C.2 If the answer is yes, what were the major challenges faced by the agency?	PC lack appropriate experiences in handing of procurement. Appointment of member from other agency does not consider qualifications or experience in procurement	
C.3 Is there a systematic process to identify procurement requirements (for a period of one year or more)?	From the Procurement plan and annual budget plan, DOR identified the needs based on Strategic Development Plan of the MPWT (short term, mid-term and long term)	
C.4 Is there a minimum period for the preparation of bids and if yes, how long?	Yes, 10 to 45 days depending on procurement method	
C.5 Are all queries from bidders replied to in writing?	Yes	
C.6 Does the bidding document state the date and time of bid opening?	Yes	

Question	Response	Risk ¹
C.7 Are bids opened in public?	Yes	
C.8 Can late bids be accepted?	No	
C.9 Can bids (except late bids) be rejected at bid opening?	No	
C.10 Are minutes of the bid opening taken?	Yes	
C.11 Are bidders provided a copy of the minutes?	Yes	
C.12 Are the minutes provided free of charge?	Yes	
C.13 Who undertakes the evaluation of bids (individual(s), permanent committee, ad-hoc committee)?	Ad-hoc committee is appointed by Procurement Committee within themselves	
C.14 What are the qualifications of the evaluators with respect to procurement and the goods and/or works under evaluation?	No qualifications identified	
C.15 Is the decision of the evaluators final or is the evaluation subject to additional approvals?	The evaluation subject to additional approvals	
C.16 Using the three 'worst-case' examples in the last year, how long from the issuance of the invitation for bids can the contract be awarded?	3 months inclusive No worst case examples as of last year	
C.17 Are there processes in place for the collection and clearance of cargo through ports of entry?	Yes	
C.18 Are there established goods receiving procedures?	Yes	
C.19 Are all goods that are received recorded as assets or inventory in a register?	Assets	
C.20 Is the agency/procurement department familiar with letters of credit?	Yes	
C.21 Does the procurement department register and track warranty and latent defects liability periods?	DoR keeps record	
Consulting Services		
C.22 Has the agency undertaken foreign- assisted procurement of consulting services recently (last 12 months, or last 36 months)? (If yes, please indicate the names of the development partner/s and the Project/s.)	Yes, ADB- second Northern GMS Transport Network Improvement Project (ADB12)	
C.23 If the above answer is yes, what were the major challenges?	Lack of appropriate experience by the PC members Political decisions	
C.24 Are assignments and invitations for expressions of interest (EOIs) advertised?	Yes	
C.25 Is a consultants' selection committee formed with appropriate individuals, and what is its composition (if any)?	Appointed but no qualifications set	
C.26 What criteria is used to evaluate EOIs?	Experience of the firms	
C.27 Historically, what is the most common method used (QCBS, QBS, etc.) to select consultants?	QCBS and QBS	
C.28 Do firms have to pay for the RFP document?	Yes	
C.29 Does the proposal evaluation criteria follow a pre-determined structure and is it detailed in the RFP?	Yes	
C.30 Are pre-proposal visits and meetings arranged?	No	
C.31 Are minutes prepared and circulated after pre-proposal meetings?	No	
C.32 To whom are the minutes distributed?	N/A	
C.33 Are all queries from consultants answered/addressed in writing?	Yes	
C.34 Are the technical and financial proposals required to be in separate envelopes and remain sealed until the technical evaluation is completed?	Yes	
C.35 Are proposal securities required?	No	
C.36 Are technical proposals opened in public?	Yes	
C.37 Are minutes of the technical opening distributed?	Yes	

Question	Response	Risk ¹
C.38. Do the financial proposals remain sealed until technical evaluation is completed?	Yes	
C.39 Who determines the final technical ranking and how?	CSC (Consultant Selection Committee)	
C.40 Are the technical scores sent to all firms?	Yes	
C.41 Are the financial proposal opened in public?	Yes	
C.42 Are minutes of the financial opening distributed?	Yes	
C.43 How is the financial evaluation completed?	By using computation in the RFP	
C.44 Are face to face contract negotiations held?	Yes	
C.45 How long after financial evaluation is negotiation held with the selected firm?	Within a month	
C.46 What is the usual basis for negotiation?	Depend on the method of selection	
C.47 Are minutes of negotiation taken and signed?	Yes	
C.48 How long after negotiation is the contract signed, on average?	In a months' time or less	
C.49 Is there an evaluation system for measuring the outputs of consultants?	Based on the RFP	
Payments		
C.50 Are advance payments made?	Yes	
C.51 What is the standard period for payment included in contracts?	Services based on output (in %) Goods based on delivery Works based on accomplished works	
C.52 On average, how long is it between receiving a firm's invoice and making payment?	2-3 months	
C.53 When late payment is made, are the beneficiaries paid interest?	Yes	
D. Effectiveness		
D.1 Is contractual performance systematically monitored and reported?	Yes	
D.2 Does the agency monitor and track its contractual payment obligations?	Yes on a need basis RMF submit Annual Summary of Payment	
D.3 Is a complaints resolution mechanism described in national procurement documents?	Yes	
D.4 Is there a formal non-judicial mechanism for dealing with complaints?	Yes	
D.5 Are procurement decisions and disputes supported by written narratives such as minutes of evaluation, minutes of negotiation, notices of default/withheld payment?	Yes	
E. Accountability Measures		
E.1 Is there a standard statement of ethics and are those involved in procurement required to formally commit to it?	Yes	
E.2 Are those involved with procurement required to declare any potential conflict of interest and remove themselves from the procurement process?	No	
E.3 Is the commencement of procurement dependent on external approvals (formal or de-facto) that are outside of the budgeting process?	Based Project procurement plan	
E.4 Who approves procurement transactions, and do they have procurement experience and qualifications?	DG of Department and Minister of MPWT	

Question	Response	Risk
E.5 Which of the following actions require approvals outside the procurement unit or the evaluation committee, as the case may be, and who grants the approval?		
a) Bidding document, invitation to pre-qualify or RFP	DG	
b) Advertisement of an invitation for bids, pre-qualification or call for EOIs	DG	
c) Evaluation reports	DG, Minister, Donors	
d) Notice of award	DG	
e) Invitation to consultants to negotiate	DG	
f) Contracts	DG, PM	
E.6 Is the same official responsible for: (i) authorizing procurement transactions, procurement invitations, documents, evaluations and contracts; (ii) authorizing payments; (iii) recording procurement transactions and events; and (iv) the custody of assets?	Yes	
E.7 Is there a written auditable trail of procurement decisions attributable to individuals and committees?	Yes	

Person met

1. Mr. Litta Khattanga, Deputy Director, DoR - MPWT
2. Mr. Sak Dalath, Head of Roads Maintenance Regional 4, DoR - MPWT

PROJECT PROCUREMENT RISK ASSESSMENT - Department of Public Works and Transport, Salavan Province

Question	Response	Risk ¹
A. Organizational and Staff Capacity		
Procurement Department/Unit		
A.1 Does the agency or Government have a Procurement Committee that is independent from the head of the agency?	Procurement committee members are assigned by the MPWT management, Concern Departments in Province and approved by Governor/Minister of MPWT – so they are not independent	
A.2 Does the agency have a procurement department/unit, including a permanent office that performs the function of a Secretariat of the Procurement Committee?	No, Road and Waterway Staff/Project manager shall be a procurement secretariat and DPWT/DOR shall lead the procurement for the proposed project	
A.3 If yes, what type of procurement does it undertake?	Procurement of Goods, Works	
A.4 How many years' experience does the head of the procurement department/unit have in a direct procurement role?	More than 5 years	
A.5 How many staff in the procurement department/unit are: 1. full time 2. part time 3. seconded	Part time 2 to 3 people, 5 agencies	
A.6 Do the procurement staff have a high level of English language proficiency (verbal and written)?	Not all	
A.7 Are the number and qualifications of the staff sufficient to undertake the additional procurement that will be required under the proposed project?	Yes	
A.8 Does the unit have adequate facilities, such as PCs, internet connection, photocopy facilities, printers etc. to undertake the planned procurement?	Yes, but not enough	
A.9 Does the agency have, or have ready access to, a procurement training program?	Yes, but the procurement training need to be organized as soon as possible once project is approved.	
A.10 At what level does the department/unit report (to the head of agency, deputy etc.)?	Director General, Department of Roads and Vice Minister, Governor	
A.11 Do the procurement positions in the agency have job descriptions, which outline specific roles, minimum technical requirements and career routes?	Yes, all of the procurement committee member are government staff, therefore they have a mandates, they are not specifically selected to work for only procurement works	
A.12 Is there a procurement process manual for goods and works?	Yes, refers to National procurement Decree and Manual.	
A.13 If there is a manual, is it up to date and does it cover foreign-assisted projects?	Yes- it covers foreign financed projects	
A.14 Is there a procurement process manual for consulting services?	Yes	
A.15 If there is a manual, is it up to date and does it cover foreign-assisted projects?	Yes- it covers foreign financed projects	
Procurement Unit		
A.16 Is there a fully (or almost fully) staffed PMU for this project currently in place?	Yes	
A.17 Are the number and qualifications of the staff sufficient to undertake the additional procurement that will be required under the proposed project?	Yes	
A.18 Does the unit have adequate facilities, such as PCs,	Yes, few	

¹ Questions indicated with * are associated with potentially 'High' or 'Substantial' risks due to the impact being 'High', therefore the strategy for managing those risks should be addressed in the Project Procurement Risk Analysis (Appendix 3)

Question	Response	Risk ¹
internet connection, photocopy facilities, printers etc. to undertake the planned procurement?		
A.19 Are there standard documents in use, such as Standard Procurement Documents/Forms, and have they been approved for use on ADB funded projects?	Yes, there are standard documents are available,	
A.20 Does the agency follow the national procurement law, procurement processes, guidelines?	Yes	
A.21 Do ToRs for consulting services follow a standard format such as background, tasks, inputs, objectives and outputs?	Yes.	
A.22 Who drafts the procurement specifications?	DoR/Project	
A.23 Who approves the procurement specifications?	DoR	
A.24 Who in the PMU has experience in drafting bidding documents?	Project manager/director and some technician	
A.25 Are records of the sale of bidding documents immediately available?	Yes, in DoR	
A.26 Who identifies the need for consulting services requirements?	DoR/Project	
A.27 Who drafts the Terms of Reference (ToR)	DoR/Project	
A.28 Who prepares the request for proposals (RFPs)	DoR/Project	
B. INFORMATION MANAGEMENT		
B.1 Is there a referencing system for procurement files?	Yes, DPWT/DOR keeps the documents for 5 years after project is closed	
B.2 Are there adequate resources allocated to record keeping infrastructure, which includes the record keeping system, space, equipment and personnel to administer the procurement records management functions within the agency?	Yes	
B.3 Does the agency adhere to a document retention policy (i.e. for what period are records kept)?	Not clear on procedures, according to the practices, DWPT/DOR keeps the documents up to 5 years	
B.4 Are copies of bids or proposals retained with the evaluation?	Yes, Some bids are separated	
B.5 Are copies of the original advertisements retained with the pre- contract papers?	yes	
B.6 Is there a single contract file with a copy of the contract and all subsequent contractual correspondence?	Mostly they keep in separate folders/files, but majority of them can discover	
B.7 Are copies of invoices included with the contract papers?	Most of the invoices are retained with finance unit, while other related correspondent are keep separately	
B.8 Is the agency's record keeping function supported by IT?	No	
C. PROCUREMENT PRACTICES		
Goods and Works		
C.1 Has the agency undertaken procurement of goods or works related to foreign assistance recently (last 12 months or last 36 months)? If yes, indicate the names of the development partner/s and project/s.	Yes. most of the experience are from WB, KfW and Gov. financed projects	
C.2 If the answer is yes, what were the major challenges faced by the agency?	English proficiency	
C.3 Is there a systematic process to identify procurement requirements (for a period of one year or more)?	Rely on the Procurement plan and annual budget plan. No procurement activities shall approved if they are not in the approved plan, and items not in the plan shall not procure until the plan is updated and approved	
C.4 Is there a minimum period for the preparation of bids and if yes, how long?	1 to 2 months	

Question	Response	Risk ¹
C.5 Are all queries from bidders replied to in writing?	Yes	
C.6 Does the bidding document state the date and time of bid opening?	Yes	
C.7 Are bids opened in public?	Yes	
C.8 Can late bids be accepted?	No	
C.9 Can bids (except late bids) be rejected at bid opening?	No	
C.10 Are minutes of the bid opening taken?	Yes	
C.11 Are bidders provided a copy of the minutes?	Yes, procurement committee, bidders' representatives who attends the bid opening session.	
C.12 Are the minutes provided free of charge?	Yes	
C.13 Who undertakes the evaluation of bids (individual(s), permanent committee, ad-hoc committee)?	Project with help from the consultant, and selected procurement committee members. However mostly there are generally ad-hoc	
C.14 What are the qualifications of the evaluators with respect to procurement and the goods and/or works under evaluation?	English and procurement experiences	
C.15 Is the decision of the evaluators final or is the evaluation subject to additional approvals?	No, It requires additional approvals	
C.16 Using the three 'worst-case' examples in the last year, how long from the issuance of the invitation for bids can the contract be awarded?	90 to 128 days	
C.17 Are there processes in place for the collection and clearance of cargo through ports of entry?	No experiences	
C.18 Are there established goods receiving procedures?	No experiences	
C.19 Are all goods that are received recorded as assets or inventory in a register?	yes	
C.20 Is the agency/procurement department familiar with letters of credit?	yes	
C.21 Does the procurement department register and track warranty and latent defects liability periods?	yes	
Consulting Services		
C.22 Has the agency undertaken foreign- assisted procurement of consulting services recently (last 12 months, or last 36 months)? (If yes, please indicate the names of the development partner/s and the Project/s.)	No experiences	
C.23 If the above answer is yes, what were the major challenges?	No experiences	
C.24 Are assignments and invitations for expressions of interest (EOIs) advertised?	No experiences	
C.25 Is a consultants' selection committee formed with appropriate individuals, and what is its composition (if any)?	No experiences	
C.26 What criteria is used to evaluate EOIs?	No experiences	
C.27 Historically, what is the most common method used (QCBS, QBS, etc.) to select consultants?	No experiences	
C.28 Do firms have to pay for the RFP document?	No experiences	
C.29 Does the proposal evaluation criteria follow a pre-determined structure and is it detailed in the RFP?	No experiences	
C.30 Are pre-proposal visits and meetings arranged?	No experiences	
C.31 Are minutes prepared and circulated after pre-proposal meetings?	No experiences	
C.32 To whom are the minutes distributed?	No experiences	
C.33 Are all queries from consultants answered/addressed in writing?	No experiences	

Question	Response	Risk ¹
C.34 Are the technical and financial proposals required to be in separate envelopes and remain sealed until the technical evaluation is completed?	No experiences	
C.35 Are proposal securities required?	No experiences	
C.36 Are technical proposals opened in public?	No experiences	
C.37 Are minutes of the technical opening distributed?	No experiences	
C.38. Do the financial proposals remain sealed until technical evaluation is completed?	No experiences	
C.39 Who determines the final technical ranking and how?	No experiences	
C.40 Are the technical scores sent to all firms?	No experiences	
C.41 Are the financial proposal opened in public?	No experiences	
C.42 Are minutes of the financial opening distributed?	No experiences	
C.43 How is the financial evaluation completed?	No experiences	
C.44 Are face to face contract negotiations held?	No experiences	
C.45 How long after financial evaluation is negotiation held with the selected firm?	No experiences	
C.46 What is the usual basis for negotiation?	No experiences	
C.47 Are minutes of negotiation taken and signed?	No experiences	
C.48 How long after negotiation is the contract signed, on average?	No experiences	
C.49 Is there an evaluation system for measuring the outputs of consultants?	No experiences	
Payments		
C.50 Are advance payments made?	Yes, for KfW funding	
C.51 What is the standard period for payment included in contracts?	30 to 60 days	
C.52 On average, how long is it between receiving a firm's invoice and making payment?	4-8 weeks	
C.53 When late payment is made, are the beneficiaries paid interest?	No experiences	
D. Effectiveness		
D.1 Is contractual performance systematically monitored and reported?	Yes	
D.2 Does the agency monitor and track its contractual payment obligations?	Yes	
D.3 Is a complaints resolution mechanism described in national procurement documents?	Yes, there provisions in the standard procurement documents	
D.4 Is there a formal non-judicial mechanism for dealing with complaints?	Yes, but not precise	
D.5 Are procurement decisions and disputes supported by written narratives such as minutes of evaluation, minutes of negotiation, notices of default/withheld payment?	Yes	
E. Accountability Measures		
E.1 Is there a standard statement of ethics and are those involved in procurement required to formally commit to it?	Yes, but not really clear and precise	
E.2 Are those involved with procurement required to declare any potential conflict of interest and remove themselves from the procurement process?	No- not clear	
E.3 Is the commencement of procurement dependent on external approvals (formal or de-facto) that are outside of the budgeting process?	It relies on the Project procurement plan of each particular project	
E.4 Who approves procurement transactions, and do they have procurement experience and qualifications?	DG, DOR, Vice Minister/Governor	

Question	Response	Risk
E.5 Which of the following actions require approvals outside the procurement unit or the evaluation committee, as the case may be, and who grants the approval?		
a) Bidding document, invitation to pre-qualify or RFP	DG DOR, WB, KfW and GOV.	
b) Advertisement of an invitation for bids, pre-qualification or call for EOIs	DG DOR, WB, KfW and GOV.	
c) Evaluation reports	DG DOR, WB, KfW and GOV.	
d) Notice of award	DG DOR, D DPWT	
e) Invitation to consultants to negotiate	DG-DOR, D DPWT	
f) Contracts	DG-DOR, WB, KfW and GOV.	
E.6 Is the same official responsible for: (i) authorizing procurement transactions, procurement invitations, documents, evaluations and contracts; (ii) authorizing payments; (iii) recording procurement transactions and events; and (iv) the custody of assets?	Yes, Project, DPWT and DOR is responsible for all procurement transaction.	
E.7 Is there a written auditable trail of procurement decisions attributable to individuals and committees?	Yes, auditors all most of all projects including procurement transactions, decision, etc	

Person met

1. Mr. Sengdalith Khattignasack, Director DPTW – Salavan Province
2. Mr. Phounone Kaiyalath, Dep. Head of Road and Waterway Office, DPTW – Salavan Province
3. Ms. Manila, Dep. Head of Planning and Investment Office, DPTW – Salavan Province
4. Mr. Inthava Senthachan, Head of Rural Road Unit, Road and Waterway Office, DPTW – Salavan Province

PROJECT PROCUREMENT RISK ASSESSMENT - Department of Public Works and Transport, Xekong Province

Question	Response	Risk ¹
A. Organizational and Staff Capacity		
Procurement Department/Unit		
A.1 Does the agency or Government have a Procurement Committee that is independent from the head of the agency?	Procurement committee members are assigned by the MPWT management, Concern Department in Province and approved by Governor/Minister of MPWT – so they are not independent	
A.2 Does the agency have a procurement department/unit, including a permanent office that performs the function of a Secretariat of the Procurement Committee?	No, Road and Waterway Staffs/Project manager shall be a procurement secretariat and DPWT/DOR shall lead the procurement for the proposed project	
A.3 If yes, what type of procurement does it undertake?	Procurement of Goods, Works	
A.4 How many years' experience does the head of the procurement department/unit have in a direct procurement role?	More than 3 year	
A.5 How many staff in the procurement department/unit are: 1. full time 2. part time 3. seconded	Part time 2 to 3 people	
A.6 Do the procurement staff have a high level of English language proficiency (verbal and written)?	No.	
A.7 Are the number and qualifications of the staff sufficient to undertake the additional procurement that will be required under the proposed project?	Yes, but not enough, an external procurement consultant also need	
A.8 Does the unit have adequate facilities, such as PCs, internet connection, photocopy facilities, printers etc. to undertake the planned procurement?	Yes, but not enough	
A.9 Does the agency have, or have ready access to, a procurement training program?	Yes, but the procurement training needed	
A.10 At what level does the department/unit report (to the head of agency, deputy etc.)?	Director General, Department of Roads and Vice Minister, Governor	
A.11 Do the procurement positions in the agency have job descriptions, which outline specific roles, minimum technical requirements and career routes?	Yes/No – all of the procurement committee member are government staff- therefore they have a mandates- however, they are not specifically selected to work for only procurement works	
A.12 Is there a procurement process manual for goods and works?	Yes, refers to National procurement Decree and Manual.	
A.13 If there is a manual, is it up to date and does it cover foreign-assisted projects?	Yes- it covers foreign financed projects	
A.14 Is there a procurement process manual for consulting services?	Yes	
A.15 If there is a manual, is it up to date and does it cover foreign-assisted projects?	Yes- it covers foreign financed projects	
Procurement Unit		
A.16 Is there a fully (or almost fully) staffed PMU for this project currently in place?	Yes	
A.17 Are the number and qualifications of the staff sufficient to undertake the additional procurement that will be required under the proposed project?	Yes, an external procurement consultant also need	
A.18 Does the unit have adequate facilities, such as PCs,	Yes, few	

¹ Questions indicated with * are associated with potentially 'High' or 'Substantial' risks due to the impact being 'High', therefore the strategy for managing those risks should be addressed in the Project Procurement Risk Analysis (Appendix 3)

Question	Response	Risk ¹
internet connection, photocopy facilities, printers etc. to undertake the planned procurement?		
A.19 Are there standard documents in use, such as Standard Procurement Documents/Forms, and have they been approved for use on ADB funded projects?	Yes, there are standard documents are available,	
A.20 Does the agency follow the national procurement law, procurement processes, guidelines?	Yes	
A.21 Do ToRs for consulting services follow a standard format such as background, tasks, inputs, objectives and outputs?	Yes.	
A.22 Who drafts the procurement specifications?	DoR/Project	
A.23 Who approves the procurement specifications?	DoR	
A.24 Who in the PMU has experience in drafting bidding documents?	Project manager/director and some technician	
A.25 Are records of the sale of bidding documents immediately available?	Yes, in DoR	
A.26 Who identifies the need for consulting services requirements?	DoR/Project	
A.27 Who drafts the Terms of Reference (ToR)	DoR/Project	
A.28 Who prepares the request for proposals (RFPs)	DoR/Project	
B. INFORMATION MANAGEMENT		
B.1 Is there a referencing system for procurement files?	No- but practically, DPWT/DOR keeps the documents for 5 years after project is closed	
B.2 Are there adequate resources allocated to record keeping infrastructure, which includes the record keeping system, space, equipment and personnel to administer the procurement records management functions within the agency?	Yes	
B.3 Does the agency adhere to a document retention policy (i.e. for what period are records kept)?	Not clear on procedures, according to the practices, DPWT/DOR keeps the documents up to 5 years	
B.4 Are copies of bids or proposals retained with the evaluation?	Yes, Some bids are separated	
B.5 Are copies of the original advertisements retained with the pre- contract papers?	Yes	
B.6 Is there a single contract file with a copy of the contract and all subsequent contractual correspondence?	Mostly they keep in separate folders/files, but majority of them can discover	
B.7 Are copies of invoices included with the contract papers?	Most of the invoices are retained with finance unit, while other related correspondent are keep separately	
B.8 Is the agency's record keeping function supported by IT?	No	
C. PROCUREMENT PRACTICES		
Goods and Works		
C.1 Has the agency undertaken procurement of goods or works related to foreign assistance recently (last 12 months or last 36 months)? If yes, indicate the names of the development partner/s and project/s.	Yes. Most of the experience are from WB, KfW financed projects	
C.2 If the answer is yes, what were the major challenges faced by the agency?	English proficiency and related experiences of the staff (rotation of the staff)	
C.3 Is there a systematic process to identify procurement requirements (for a period of one year or more)?	Rely on the Procurement plan and annual budget plan. No procurement activities shall approved if they are not in the approved plan, and items not in the plan shall not procure until the plan is updated and approved	
C.4 Is there a minimum period for the preparation of bids and if yes, how long?	4-6 weeks	

Question	Response	Risk ¹
C.5 Are all queries from bidders replied to in writing?	Yes	
C.6 Does the bidding document state the date and time of bid opening?	Yes	
C.7 Are bids opened in public?	Yes	
C.8 Can late bids be accepted?	No	
C.9 Can bids (except late bids) be rejected at bid opening?	No	
C.10 Are minutes of the bid opening taken?	Yes	
C.11 Are bidders provided a copy of the minutes?	Yes, procurement committee, bidders' representatives who attends the bid opening session	
C.12 Are the minutes provided free of charge?	Yes	
C.13 Who undertakes the evaluation of bids (individual(s), permanent committee, ad-hoc committee)?	Project with help from the consultant, and selected procurement committee members. However mostly there are generally ad-hoc	
C.14 What are the qualifications of the evaluators with respect to procurement and the goods and/or works under evaluation?	Limited, the procurement training need to be organized as soon as possible once project is approved. An external procurement consultant also need	
C.15 Is the decision of the evaluators final or is the evaluation subject to additional approvals?	No, It requires approval from Governor, Vice Minister and Minister- and the approval also rely donors NOL	
C.16 Using the three 'worst-case' examples in the last year, how long from the issuance of the invitation for bids can the contract be awarded?	90 to 128 days	
C.17 Are there processes in place for the collection and clearance of cargo through ports of entry?	No experiences	
C.18 Are there established goods receiving procedures?	No experiences	
C.19 Are all goods that are received recorded as assets or inventory in a register?	Yes	
C.20 Is the agency/procurement department familiar with letters of credit?	Yes	
C.21 Does the procurement department register and track warranty and latent defects liability periods?	Yes	
Consulting Services		
C.22 Has the agency undertaken foreign- assisted procurement of consulting services recently (last 12 months, or last 36 months)? (If yes, please indicate the names of the development partner/s and the Project/s.)	No experiences	
C.23 If the above answer is yes, what were the major challenges?	No experiences	
C.24 Are assignments and invitations for expressions of interest (EOIs) advertised?	No experiences	
C.25 Is a consultants' selection committee formed with appropriate individuals, and what is its composition (if any)?	No experiences	
C.26 What criteria is used to evaluate EOIs?	No experiences	
C.27 Historically, what is the most common method used (QCBS, QBS, etc.) to select consultants?	No experiences	
C.28 Do firms have to pay for the RFP document?	No experiences	
C.29 Does the proposal evaluation criteria follow a pre-determined structure and is it detailed in the RFP?	No experiences	
C.30 Are pre-proposal visits and meetings arranged?	No experiences	
C.31 Are minutes prepared and circulated after pre-proposal meetings?	No experiences	
C.32 To whom are the minutes distributed?	No experiences	

Question	Response	Risk ¹
C.33 Are all queries from consultants answered/addressed in writing?	No experiences	
C.34 Are the technical and financial proposals required to be in separate envelopes and remain sealed until the technical evaluation is completed?	No experiences	
C.35 Are proposal securities required?	No experiences	
C.36 Are technical proposals opened in public?	No experiences	
C.37 Are minutes of the technical opening distributed?	No experiences	
C.38. Do the financial proposals remain sealed until technical evaluation is completed?	No experiences	
C.39 Who determines the final technical ranking and how?	No experiences	
C.40 Are the technical scores sent to all firms?	No experiences	
C.41 Are the financial proposal opened in public?	No experiences	
C.42 Are minutes of the financial opening distributed?	No experiences	
C.43 How is the financial evaluation completed?	No experiences	
C.44 Are face to face contract negotiations held?	No experiences	
C.45 How long after financial evaluation is negotiation held with the selected firm?	No experiences	
C.46 What is the usual basis for negotiation?	No experiences	
C.47 Are minutes of negotiation taken and signed?	No experiences	
C.48 How long after negotiation is the contract signed, on average?	No experiences	
C.49 Is there an evaluation system for measuring the outputs of consultants?	No experiences	
Payments		
C.50 Are advance payments made?	Yes, for KfW and Gov. funding	
C.51 What is the standard period for payment included in contracts?	30 to 60 days	
C.52 On average, how long is it between receiving a firm's invoice and making payment?	4-8 weeks	
C.53 When late payment is made, are the beneficiaries paid interest?	No experiences	
D. Effectiveness		
D.1 Is contractual performance systematically monitored and reported?	Yes	
D.2 Does the agency monitor and track its contractual payment obligations?	Yes, but not clear and precise tracking system	
D.3 Is a complaints resolution mechanism described in national procurement documents?	Yes, there provisions in the standard procurement documents	
D.4 Is there a formal non-judicial mechanism for dealing with complaints?	Yes, but not precise	
D.5 Are procurement decisions and disputes supported by written narratives such as minutes of evaluation, minutes of negotiation, notices of default/withheld payment?	Yes	
E. Accountability Measures		
E.1 Is there a standard statement of ethics and are those involved in procurement required to formally commit to it?	Yes, but not really clear and precise	
E.2 Are those involved with procurement required to declare any potential conflict of interest and remove themselves from the procurement process?	No- not clear	
E.3 Is the commencement of procurement dependent on external approvals (formal or de-facto) that are outside of the budgeting process?	It relies on the Project procurement plan of each particular project	
E.4 Who approves procurement transactions, and do they have procurement experience and qualifications?	DG, DOR, Vice Minister/Governor	

Question	Response	Risk
E.5 Which of the following actions require approvals outside the procurement unit or the evaluation committee, as the case may be, and who grants the approval?		
a) Bidding document, invitation to pre-qualify or RFP	DG DOR, WB, KfW and GOV.	
b) Advertisement of an invitation for bids, pre-qualification or call for EOIs	DG DOR, WB, KfW and GOV.	
c) Evaluation reports	DG DOR, WB, KfW and GOV.	
d) Notice of award	DG DOR, D DPWT	
e) Invitation to consultants to negotiate	DG-DOR, D DPWT	
f) Contracts	DG-DOR, WB, KfW and GOV.	
E.6 Is the same official responsible for: (i) authorizing procurement transactions, procurement invitations, documents, evaluations and contracts; (ii) authorizing payments; (iii) recording procurement transactions and events; and (iv) the custody of assets?	Yes, Governor, Project, DPWT and DOR is responsible for all procurement transaction.	
E.7 Is there a written auditable trail of procurement decisions attributable to individuals and committees?	Yes, auditors all most of all projects including procurement transactions, decision	

Person met

1. Mr. Soutsana Sihavong, Director DPTW – Xekong Province
2. Mr. Thongthep Souliyo, Deputy Director DPTW – Xekong Province
3. Mr. Sovath Sidavong, Head of Road and Waterway Office, DPTW – Xekong Province
4. Mr. Khamkeng Keosouvanh, Head of Planning and Investment Office, DPTW – Xekong Province
5. Mr. Kolakan Phetsomphou, Technician, Road and Waterway Office, DPTW – Xekong Province

PROJECT PROCUREMENT RISK ASSESSMENT - Department of Public Works and Transport, Attapeu Province

Question	Response	Risk ¹
A. Organizational and Staff Capacity		
Procurement Department/Unit		
A.1 Does the agency or Government have a Procurement Committee that is independent from the head of the agency?	Procurement committee members are from 5 to 7 agencies in Province and approved by Governor, so they are not independent	
A.2 Does the agency have a procurement department/unit, including a permanent office that performs the function of a Secretariat of the Procurement Committee?	No, Road and Waterway Staffs/Project manager shall be a procurement secretariat and DPWT/DOR shall lead the procurement for the proposed project	
A.3 If yes, what type of procurement does it undertake?	Procurement of Goods, Works	
A.4 How many years' experience does the head of the procurement department/unit have in a direct procurement role?	More than 5 years	
A.5 How many staff in the procurement department/unit are: 1. full time 2. part time 3. seconded	Part time 2 to 3 people,	
A.6 Do the procurement staff have a high level of English language proficiency (verbal and written)?	Not all	
A.7 Are the number and qualifications of the staff sufficient to undertake the additional procurement that will be required under the proposed project?	Yes	
A.8 Does the unit have adequate facilities, such as PCs, internet connection, photocopy facilities, printers etc. to undertake the planned procurement?	Yes, but not enough	
A.9 Does the agency have, or have ready access to, a procurement training program?	Yes	
A.10 At what level does the department/unit report (to the head of agency, deputy etc.)?	Director General, Department of Roads and Vice Minister, Governor	
A.11 Do the procurement positions in the agency have job descriptions, which outline specific roles, minimum technical requirements and career routes?	Yes, the procurement committee members are government staff, therefore they have a mandates, they are not specifically selected to work for only procurement works	
A.12 Is there a procurement process manual for goods and works?	Yes, refers to National procurement Decree and Manual.	
A.13 If there is a manual, is it up to date and does it cover foreign-assisted projects?	Yes- it covers foreign financed projects	
A.14 Is there a procurement process manual for consulting services?	Yes	
A.15 If there is a manual, is it up to date and does it cover foreign-assisted projects?	Yes- it covers foreign financed projects	
Procurement Unit		
A.16 Is there a fully (or almost fully) staffed PMU for this project currently in place?	Yes	
A.17 Are the number and qualifications of the staff sufficient to undertake the additional procurement that will be required under the proposed project?	Yes	
A.18 Does the unit have adequate facilities, such as PCs, internet connection, photocopy facilities, printers etc. to undertake the planned procurement?	Yes, needed to upgrade	
A.19 Are there standard documents in use, such as Standard Procurement Documents/Forms, and have they been	Yes, there are standard documents, which are	

¹ Questions indicated with * are associated with potentially 'High' or 'Substantial' risks due to the impact being 'High', therefore the strategy for managing those risks should be addressed in the Project Procurement Risk Analysis (Appendix 3)

Question	Response	Risk ¹
approved for use on ADB funded projects?	available for WB, KfW and Gov. funding	
A.20 Does the agency follow the national procurement law, procurement processes, guidelines?	Yes	
A.21 Do ToRs for consulting services follow a standard format such as background, tasks, inputs, objectives and outputs?	Yes.	
A.22 Who drafts the procurement specifications?	DoR/Project	
A.23 Who approves the procurement specifications?	DoR	
A.24 Who in the PMU has experience in drafting bidding documents?	Project manager/director and some technician	
A.25 Are records of the sale of bidding documents immediately available?	Yes, in DoR/DPTW	
A.26 Who identifies the need for consulting services requirements?	DoR/Project	
A.27 Who drafts the Terms of Reference (ToR)	DoR/Project	
A.28 Who prepares the request for proposals (RFPs)	DoR/Project	
B. INFORMATION MANAGEMENT		
B.1 Is there a referencing system for procurement files?	No, but practically, DPWT/DOR keeps the documents for 5 years	
B.2 Are there adequate resources allocated to record keeping infrastructure, which includes the record keeping system, space, equipment and personnel to administer the procurement records management functions within the agency?	yes	
B.3 Does the agency adhere to a document retention policy (i.e. for what period are records kept)?	According to the practices, DPWT/DOR keeps the documents up to 5 years	
B.4 Are copies of bids or proposals retained with the evaluation?	Yes, Some bids are separated	
B.5 Are copies of the original advertisements retained with the pre- contract papers?	yes	
B.6 Is there a single contract file with a copy of the contract and all subsequent contractual correspondence?	Mostly they keep in separate folders/files	
B.7 Are copies of invoices included with the contract papers?	Most of the invoices are retained with finance unit, while other related correspondent are keep separately	
B.8 Is the agency's record keeping function supported by IT?	No	
C. PROCUREMENT PRACTICES		
Goods and Works		
C.1 Has the agency undertaken procurement of goods or works related to foreign assistance recently (last 12 months or last 36 months)? If yes, indicate the names of the development partner/s and project/s.	Yes. most of the experience are from WB, KfW and Gov. financed projects	
C.2 If the answer is yes, what were the major challenges faced by the agency?	English proficiency	
C.3 Is there a systematic process to identify procurement requirements (for a period of one year or more)?	Rely on the Procurement plan and annual budget plan. No procurement activities shall approved if they are not in the approved plan, and items not in the plan shall not procure until the plan is updated and approved	
C.4 Is there a minimum period for the preparation of bids and if yes, how long?	1 to 2 months	
C.5 Are all queries from bidders replied to in writing?	Yes	
C.6 Does the bidding document state the date and time of bid opening?	Yes	
C.7 Are bids opened in public?	Yes	

Question	Response	Risk ¹
C.8 Can late bids be accepted?	No	
C.9 Can bids (except late bids) be rejected at bid opening?	No	
C.10 Are minutes of the bid opening taken?	Yes	
C.11 Are bidders provided a copy of the minutes?	Yes, procurement committee, bidders' representatives who attends the bid opening session.	
C.12 Are the minutes provided free of charge?	Yes	
C.13 Who undertakes the evaluation of bids (individual(s), permanent committee, ad-hoc committee)?	Project with help from the consultant, and selected procurement committee members.	
C.14 What are the qualifications of the evaluators with respect to procurement and the goods and/or works under evaluation?	English proficiency and experiences	
C.15 Is the decision of the evaluators final or is the evaluation subject to additional approvals?	No, It requires approval from Governor, Minister and the approval also rely donors NOL	
C.16 Using the three 'worst-case' examples in the last year, how long from the issuance of the invitation for bids can the contract be awarded?	90 to 128 days	
C.17 Are there processes in place for the collection and clearance of cargo through ports of entry?	No experiences	
C.18 Are there established goods receiving procedures?	No experiences	
C.19 Are all goods that are received recorded as assets or inventory in a register?	yes	
C.20 Is the agency/procurement department familiar with letters of credit?	yes	
C.21 Does the procurement department register and track warranty and latent defects liability periods?	yes	
Consulting Services		
C.22 Has the agency undertaken foreign- assisted procurement of consulting services recently (last 12 months, or last 36 months)? (If yes, please indicate the names of the development partner/s and the Project/s.)	No experiences	
C.23 If the above answer is yes, what were the major challenges?	No experiences	
C.24 Are assignments and invitations for expressions of interest (EOIs) advertised?	No experiences	
C.25 Is a consultants' selection committee formed with appropriate individuals, and what is its composition (if any)?	No experiences	
C.26 What criteria is used to evaluate EOIs?	No experiences	
C.27 Historically, what is the most common method used (QCBS, QBS, etc.) to select consultants?	No experiences	
C.28 Do firms have to pay for the RFP document?	No experiences	
C.29 Does the proposal evaluation criteria follow a pre-determined structure and is it detailed in the RFP?	No experiences	
C.30 Are pre-proposal visits and meetings arranged?	No experiences	
C.31 Are minutes prepared and circulated after pre-proposal meetings?	No experiences	
C.32 To whom are the minutes distributed?	No experiences	
C.33 Are all queries from consultants answered/addressed in writing?	No experiences	
C.34 Are the technical and financial proposals required to be in separate envelopes and remain sealed until the technical evaluation is completed?	No experiences	
C.35 Are proposal securities required?	No experiences	

Question	Response	Risk ¹
C.36 Are technical proposals opened in public?	No experiences	
C.37 Are minutes of the technical opening distributed?	No experiences	
C.38. Do the financial proposals remain sealed until technical evaluation is completed?	No experiences	
C.39 Who determines the final technical ranking and how?	No experiences	
C.40 Are the technical scores sent to all firms?	No experiences	
C.41 Are the financial proposal opened in public?	No experiences	
C.42 Are minutes of the financial opening distributed?	No experiences	
C.43 How is the financial evaluation completed?	No experiences	
C.44 Are face to face contract negotiations held?	No experiences	
C.45 How long after financial evaluation is negotiation held with the selected firm?	No experiences	
C.46 What is the usual basis for negotiation?	No experiences	
C.47 Are minutes of negotiation taken and signed?	No experiences	
C.48 How long after negotiation is the contract signed, on average?	No experiences	
C.49 Is there an evaluation system for measuring the outputs of consultants?	No experiences	
Payments		
C.50 Are advance payments made?	Yes, for KfW funding	
C.51 What is the standard period for payment included in contracts?	30 to 60 days	
C.52 On average, how long is it between receiving a firm's invoice and making payment?	4-8 weeks	
C.53 When late payment is made, are the beneficiaries paid interest?	No experiences	
D. Effectiveness		
D.1 Is contractual performance systematically monitored and reported?	Yes	
D.2 Does the agency monitor and track its contractual payment obligations?	Yes	
D.3 Is a complaints resolution mechanism described in national procurement documents?	Yes, there provisions in the standard procurement documents	
D.4 Is there a formal non-judicial mechanism for dealing with complaints?	Yes, but not precise	
D.5 Are procurement decisions and disputes supported by written narratives such as minutes of evaluation, minutes of negotiation, notices of default/withheld payment?	Yes	
E. Accountability Measures		
E.1 Is there a standard statement of ethics and are those involved in procurement required to formally commit to it?	Yes, but not really clear and precise	
E.2 Are those involved with procurement required to declare any potential conflict of interest and remove themselves from the procurement process?	It's should be yes, but we don't have experiences	
E.3 Is the commencement of procurement dependent on external approvals (formal or de-facto) that are outside of the budgeting process?	It relies on the Project procurement plan of each particular project	
E.4 Who approves procurement transactions, and do they have procurement experience and qualifications?	DG, DOR, Vice Minister/Governor	

Question	Response	Risk ²
E.5 Which of the following actions require approvals outside the procurement unit or the evaluation committee, as the case may be, and who grants the approval?		
a) Bidding document, invitation to pre-qualify or RFP	DG DOR, WB, KfW and GOV.	
b) Advertisement of an invitation for bids, pre-qualification or call for EOIs	DG DOR, WB, KfW and GOV.	
c) Evaluation reports	DG DOR, WB, KfW and GOV.	
d) Notice of award	DG DOR, D DPWT	
e) Invitation to consultants to negotiate	DG-DOR, D DPWT	
f) Contracts	DG-DOR, WB, KfW and GOV.	
E.6 Is the same official responsible for: (i) authorizing procurement transactions, procurement invitations, documents, evaluations and contracts; (ii) authorizing payments; (iii) recording procurement transactions and events; and (iv) the custody of assets?	Yes, Province, Project, DPWT and DOR is responsible for all procurement transaction.	
E.7 Is there a written auditable trail of procurement decisions attributable to individuals and committees?	Yes, all projects including procurement transactions, decision.	

Person met

1. Mr. Phetmixay Khamphakdy, Director DPWT – Attapeu Province
2. Mr. Souliyaseng Singhavong, Dep. Head of Planning and Investment Office, DPWT – Attapeu Province
3. Mr. Thongsouk Aphaiyalath, Dep. Head of Road and Waterway Office, DPWT – Attapeu Province
4. Mr. Bounthavy Xaykhampheng, Head of Rural Road Unit, Road and Waterway Office, DPWT – Attapeu Province

² Questions indicated with * are associated with potentially 'High' or 'Substantial' risks due to the impact being 'High', therefore the strategy for managing those risks should be addressed in the Project Procurement Risk Analysis (Appendix 3)

**Annex AH – Procurement- and Project Implementation
Schedules [Bar Charts]**

CONTRACT PACKAGES' PROCUREMENT SCHEDULE

Contract Packages	Description/Activities	2015												2016												2017												2018												2019												2020												2021												2022															
		1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4
A. Consultancy Services																																																																																																					
1. Project Management Support Consultants (QCBS)																																																																																																					
	Posting of REOI																																																																																																				
	Long/Shortlisting of consultants																																																																																																				
	Issuance of RFP to shortlisted consultants																																																																																																				
	Submission of Proposal by Consultants																																																																																																				
	Evaluation of Technical Proposal																																																																																																				
	Opening of Financial Proposal																																																																																																				
	Evaluation of Financial Proposal																																																																																																				
	Contract Negotiation and Award																																																																																																				
	Issue Notice to Proceed																																																																																																				
	Implementation of PMSC																																																																																																				
2. Independent Audit (LCS)																																																																																																					
	Posting of REOI																																																																																																				
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	Evaluation of Financial Proposal																																																																																																				
	Contract Negotiation																																																																																																				
	Contract Signed																																																																																																				
	Implementation of Audit																																																																																																				
B. Civil Works Packages																																																																																																					
1. All NCB Packages																																																																																																					
	Posting of Invitation for Prequalification																																																																																																				
	Prequalification of Bidders																																																																																																				
	Finalization and approval of Bidding Documents																																																																																																				
	Issuance of Invitation for Bids to Prequalified Bidders																																																																																																				
	Preparation of Bids by Contractor																																																																																																				
	Submission/Opening of Bids																																																																																																				
	Bid Evaluation																																																																																																				
	ADB Concurrence on Bid Evaluation Report																																																																																																				
	Preparation of Contract Documents																																																																																																				
	Contract Award and Signing																																																																																																				
	Issue Notice to Proceed																																																																																																				
	Implementation of Civil Works Cont																																																																																																				
2. All ICB Packages																																																																																																					
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	Finalization and approval of Bidding Documents																																																																																																				
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	Implementation of Civil Works Cont																																																																																																				
C. Goods																																																																																																					
1. For Goods under ICB - Road Asset Management System																																																																																																					
	Posting of Invitation for Bids																																																																																																				
	Preparation of Bids by Contractor																																																																																																				
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	ADB Concurrence on Bid Evaluation Report																																																																																																				
	Preparation of Purchase Orders																																																																																																				
	Purchase Order Signing																																																																																																				
	Delivery of Goods																																																																																																				
2. For Goods under Shopping (Maintenance tools)																																																																																																					
	Issuance of RFQ to at least three suppliers																																																																																																				
	Preparation of Quotes by Supplier																																																																																																				
	Submission/Opening of Bids																																																																																																				
	Evaluation of Quotation																																																																																																				
	Preparation of Purchase Orders																																																																																																				
	Purchase Order Signing																																																																																																				
	Delivery of Goods																																																																																																				

Project Implementation Schedule

Activities	Completed	2015		2016				2017				2018				2019				2020				2021		
		3Q	4Q	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q	1Q	1Q	
ADB Board Approval	Q1 - 2016																									
Loan Signing	Q2 - 2016																									
Loan Effectiveness	Q2 - 2016																									
1. 0 Procurement of Project Management Consultant	Q2 - 2016																									
Recruitment of independent financial auditor	Q4 - 2016																									
1. Governance and practice for road asset management improved																										
1.1 Review of overloading control and monitoring policy and process, and prepare draft revised axle load control regulation for government approval	Q2 - 2017																									
1.2 Prepare draft long-term financing plan and revised RMF degree	Q2 - 2017																									
1.3 Prepare a web-based registry system, develop/ procure road asset management system and equipment	Q2 - 2018																									
1.4 Prepare updated (i) Performance-Based Maintenance contract documents, (ii) Technical Specifications for Road Construction and Maintenance, (iii) Road Design Manual, (iv) Road Maintenance Manual; for acceptance and approval by MPWT	Q4 - 2017																									
2. Strengthened Institutional Capacity for Sustainable Road Asset Management																										
2.1 Provide capacity building/ training for MPWT and DPWTs for Output 1	Q4 - 2020																									
2.2 Provide training for private contractors in preparation of tenders and implementation of Performance-Based Maintenance Contracts	Q2 - 2018																									
2.3 Provide capacity building to small enterprises in maintenance of local roads	Q2 - 2019																									
3. Rehabilitation and maintenance and of national and local roads completed																										
3.1 Undertake detailed design and prepare bidding documents	Q1 - 2017																									
3.2 Procurement of civil works contractors	Q4 - 2017																									
3.3 Implement civil works contracts (rehabilitation + performance based maintenance)	Q1 - 2021																									

Preparation

Procurement

Implementation

Training

**Annex AI – Standard RFP, Selection of Consultants &
Evaluation Criteria**

Standard Request for Proposals

Selection of Consultants



Asian Development Bank

August 2013

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Foreword

1. This Standard Request for Proposals (“SRFP”) has been prepared by the Asian Development Bank (“Bank”) and is based on the Master Procurement Document for Selection of Consultants (“Master Document”). The Master Document was prepared by participating Multilateral Development Banks (“MDBs”) and reflects what are considered “best practices”.
2. This SRFP follows the structure and the provisions of the Master Document, except where specific considerations within the respective institutions have required a change.
3. The text shown in *Italics* is “Notes to the Client”. It provides guidance to the entity in preparing a specific RFP. “Notes to the Client” should be deleted from the final RFP issued to the shortlisted Consultants”.
4. This SRFP can be used with different selection methods described in the *Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers*, including Quality- and Cost-Based Selection (“QCBS”), Quality-Based Selection (“QBS”), Selection under a Fixed Budget (“FBS”), Least-Cost Selection (“LCS”), Consultants’ Qualifications Selection (“CQS”); and Single-Source Selection (“SSS”).
5. The use of this SRFP is not required for selections conducted under commercial practice, selection of individual consultants and selections through ADB’s online Consultant Management System (CMS).
6. Before preparing a Request for Proposals (RFP) for a specific assignment, the user must be familiar with the *Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers*, and must have chosen an appropriate method and the appropriate contract form. The SRFP includes two standard forms of contract: one for time-based assignments and the other for lump-sum assignments. The prefaces to these two contracts indicate the circumstances in which their use is most appropriate.
7. Use of a single RFP for multiple selections resulting in multiple contract awards is not permissible.
8. Clients are advised to reconfirm identity and eligibility of the consultants submitting proposals to ensure i) no transfer of invitation to another party and ii) legal capacity of the consultants to enter into binding and enforceable contracts, if selected.
9. Clients are advised to follow ADB Guide on Evaluation of Financial proposal available at <http://www.adb.org/site/business-opportunities/operational-procurement/consulting/documents>

SUMMARY DESCRIPTION

STANDARD REQUEST FOR PROPOSALS

PART I – SELECTION PROCEDURES AND REQUIREMENTS

Section 1: Letter of Invitation (LOI)

This Section is a template of a letter from the Client addressed to a shortlisted consulting firm inviting it to submit a proposal for a consulting assignment. The LOI includes a list of all shortlisted firms to whom similar letters of invitation are sent, and a reference to the selection method and applicable guidelines or policies of the financing institution that govern the selection and award process.

Section 2: Instructions to Consultants, Data Sheet, Summary and Personnel Evaluation Forms and Grounds for Disqualification of the Experts

This Section consists of two parts: “Instructions to Consultants” and “Data Sheet”. “Instructions to Consultants” contains provisions that are to be used without modifications. “Data Sheet” contains information specific to each selection and corresponds to the clauses in “Instructions to Consultants” that call for selection-specific information to be added. This Section provides information to help shortlisted consultants prepare their proposals. Information is also provided on the submission, opening and evaluation of proposals, contract negotiation and award of contract. Information in the Data Sheet indicates whether a Full Technical Proposal (FTP), Simplified Technical Proposal (STP) or Biodata Technical Proposal (BTP) shall be used. Summary and Personnel Evaluation Forms and Grounds for Disqualification of the Experts are attached as well

Section 3: Technical Proposal – Standard Forms

This Section includes the forms for FTP, STP and BTP that are to be completed by the shortlisted consultants and submitted in accordance with the requirements of Section 2.

Section 4: Financial Proposal – Standard Forms

This Section includes the financial forms that are to be completed by the shortlisted consultants, including the consultant’s costing of its technical proposal, which are to be submitted in accordance with the requirements of Section 2.

Section 5: Eligible Countries

This Section contains information regarding eligible countries.

Section 6: Bank’s Policy – Corrupt and Fraudulent Practices

This Section provides shortlisted consultants with the reference to the Bank’s policy in regard to corrupt and fraudulent practices applicable to the selection process. This Section is also incorporated in the standard forms of contract (Section 8) as Attachment 1.

Section 7: Terms of Reference (TORs)

This Section describes the scope of services, objectives, goals, specific tasks required to implement the assignment, and relevant background information; provides details on the required qualifications of the key experts; and lists the expected deliverables. This Section shall not be used to over-write provisions in Section 2.

PART II – CONDITIONS OF CONTRACT AND CONTRACT FORMS

Section 8: Standard Forms of Contract

This Section includes two types of standard contract forms for large or complex assignments: a Time-Based Contract and a Lump-Sum Contract. Each type includes General Conditions of Contract (“GCC”) that shall not be modified, and Special Conditions of Contract (“SCC”). The SCC include clauses specific to each contract to supplement the General Conditions.

Each standard form of contract incorporates “Bank’s Policy – Corrupt and Fraudulent Practices” (Section 6 of Part I) in a form of Attachment 1.

SELECTION OF CONSULTANTS

REQUEST FOR PROPOSALS

RFP No.: CS1

Selection of Consulting Services for: Project Management Consultant

Client: Department of Road, Ministry of Public Works and Transport

Country: Lao PDR

Project: Road Sector Governance and Maintenance Project

Issued on: _____ 2015

Preface

This Request for Proposals (“RFP”) has been prepared by Department of Road – Ministry of Public Works and Transport and is based on the Standard Request for Proposals (“SRFP”) issued by the Asian Development Bank (“the Bank”), dated October 2011.

The SRFP reflects the structure and the provisions of the Master Procurement Document for Selection of Consultants (“Master Document”) prepared by participating Multilateral Development Banks (MDBs), except where specific considerations within the respective institutions have required a change.

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- **Section 1 – Letter of Invitation**
- **Section 2 – Instructions to Consultants and Data Sheet**
- **Section 3 – Technical Proposal – Standard Forms**
- **Section 4 – Financial Proposal – Standard Forms**
- **Section 5 – Eligible Countries**
- **Section 6 – Bank Policy - Corrupt and Fraudulent Practices**
- **Section 7 – Terms of Reference**
- **Section 8 – Conditions of Contract and Contract Forms**

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Form TECH-2

Form TECH-3

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Form TECH-4 (For Simplified Technical Proposals Only)

Form TECH-5

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Time-Based Form of Contract

Preface

I. Form of Contract

- II. General Conditions of Contract
- III. Special Conditions of Contract
- IV. Appendices

Lump-Sum Form of Contract

Preface

- I. Form of Contract
- II. General Conditions of Contract
- III. Special Conditions of Contract
- IV. Appendices

PART I

Section 1. Letter of Invitation

[if applicable, insert: RFP No.....; Loan/Grant/Financing No.]
[insert: Location and Date]

[insert: Name and Address of Consultant. In case of a Joint Venture (JV), a full name of the JV and the names of each member as in the submitted Expression of Interest shall be used]

Dear Mr./Ms.:

1. The *Ministry of Public Works and Transportation* (hereinafter called “*Borrower*” has applied for financing from the Asian Development Bank (the “Bank”) in the form of a *loan* toward the cost of Road Sector Governance and Maintenance Project. The DOR-MPWT, an *implementing and executing agency of the Borrower*, intends to apply a portion of the proceeds of this *loan* to eligible payments under the contract for which this Request for Proposals is issued. Payments by the Bank will be made only at the request of the *Ministry of Public Works and Transport* and upon approval by the Bank, and will be subject, in all respects, to the terms and conditions of the *loan* agreement. The *loan* agreement prohibits a withdrawal from the *loan* account for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Bank, is prohibited by a decision of the United Nations Security council taken under Chapter VII of the Charter of the United Nations. No party other than the *Ministry of Public Works and Transport* shall derive any rights from the *loan* agreement or have any claims to the proceeds of the *loan*.
2. The Client now invites proposals to provide the following consulting services (hereinafter called “Services”): *Project Management Consultants*. More details on the Services are provided in the Terms of Reference (Section 7).
3. This Request for Proposals (RFP) has been addressed to the following shortlisted Consultants:

[Insert the list of shortlisted Consultants. If a Consultant is a Joint Venture (JV), the full name of the JV, as in the Expression of Interest, shall be used. In addition, list all members, starting with the name of the lead member. To ensure eligibility, specify country of incorporation for each of the Shortlisted Consultants, JV partners and Sub-consultants]
4. It is not permissible to transfer this invitation to any other firm, such as Consultant’s parent companies, subsidiaries and affiliates. The Client will reject a Proposal if the Consultant drops a JV partner without the Client’s prior consent, which is given only in

exceptional circumstances, such as debarment of the JV partner or occurrence of Force Majeure.

5. A firm will be selected under **Quality and Cost Based Selection (QCBS)** procedures and in a Full Technical Proposal (FTP) format as described in this RFP, in accordance with the policies of the Bank detailed in the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers – which can be found at the following website: www.adb.org.
6. The RFP includes the following documents:
 - Section 1 - Letter of Invitation
 - Section 2 - Instructions to Consultants, Data Sheet, Summary and Personnel Evaluation Forms, and Grounds for Disqualification of the Experts
 - Section 3 - Technical Proposal (FTP) - Standard Forms
 - Section 4 - Financial Proposal - Standard Forms
 - Section 5 – Eligible Countries
 - Section 6 – Bank’s Policy – Corrupt and Fraudulent Practices
 - Section 7 - Terms of Reference
 - Section 8 - Standard Forms of Contract (Time-Based)
7. Please inform us by [insert date], in writing at **Ministry of Public Works and Transport of Lao PDR, Lanxang Ave., Vientiane Capital, Lao PDR**, by 856-21 412250, or by E-mail webmaster@mpwt.gov.la:
 - (a) whether you intend to submit a proposal or not and, if affirmative
 - (b) whether you intend to enhance your experience by requesting permission to associate with other firm(s) (if permissible under Section 2, Instructions to Consultants (ITC), Data Sheet 14.1.1).
8. Details on the proposal’s submission date, time and address are provided in Clauses 17.7 and 17.9 of the ITC.

Yours sincerely,

DOR-MPWT Director General

Section 2. Instructions to Consultants and Data Sheet

[“Notes to the Client”: this Section 2 - Instructions to Consultants shall not be modified. Any necessary changes, acceptable to the Bank, to address specific country and project issues, to supplement, but not over-write, the provisions of the Instructions to Consultants (ITC), shall be introduced through the Data Sheet only. “Notes to the Client” should be deleted from the final RFP issued to the shortlisted Consultants].

A. General Provisions

1. Definitions

- (a) “Affiliate(s)” means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the Consultant.
- (b) “Applicable Guidelines” means the policies of the Asian Development Bank governing the selection and Contract award process as set forth in this RFP.
- (c) “Applicable Law” means the laws and any other instruments having the force of law in the Client’s country, or in such other country as may be specified in the **Data Sheet**, as they may be issued and in force from time to time.
- (d) “Bank” means the Asian Development Bank.
- (e) “Borrower [or Recipient or Beneficiary]” means the Government, Government agency or other entity that signs the financing [or loan/credit/grant/project] agreement with the Bank.
- (f) “Client” means the [implementing/ executing agency] that signs the Contract for the Services with the selected Consultant.
- (g) “Consultant” means a legally-established professional consulting firm or an entity that may provide or provides the Services to the Client under the Contract.
- (h) “Contract” means a legally binding written agreement signed between the Client and the Consultant and includes all the attached documents listed in its Clause 1 (the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices).
- (i) “Data Sheet” means an integral part of the Instructions to Consultants (ITC) Section 2 that is used to reflect specific country and assignment conditions to supplement, but not to over-write, the provisions of the ITC.

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- (j) “Day” means a calendar day.
 - (k) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or Joint Venture member(s).
 - (l) “Government” means the government of the Client’s country.
 - (m) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one Consultant where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Client for the performance of the Contract.
 - (n) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose CV is taken into account in the technical evaluation of the Consultant’s proposal.
 - (o) “ITC” (this Section 2 of the RFP) means the Instructions to Consultants that provides the shortlisted Consultants with all information needed to prepare their Proposals.
 - (p) “LOI” (this Section 1 of the RFP) means the Letter of Invitation being sent by the Client to the shortlisted Consultants.
 - (q) “Non-Key Expert(s)” means an individual professional provided by the Consultant or its Sub-consultant and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.
 - (r) “Proposal” means the Technical Proposal and the Financial Proposal of the Consultant.
 - (s) “RFP” means the Request for Proposals to be prepared by the Client for the selection of Consultants, based on the SRFP.
 - (t) “SRFP” means the Standard Request for Proposals, which must be used by the Client as the basis for the preparation of the RFP.
 - (u) “Services” means the work to be performed by the Consultant pursuant to the Contract.
 - (v) “Sub-consultant” means an entity to whom the Consultant

intends to subcontract any part of the Services while remaining responsible to the Client during the performance of the Contract.

- (w) “TORs” (this Section 7 of the RFP) means the Terms of Reference that explain the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Client and the Consultant, and expected results and deliverables of the assignment.

2. Introduction

The Client named in the **Data Sheet** intends to select a Consultant from those listed in the Letter of Invitation, in accordance with the method of selection specified in the **Data Sheet**.

The shortlisted Consultants are invited to submit a Technical Proposal and a Financial Proposal, or a Technical Proposal only, as specified in the **Data Sheet**, for consulting services required for the assignment named in the **Data Sheet**. The Proposal will be the basis for negotiating and ultimately signing the Contract with the selected Consultant.

The Consultants should familiarize themselves with the local conditions and take them into account in preparing their Proposals, including attending a pre-proposal conference if one is specified in the **Data Sheet**. Attending any such pre-proposal conference is optional and is at the Consultants’ expense.

The Client will timely provide, at no cost to the Consultants, the inputs, relevant project data, and reports required for the preparation of the Consultant’s Proposal as specified in the **Data Sheet**.

3. Conflict of Interest

The Consultant is required to provide professional, objective, and impartial advice, at all times holding the Client’s interests paramount, strictly avoiding conflicts with other assignments or its own corporate interests, and acting without any consideration for future work.

The Consultant has an obligation to disclose to the Client any situation of actual or potential conflict that impacts its capacity to serve the best interest of its Client. Failure to disclose such situations may lead to the disqualification of the Consultant or the termination of its Contract and/or sanctions by the Bank.

Without limitation on the generality of the foregoing, and unless stated otherwise in the **Data Sheet**, the Consultant shall not be

hired under the circumstances set forth below:

- a. **Conflicting activities**
 - (i) Conflict between consulting activities and procurement of goods, works or non-consulting services: a firm that has been engaged by the Client to provide goods, works, or non-consulting services for a project, or any of its Affiliates, shall be disqualified from providing consulting services resulting from or directly related to those goods, works, or non-consulting services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, or any of its Affiliates, shall be disqualified from subsequently providing goods or works or non-consulting services resulting from or directly related to the consulting services for such preparation or implementation.
- b. **Conflicting assignments**
 - (ii) Conflict among consulting assignments: a Consultant (including its Experts and Sub-consultants) or any of its Affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the Consultant for the same or for another Client.
- c. **Conflicting relationships**
 - (iii) Relationship with the Client's staff: a Consultant (including its Experts and Sub-consultants) that has a close business or family relationship with a professional staff of the [Borrower or the Client or the Recipient or Beneficiary] or of the [implementing/executing agency] or of a recipient of a part of the Bank's financing who are directly or indirectly involved in any part of (i) the preparation of the Terms of Reference for the assignment, (ii) the selection process for the Contract, or (iii) the supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Bank throughout the selection process and the execution of the Contract.
 - (iv) Any other types of conflicting relationships as indicated in the **Data Sheet**.

4. Unfair Competitive Advantage

Fairness and transparency in the selection process require that the Consultants or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the Client shall indicate in the **Data Sheet** and make available to all shortlisted Consultants together with this RFP all information that would in that respect give such Consultant any unfair competitive advantage over competing Consultants.

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- 5. Corrupt and Fraudulent Practices**
- 5.1 The Bank requires compliance with its policy in regard to corrupt and fraudulent/prohibited practices as set forth in Section 6.
- 5.2 In further pursuance of this policy, Consultant shall permit and shall cause its sub-consultants and sub-contractors to permit ADB or its representatives to inspect the accounts, records and other documents relating to the submission of the Proposal and execution of the contract, in case of award, and to have the accounts and records audited by auditors appointed by the ADB.
- 6. Eligibility**
- 6.1 The Bank permits consultants (individuals and firms, including Joint Ventures and their individual members) from the eligible countries as stated in Section 5 to offer consulting services for Bank-financed projects.
- 6.2 Furthermore, it is the Consultant's responsibility to ensure that its Experts, joint venture members, Sub-consultants, agents (declared or not), sub-contractors, service providers, suppliers and/or their employees meet the eligibility requirements as established by the Asian Development Bank in Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers, which can be found in the following website: www.adb.org.
- 6.3 As an exception to the foregoing Clauses 6.1 and 6.2 above:
- a. Sanctions**
- 6.3.1 A firm or an individual sanctioned by the Bank in accordance with the above Clause 5.1 or in accordance with Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers shall be ineligible to be awarded a Bank-financed contract, or to benefit from a Bank-financed contract, financially or otherwise, during such period of time as the Bank shall determine. The list of debarred firms and individuals is available at the electronic address specified in the **Data Sheet**.

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- b. Prohibitions**
- 6.3.2 Firms and individuals of a country or goods manufactured in a country may be ineligible if so indicated in Section 5 (Eligible Countries) and:
- (a) as a matter of law or official regulations, the Borrower's/Beneficiary's country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the provision of Services required; or
 - (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's Country prohibits any import of goods from that country or any payments to any country, person, or entity in that country.
- c. Restrictions for Government-owned Enterprises**
- 6.3.3 Government-owned enterprises or institutions in the Borrower's country shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) that they are not dependent agencies of the Client.
- d. Restrictions for public employees**
- 6.3.4 Government officials and civil servants may only be hired under consulting contracts, either as individuals or as members of a team of a consulting firm, if they (i) are on leave of absence without pay; (ii) are not being hired by the agency they were working for immediately before going on leave; and (iii) their employment would not create a conflict of interest).

B. Preparation of Proposals

- 7. General Considerations**
- 7.1 In preparing the Proposal, the Consultant is expected to examine the RFP in detail. Material deficiencies in providing the information requested in the RFP may result in rejection of the Proposal.
- 8. Cost of Preparation of Proposal**
- 8.1 The Consultant shall bear all costs associated with the preparation and submission of its Proposal, and the Client shall not be responsible or liable for those costs, regardless of the conduct or outcome of the selection process. The Client is not bound to accept any proposal, and reserves the

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- right to annul the selection process at any time prior to Contract award, without thereby incurring any liability to the Consultant.
- 9. Language** 9.1 The Proposal, as well as all correspondence and documents relating to the Proposal exchanged between the Consultant and the Client, shall be written in the language(s) specified in the **Data Sheet**.
- 10. Documents Comprising the Proposal** 10.1 The Proposal shall comprise the documents and forms listed in the **Data Sheet**.
- 10.2 If specified in the **Data Sheet**, the Consultant shall include a statement of an undertaking of the Consultant to observe, in competing for and executing a contract, the Client country's laws against fraud and corruption (including bribery).
- 10.3 The Consultant shall furnish information on commissions, gratuities and fees, if any, paid or to be paid to agents or any other party relating to this Proposal and, if awarded, Contract execution, as requested in the Financial Proposal submission form (Section 4).
- 11. Only One Proposal** 11.1 The Consultant (including the individual members of any Joint Venture) shall submit only one Proposal, either in its own name or as part of a Joint Venture in another Proposal. If a Consultant, including any Joint Venture member, submits or participates in more than one proposal, all such proposals shall be disqualified and rejected. This does not, however, preclude a Sub-consultant, or the Consultant's staff from participating as Key Experts and Non-Key Experts in more than one Proposal when circumstances justify and if stated in the **Data Sheet**.
- 12. Proposal Validity** 12.1 The **Data Sheet** indicates the period during which the Consultant's Proposal must remain valid after the Proposal submission deadline.
- 12.2 During this period, the Consultant shall maintain its original Proposal without any change, including the availability of the Key Experts, the proposed rates and the total price.
- 12.3 If it is established that any Key Expert nominated in the Consultant's Proposal was not available at the time of Proposal submission or was included in the Proposal without his/her confirmation, such Proposal shall be disqualified and rejected for further evaluation, and may be subject to sanctions in accordance with Clause 5 of this ITC.

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- a. Extension of Validity Period**
- 12.4 The Client will make its best effort to complete the negotiations within the proposal’s validity period. However, should the need arise, the Client may request, in writing, all Consultants who submitted Proposals prior to the submission deadline to extend the Proposals’ validity.
- 12.5 If the Consultant agrees to extend the validity of its Proposal, it shall be done without any change in the original Proposal and with the confirmation of the availability of the Key Experts.
- 12.6 The Consultant has the right to refuse to extend the validity of its Proposal in which case such Proposal will not be further evaluated.
- b. Substitution of Key Experts at Validity Extension**
- 12.7 If any of the Key Experts become unavailable for the extended validity period, the Consultant shall provide a written adequate justification and evidence satisfactory to the Client together with the substitution request. In such case, a replacement Key Expert shall have equal or better qualifications and experience than those of the originally proposed Key Expert. The technical evaluation score, however, will remain to be based on the evaluation of the CV of the original Key Expert.
- 12.8 If the Consultant fails to provide a replacement Key Expert with equal or better qualifications, or if the provided reasons for the replacement or justification are unacceptable to the Client, such Proposal will be rejected with the prior Bank’s no objection.
- c. Sub-Contracting**
- 12.9 The Consultant shall not subcontract the whole of the Services unless otherwise indicated in the **Data Sheet**.
- 13. Clarification and Amendment of RFP**
- 13.1 The Consultant may request a clarification of any part of the RFP during the period indicated in the **Data Sheet** before the Proposals’ submission deadline. Any request for clarification must be sent in writing, or by standard electronic means, to the Client’s address indicated in the **Data Sheet**. The Client will respond in writing, or by standard electronic means, and will send written copies of the response (including an explanation of the query but without identifying its source) to all shortlisted Consultants. Should the Client deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure described below:
- 13.1.1 At any time before the proposal submission

deadline, the Client may amend the RFP by issuing an amendment in writing or by standard electronic means. The amendment shall be sent to all shortlisted Consultants and will be binding on them. The shortlisted Consultants shall acknowledge receipt of all amendments in writing.

13.1.2 If the amendment is substantial, the Client may extend the proposal submission deadline to give the shortlisted Consultants reasonable time to take an amendment into account in their Proposals.

13.1.3 The Consultant may submit a modified Proposal or a modification to any part of it at any time prior to the proposal submission deadline. No modifications to the Technical or Financial Proposal shall be accepted after the deadline.

14. Preparation of Proposals – Specific Considerations

14.1 While preparing the Proposal, the Consultant must give particular attention to the following:

14.1.1 If a shortlisted Consultant considers that it may enhance its expertise for the assignment by associating with other consultants in the form of a Joint Venture or as Sub-consultants, it may do so with either (a) non-shortlisted Consultant(s), or (b) shortlisted Consultants if permitted in the **Data Sheet**. In all such cases a shortlisted Consultant must obtain the written approval of the Client prior to the submission of the Proposal. When associating with non-shortlisted firms in the form of a joint venture or a sub-consultancy, the shortlisted Consultant shall be a lead member. If shortlisted Consultants associate with each other, any of them can be a lead member.

14.1.2 The Client may indicate in the **Data Sheet** the estimated Key Experts' time input (expressed in person-month) and the Client's estimated total cost of the assignment. This estimate is indicative and the Proposal shall be based on the Consultant's own estimates for the same.

14.1.3 If stated in the **Data Sheet**, the Consultant shall include in its Proposal at least the same time input (in the same unit as indicated in the **Data Sheet**) of Key Experts, failing which the Financial Proposal will be adjusted for the purpose of comparison of proposals and decision for award in accordance with

the procedure in the **Data Sheet**.

14.1.4 Total available budget, with an indication whether it is inclusive or exclusive of taxes, is given in the **Data Sheet**, and the Financial Proposal shall not exceed this budget.

15. Technical Proposal Format and Content

15.1 The Technical Proposal shall not include any financial information. A Technical Proposal containing material financial information shall be declared non-responsive.

15.2 Depending on the nature of the assignment, the Consultant is required to submit a Full Technical Proposal (FTP), a Biodata Technical Proposal (BTP) or a Simplified Technical Proposal (STP) as indicated in the **Data Sheet** and using the Standard Forms provided in Section 3 of the RFP.

16. Financial Proposal

16.1 The Financial Proposal shall be prepared using the Standard Forms provided in Section 4 of the RFP. It shall list all costs associated with the assignment, including (a) remuneration for Key Experts and Non-Key Experts, (b) other expenses, (c) provisional sums when applicable and (d) contingency indicated in the **Data Sheet**.

a. Price Adjustment

16.2 For assignments with a duration exceeding 18 months, a price adjustment provision for foreign and/or local inflation for remuneration rates applies if so stated in the **Data Sheet**.

b. Taxes

16.3 The Consultant and its Sub-consultants and Experts are responsible for meeting all tax liabilities arising out of the Contract unless stated otherwise in the **Data Sheet**. Information on taxes in the Client's country is provided in the **Data Sheet**.

c. Currency of Proposal

16.4 The Consultant may express the price for its Services in the currency or currencies as stated in the **Data Sheet**. If indicated in the **Data Sheet**, the portion of the price representing local cost shall be stated in the national currency.

d. Currency of Payment

16.5 Payment under the Contract shall be made in the currency or currencies in which the payment is requested in the Proposal.

C. Submission, Opening and Evaluation

17. Submission, Sealing, and Marking of Proposals

- 17.1 The Consultant shall submit a signed and complete Proposal comprising the documents and forms in accordance with Clause 10 (Documents Comprising Proposal). The submission can be done by mail or by hand. If specified in the **Data Sheet**, the Consultant has the option of submitting its Proposals electronically.
- 17.2 An authorized representative of the Consultant shall sign the original submission letters in the required format for both the Technical Proposal and, if applicable, the Financial Proposals and shall initial all pages of both. The authorization shall be in the form of a written power of attorney attached to the Technical Proposal.
- 17.2.1 A Proposal submitted by a Joint Venture shall be signed by all members so as to be legally binding on all members, or by an authorized representative who has a written power of attorney signed by each member's authorized representative.
- 17.3 Any modifications, revisions, interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Proposal.
- 17.4 The signed Proposal shall be marked "ORIGINAL", and its copies marked "COPY" as appropriate. The number of copies is indicated in the **Data Sheet**. All copies shall be made from the signed original. If there are discrepancies between the original and the copies, the original shall prevail.
- 17.5 The original and all the copies of the Technical Proposal shall be placed inside of a sealed envelope clearly marked "**TECHNICAL PROPOSAL**", "[Name of the Assignment]", reference number, name and address of the Consultant, and with a warning "**DO NOT OPEN UNTIL [INSERT THE DATE AND THE TIME OF THE TECHNICAL PROPOSAL SUBMISSION DEADLINE]**."
- 17.6 Similarly, the original Financial Proposal (if required for the applicable selection method) shall be placed inside of a sealed envelope clearly marked "**FINANCIAL PROPOSAL**" followed by the name of the assignment, reference number, name and address of the Consultant, and with a warning

“DO NOT OPEN WITH THE TECHNICAL PROPOSAL.”

- 17.7 The sealed envelopes containing the Technical and Financial Proposals shall be placed into one outer envelope and sealed. This outer envelope shall bear the submission address, RFP reference number, the name of the assignment, Consultant’s name and the address, and shall be clearly marked **“DO NOT OPEN BEFORE** [insert the time and date of the submission deadline indicated in the Data Sheet]”.
- 17.8 If the envelopes and packages with the Proposal are not sealed and marked as required, the Client will assume no responsibility for the misplacement, loss, or premature opening of the Proposal. For QCBS, FBS and LCS, if the Technical and Financial Proposals are not submitted in separate sealed envelopes as required, the Client shall reject the Proposal.
- 17.9 The Proposal or its modifications must be sent to the address indicated in the **Data Sheet** and received by the Client no later than the deadline indicated in the **Data Sheet**, or any extension to this deadline. Any Proposal or its modification received by the Client after the deadline shall be declared late and rejected, and promptly returned unopened.

18. Confidentiality

- 18.1 From the time the Proposals are opened to the time the Contract is awarded, the Consultant should not contact the Client on any matter related to its Technical and/or Financial Proposal. Information relating to the evaluation of Proposals and award recommendations shall not be disclosed to the Consultants who submitted the Proposals or to any other party not officially concerned with the process, until the publication of the Contract award information.
- 18.2 Any attempt by shortlisted Consultants or anyone on behalf of the Consultant to influence improperly the Client in the evaluation of the Proposals or Contract award decisions may result in the rejection of its Proposal, and may be subject to the application of prevailing Bank’s sanctions procedures.
- 18.3 Notwithstanding the above provisions, from the time of the Proposals’ opening to the time of Contract award publication, if a Consultant wishes to contact the Client or the Bank on any matter related to the selection process, it should do so only in writing.

19. Opening of Technical Proposals

19.1 The Client's evaluation committee shall conduct the opening of the Technical Proposals in the presence of the shortlisted Consultants' authorized representatives who choose to attend (in person, or online if this option is offered in the **Data Sheet**). The opening date, time and the address are stated in the **Data Sheet**. The envelopes with the Financial Proposal shall remain sealed and shall be securely stored with a reputable public auditor or independent authority until they are opened in accordance with Clause 23 of the ITC.

19.2 At the opening of the Technical Proposals the following shall be read out: (i) the name and the country of the Consultant or, in case of a Joint Venture, the name of the Joint Venture, the name of the lead member and the names and the countries of all members; (ii) the presence or absence of a duly sealed envelope with the Financial Proposal; (iii) any modifications to the Proposal submitted prior to proposal submission deadline; and (iv) any other information deemed appropriate or as indicated in the **Data Sheet**.

20. Proposals Evaluation

20.1 Subject to provision of Clause 15.1 of the ITC, the evaluators of the Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded and the Bank issues its "no objection", if applicable.

20.2 The Consultant is not permitted to alter or modify its Proposal in any way after the proposal submission deadline except as permitted under Clause 12.7 of this ITC. While evaluating the Proposals, the Client will conduct the evaluation solely on the basis of the submitted Technical and Financial Proposals.

20.3 From the time the proposals are received by the Client to the time that the Contract is awarded, the Client shall not request the Consultant to provide clarification on any matter related to the Consultant's Technical or Financial Proposal. The Client may, however, request clarification on an expert's eligibility, specifically items (ii) to (vi) of Form TECH-6 with prior approval from ADB. Any request for clarification must be sent and responded to in writing.

21. Evaluation of Technical Proposals

21.1 The Client's evaluation committee shall evaluate the Technical Proposals on the basis of their responsiveness to the Terms of Reference and the RFP, applying the evaluation criteria, sub-criteria, and point system specified

in the Summary and Personnel Evaluation Sheet attached to the **Data Sheet**. Each responsive Proposal will be given a technical score. A Proposal shall be rejected at this stage if it does not respond to important aspects of the RFP or if it fails to achieve the minimum technical score indicated in the **Data Sheet**.

22. Financial Proposals for QBS

22.1 Following the ranking of the Technical Proposals, when the selection is based on quality only (QBS), the top-ranked Consultant is invited to negotiate the Contract.

22.2 If Financial Proposals were invited together with the Technical Proposals, only the Financial Proposal of the technically top-ranked Consultant is opened by the Client's evaluation committee. All other Financial Proposals are returned unopened after the Contract negotiations are successfully concluded and the Contract is signed.

23. Public Opening of Financial Proposals (for QCBS, FBS, and LCS methods)

23.1 After the technical evaluation is completed and the Bank has issued its no objection (if applicable), the Client shall notify those Consultants whose Proposals were considered non-responsive to the RFP and TOR or did not meet the minimum qualifying technical score (and shall provide information relating to the Consultant's overall technical score, as well as scores obtained for each criterion and sub-criterion) that their Financial Proposals will be returned unopened after completing the selection process and Contract signing. The Client shall simultaneously notify in writing those Consultants that have achieved the minimum overall technical score and inform them of the date, time and location for the opening of the Financial Proposals. The opening date should allow the Consultants sufficient time to make arrangements for attending the opening. The Consultant's attendance at the opening of the Financial Proposals (in person, or online if such option is indicated in the Data Sheet) is optional and is at the Consultant's choice.

23.2 The Financial Proposals shall be opened by the Client's evaluation committee in the presence of the representatives of those Consultants whose proposals have passed the minimum technical score. At the opening, the names of the Consultants, and the overall technical scores, including the break-down by criterion, shall be read aloud. The Financial Proposals will then be inspected to confirm that they have remained sealed and unopened. These Financial Proposals shall be then opened, and the total prices read aloud and recorded. Copies of the record shall be sent to all

Consultants who submitted Proposals and to the Bank.

- 24. Correction of Errors**
- 24.1 Activities and items described in the Technical Proposal but not priced in the Financial Proposal, shall be assumed to be included in the prices of other activities or items, and no corrections are made to the Financial Proposal.
- a. Time-Based Contracts**
- 24.1.1 If a Time-Based contract form is included in the RFP, the Client's evaluation committee will (a) correct any computational or arithmetical errors, and (b) adjust the prices if they fail to reflect all inputs included for the respective activities or items in the Technical Proposal. In case of discrepancy between (i) a partial amount (sub-total) and the total amount, or (ii) between the amount derived by multiplication of unit price with quantity and the total price, or (iii) between words and figures, the former will prevail. In case of discrepancy between the Technical and Financial Proposals in indicating quantities of input, the Technical Proposal prevails and the Client's evaluation committee shall correct the quantification indicated in the Financial Proposal so as to make it consistent with that indicated in the Technical Proposal, apply the relevant unit price included in the Financial Proposal to the corrected quantity, and correct the total Proposal cost.
- b. Lump-Sum Contracts**
- 24.2 If a Lump-Sum contract form is included in the RFP, the Consultant is deemed to have included all prices in the Financial Proposal, so neither arithmetical corrections nor price adjustments shall be made. The total price, net of taxes understood as per Clause ITC 25 below, specified in the Financial Proposal (Form FIN-1) shall be considered as the offered price.
- 25. Taxes**
- 25.1 Except as set out in Sub-clause 25.2, all taxes are deemed included in the Consultant's Financial proposal, and, therefore, included in the evaluation.
- 25.2 Any local identifiable indirect taxes levied on the contract invoices (such as sales tax, VAT, excise tax, or any similar taxes or levies) and income tax payable to the Client's country on the remuneration of non-resident Experts for the services rendered in the Client's country are dealt with in accordance with the instructions in the Data Sheet.
- 26. Conversion to Single Currency**
- 26.1 For the evaluation purposes, prices shall be converted to a single currency using the selling rates of exchange, source

and date indicated in the **Data Sheet**.

27. Combined Quality and Cost Evaluation

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|--|---|
| a. Quality- and Cost-Based Selection (QCBS) | 27.1 In the case of QCBS, the total score is calculated by weighting the technical and financial scores and adding them as per the formula and instructions in the Data Sheet . The Consultant achieving the highest combined technical and financial score will be invited for negotiations. |
| b. Fixed-Budget Selection (FBS) | 27.2 In the case of FBS, those Proposals that exceed the budget indicated in Clause 14.1.4 of the Data Sheet shall be rejected.

27.3 The Client will select the Consultant that submitted the highest-ranked Technical Proposal that does not exceed the budget indicated in the RFP, and invite such Consultant to negotiate the Contract. |
| c. Least-Cost Selection (LCS) | 27.4 In the case of Least-Cost Selection (LCS), the Client will select the Consultant with the lowest evaluated total price among those consultants that achieved the minimum technical score, and invite such Consultant to negotiate the Contract. |

D. Negotiations and Award

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|---------------------------------------|---|
| 28. Negotiations | 28.1 The negotiations will be held at the date and address indicated in the Data Sheet with the Consultant's representative(s) who must have written power of attorney to negotiate and sign a Contract on behalf of the Consultant.

28.2 The Client shall prepare minutes of negotiations that are signed by the Client and the Consultant's authorized representative. |
| a. Availability of Key Experts | 28.3 The invited Consultant shall confirm the availability of all Key Experts included in the Proposal as a pre-requisite to the negotiations, or, if applicable, a replacement in accordance with Clause 12 of the ITC. Failure to confirm the Key Experts' availability may result in the rejection of the Consultant's Proposal and the Client proceeding to negotiate the Contract with the next-ranked Consultant.

28.4 Notwithstanding the above, the substitution of Key Experts at the negotiations may be considered if due solely to |

circumstances outside the reasonable control of and not foreseeable by the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall offer a substitute Key Expert within the period of time specified in the letter of invitation to negotiate the Contract, who shall have equivalent or better qualifications and experience than the original candidate.

b. Technical negotiations

28.5 The negotiations include discussions of the Terms of Reference (TORs), the proposed methodology, the Client's inputs, the special conditions of the Contract, and finalizing the "Description of Services" part of the Contract. These discussions shall not substantially alter the original scope of services under the TOR or the terms of the contract, lest the quality of the final product, its price, or the relevance of the initial evaluation be affected.

c. Financial negotiations

28.6 The negotiations include the clarification of the Consultant's tax liability in the Client's country and how it should be reflected in the Contract.

28.7 If the selection method included cost as a factor in the evaluation, the total price stated in the Financial Proposal for a Lump-Sum contract shall not be negotiated.

29. Conclusion of Negotiations

29.1 The negotiations are concluded with a review of the finalized draft Contract, which then shall be initialed by the Client and the Consultant's authorized representative.

29.2 If the negotiations fail, the Client shall inform the Consultant in writing of all pending issues and disagreements and provide a final opportunity to the Consultant to respond. If disagreement persists, the Client shall terminate the negotiations informing the Consultant of the reasons for doing so. After having obtained the Bank's no objection, the Client will invite the next-ranked Consultant to negotiate a Contract. Once the Client commences negotiations with the next-ranked Consultant, the Client shall not reopen the earlier negotiations.

30. Award of Contract

30.1 After completing the negotiations the Client shall obtain the Bank's no objection to the negotiated draft Contract, if applicable; sign the Contract; publish the award information as per the instructions in the **Data Sheet**; and promptly notify the other shortlisted Consultants.

30.2 The Consultant is expected to commence the assignment on the date and at the location specified in the **Data Sheet**.

E. Data Sheet

["Notes to Client" shown in brackets throughout the text are provided for guidance to prepare the Data Sheet; they should be deleted from the final RFP to be sent to the shortlisted Consultants]

A. General	
ITC Clause Reference	
1 (c)	La PDR
1(k)^{1,2} (definitions)	<p>ADB differentiates between International and National Experts. International experts mean experts who are citizens of an ADB member country. National experts mean experts who are citizens of the Client's country. Nationals of a DMC who possess the appropriate international experience may be considered for assignments that require international expertise, whether in the national's own country or in other DMCs. The international experience that is required for a particular assignment will be defined and described in the pertinent TOR.</p>
2.1	<p>Name of the Client: <u>Department of Roads under the Ministry of Public Works and Transport</u> Method of selection: <u>Quality and Cost Based Selection (QCBS)</u> as per Applicable Guidelines: Guidelines on Use of Consultants by ADB and Its Borrowers available on http://www.adb.org/documents/guidelines-use-consultants-asian-development-bank-and-its-borrowers?ref=/site/business-opportunities/operational-procurement/consulting</p>
2.2	<p>Financial Proposal to be submitted together with Technical Proposal: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> [Notes to Client: Client shall request Financial proposal submission at the same time for QCBS, FBS, LCS, CQS and SSS]</p> <p>The name of the assignment is: <u>CS1- Project Management Consultants</u></p>
2.3	<p>A pre-proposal conference will be held: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/> [If "Yes", fill in the following:] Date of pre-proposal conference: <u>to be determined</u></p>

¹ ADB Consulting Services Guidelines 1.3.

² Citizenship is determined from the passport the expert holds or other legal document in the case of national experts in certain countries who do not have passports.

	<p>Time: _____ Address: <u>Ministry of Public Works and Transport of Lao PDR, Lanxang Ave., Vientiane Capital, Lao PDR</u> Telephone: <u>856-21 451942</u> Facsimile: <u>856-21 412250</u> E-mail: webmaster@mpwt.gov.la Contact person/conference coordinator: <u>Mr. Litta Khattiya, DOR-MPWT Deputy Director General</u></p> <p>[Note to Client: For complex assignments, Client is advised to hold a pre-proposal meeting]</p>
2.4	<p>The Client will provide the following inputs, project data, reports, etc. to facilitate the preparation of the Proposals: Please refer to Section 7, TOR</p>
4.1	<p>[If “Unfair Competitive Advantage” applies to the selection, explain how it is mitigated, including listing the reports, information, documents, etc. and indicating the sources where these can be downloaded or obtained by the shortlisted Consultants] – Not Applicable</p>
6.3.1	<p>A list of debarred firms and individuals is available at the Bank’s external website http://www.adb.org/Integrity/sanctions.asp</p>
<p>B. Preparation of Proposals</p>	
9.1	<p>This RFP has been issued in the English language. Proposals shall be submitted in English language. All correspondence exchange shall be in English language.</p>
10.1	<p>The Proposal shall comprise the following:</p> <p><u>For FULL TECHNICAL PROPOSAL (FTP):</u> 1st Inner Envelope with the Technical Proposal:</p> <ol style="list-style-type: none"> (1) Power of Attorney to sign the Proposal (2) Proof of Legal Status and Eligibility (3) TECH-1(including Statement of Undertaking if required under Data Sheet 10.2 below) (4) TECH-2 (5) TECH-3 (6) TECH-4 (7) TECH-5 (8) TECH-6 <p style="text-align: center;">OR</p>

	<p>AND</p> <p>2nd Inner Envelope with the Financial Proposal (if applicable):</p> <p>(1) FIN-1 (2) FIN-2 (3) FIN-3 (4) FIN-4</p> <p>Proof of legal status establish Consultant’s legal capacity to enter into binding and enforceable contracts and may be supported by:</p> <ul style="list-style-type: none"> • Certificate of incorporation in an ADB member country. • Partnerships duly organized in an ADB member country • Universities, institutions, public sector organizations, and NGOs that are not legally incorporated shall provide other documentation that establishes their legal capacity to enter into binding and enforceable contracts with the Client (such as charter, statute, etc.). <p>Please refer to CHECKLIST OF REQUIRED FORMS in Section 3</p>
10.2	<p>Statement of Undertaking is required Yes <input checked="" type="checkbox"/> or No _____</p> <p>If Yes, make sure to include paragraph (h) in Form TECH-1]</p>
11.1	<p>Participation of Sub-consultants, Key Experts and Non-Key Experts in more than one Proposal is permissible Yes <input checked="" type="checkbox"/> or No _____</p> <p>[Notes to Client: Default provision is “Yes” that participation of local sub-consultants, international or national independent expert in more than one Proposal is permissible. Participation of experts who are regular employees of one of the lead firms in more than one proposal is not permissible, unless such firm declines to present the proposal]</p>
12.1	<p>Proposals must remain valid for less than 120 days]calendar days after the proposal submission deadline (i.e., until: [insert the date]).</p> <p>[Notes to Client: Duration of validity of the proposals shall be adequate to complete evaluation of the proposals, receive all necessary Government and ADB endorsements and negotiate the contract.]</p>
12.9	<p>[Notes to Client: Default provision is that outsourcing of the whole Services is not allowed. Any deviations from the default provisions and introduction of a scale to measure sub-contracting would require (a) prior agreement with ADB,</p>

	and (b) inserting description of specific requirements.] Not Allowed
13.1	<p>Clarifications may be requested no later than <u>14</u> days prior to the submission deadline.</p> <p>The contact information for requesting clarifications is: : <u>Mr. Litta Khattiya, DOR - MPWT Deputy Director General</u> Facsimile: <u>856-21 412250</u> E-mail: <u>webmaster@mpwt.gov.la</u></p>
14.1.1	<p>Shortlisted Consultants may associate with</p> <p>(a) non-shortlisted consultant(s): Yes <u> ✓ </u> or No <u> </u>, Or</p> <p>(b) other shortlisted Consultants: Yes <u> </u> or No <u> ✓ </u></p> <p>[Notes to Client: Default provision is for (a) “Yes” and (b) “No”, e.g. Shortlisted consultants may <u>not</u> associate with other shortlisted consultants, but may associate with other non-shortlisted consultants. Any deviations from the default provisions would require ADB prior approval]</p>
14.1.2	<p>Estimated input of international Key Experts’ time-input: <u>136 person-months</u></p> <p>Estimated input of national Key Experts’ time-input: <u>209 person-months</u></p> <p>AND/ OR</p> <p>Estimated total cost of the assignment for the assignment: 6.31 Million USD</p>
14.1.3 for time-based contracts only	<p>Minimum time-input of international Key Experts’ is: <u>136 person-months person-months.</u></p> <p>Minimum time-input of national Key Experts’ is: <u>209 person-months</u></p> <p>For the evaluation and comparison of Proposals only: if a Proposal includes less than the required minimum time-input, the Client will adjust the proposal price following the Guidance Note for Financial Evaluation: http://www.adb.org/site/business-opportunities/operational-procurement/consulting/documents</p> <p>Proposals that quoted higher than the required minimum of time-input will not be adjusted.</p>
14.1.4 (QCBS with maximum	<p>The Client may disqualify evaluated financial proposal exceeding maximum budget.</p>

budget)	
15.2	<p>The format of the Technical Proposal to be submitted is: FTP <input checked="" type="checkbox"/> or STP _____ or BTP _____</p> <p>Please refer to Checklist of Required Forms in Section 3</p> <p>Submission of the Technical Proposal in a wrong format may lead to the Proposal being deemed non-responsive to the RFP requirements.</p>
16.1	<ol style="list-style-type: none"> (1) a per diem allowance, including hotel, for experts for every day of absence from the home office for the purposes of the Services; (2) cost of travel by the most appropriate means of transport and the most direct practicable route; (3) cost of office accommodation, including overheads and back-stop support; (4) communications costs; (5) cost of reports production (including printing) and delivering to the Client; (6) other allowances where applicable <p>[insert other relevant type of expenses, if/as applicable]</p> <p>Only for Time-Based Contracts:</p> <p>Provisional sums [10%] Contingency [10%]</p>
16.2	<p>A price adjustment provision applies to remuneration rates: Yes <input checked="" type="checkbox"/> or No _____</p> <p>[Applies to all Time-Based contracts with a duration exceeding 18 months. In exceptional circumstances, can also apply to Lump-Sum contracts assignments longer than 18 months in duration with prior agreement with ADB.]</p> <p>[If “Yes”, follow SCC 42.3]</p>
16.3	<p>[If the Client has obtained a tax exemption applicable to the Contract, insert “The Client has obtained an exemption for the Consultant from payment</p>

	<p>of _____ [insert the tax description. E.g., VAT, or local indirect taxes, etc.] in the Client’s country as per [insert reference to the applicable official source that issued an exemption].</p> <p>[If there is no tax exemption in the Client’s country, insert the following: “Information on the Consultant’s tax obligations in the Client’s country can be found [insert reference to the appropriate official source].”</p>
16.4	<p>The Financial Proposal shall be stated in the following currencies:</p> <p>Consultant may express the price for their Services in any fully convertible currency, singly or in combination of up to three foreign currencies.</p> <p>The Financial Proposal should state local costs in the Client’s country currency (local currency): Yes <input checked="" type="checkbox"/> or No _____.</p> <p>Note :</p>
C. Submission, Opening and Evaluation	
17.1	The Consultants “shall not” have the option of submitting their Proposals electronically.
17.4	<p>The Consultant must submit:</p> <p>(a) Technical Proposal: one (1) original and <u>five</u> [5] copies;</p> <p>(b) Financial Proposal: one (1) original.</p>
17.9	<p>The Proposals must be received at the address below no later than:</p> <p>Date: _____ day/month/year [for example, 15 January 2011]</p> <p>Time: _____ [insert time in 24h format, for example, “16:00 local time”]</p> <p>[If appropriate, add translation of the warning marking [“Do not open...”] in the national language to the outer sealed envelope]</p> <p>The Proposal submission address is: <u>Ministry of Public Works and Transport, Lanxang Ave., Vientiane Capital, Lao PDR</u></p> <p>The Consultant is requested to submit copies of the Technical Proposal at the same time to ADB HQ in Manila and ADB Resident Mission:</p> <p><u>For ADB HQ, Manila:</u> c/o Director, OSP2, ADB 6 ADB Avenue, Mandaluyong, Metro Manila 1550 Philippines</p> <p><u>For ADB Resident Mission in the Country:</u> [insert address of ADB RM]</p>

	[Note to Client: Proposal submission on or before the deadline shall be recorded by the Client when the Client receives the Proposal and its copies as indicated in DS17.4.]
19.1	<p>An online option of the opening of the Technical Proposals is offered: Yes ___ or No <input checked="" type="checkbox"/> ___</p> <p>[If yes, insert “The online opening procedure shall be: [describe the procedure for online opening of Technical Proposals.]</p> <p>The opening shall take place at: [Insert: “same as the Proposal submission address” OR insert and fill in the following: Street Address: _____ Floor, room number _____ City: _____ Country: _____ Date: ___ same as the submission deadline indicated in 17.7. Time: ___ [insert time in 24h format, for example – “16:00 local time [The time should be immediately after the time for the submission deadline]</p>
19.2	<p>In addition, the following information will be read aloud at the opening of the Technical Proposals :</p> <p>Confirmation that invitation to submit proposal was not transferred to another party.</p> <p>[State what additional information will be read out and recorded in the opening minutes]</p>
20.2	The Client will follow the Guidance Note for Financial Evaluation: http://www.adb.org/site/business-opportunities/operational-procurement/consulting/documents
21.1	<p>The evaluation criteria, sub-criteria, and point system are specified in the Summary and Personnel Evaluation Sheets that are attached to the Data Sheet.</p> <p>The minimum technical score (St) required to pass is: 750 (on a scale of 1 to 1000)</p>
23.1	<p>An online option of the opening of the Financial Proposals is offered: Yes ___ or No <input checked="" type="checkbox"/> ___.</p> <p>[If yes, insert “The online opening procedure shall be: [describe the procedure for online opening of Financial Proposals.]</p>

23.1 and 23.2	The Client will read aloud only overall technical scores.
25.2	<p>For the purpose of the evaluation, the Client will exclude: (a) all local identifiable indirect taxes, including VAT, on the contract invoices; and (b) all additional local indirect tax on the remuneration of services rendered by non-resident experts of the Consultant in the Client's country. At contract negotiations, all applicable indirect local taxes will be discussed and agreed (using the itemized list as guidance but not limiting to it) and added to the contract amount in a separate line, also indicating which taxes shall be paid by the Consultant and which are withheld and paid by the Client on behalf of the Consultant.</p> <p>OR [In exceptional cases only, in particular, in case of sub-national lending, when indirect taxes cannot be fully identified, replace the text above with: "For evaluation purposes, such taxes are deemed included in the Consultant's financial proposal.]</p>
26.1	<p>The single currency for the conversion of all prices expressed in various currencies into a single one is [indicate local currency or fully convertible foreign currency]_____</p> <p>[Note to Client: for ease of comparison, it is preferable to indicate in the currency of the budget]</p> <p>The official source of the selling (exchange) rate is: <u>Bank of Lao PDR</u></p> <p>The date of the exchange rate is: <u>28 days prior to the deadline for submission of proposal</u></p> <p>[The date shall not be earlier than four (4) weeks prior to the deadline for submission of proposals and no later than the date of the original validity of Proposals.]</p>
27.1 [a. QCBS only]	<p>The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 1000.</p> <p>The formula for determining the financial scores (Sf) of all other Proposals is calculated as following:</p> <p>Sf = 1000 x Fm/ F, in which "Sf" is the financial score, "Fm" is the lowest ETP [Evaluated Total Price (ETP) which is equal to the Adjusted Total Price (ATP) less Non-competitive Component, i.e., provisional sums and contingency], and "F" is the ETP of the proposal under consideration.</p> <p>The weights given to the Technical (T) and Financial (P) Proposals are:</p> <p>T = <u>90%</u> [Insert weight:], and</p> <p>P = <u>10%</u> [Insert weight:]</p> <p>[Note to the Client: Values for T and P shall be consistent with those indicated</p>

	<p>in the Procurement Plan]</p> <p>Proposals are ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following: $S = St \times T\% + Sf \times P\%$.</p>
	D. Negotiations and Award
28.1	<p>Expected date and address for contract negotiations: Date: <u>February 2016</u> [insert realistic date] Address: <u>Ministry of Public Works and Transport, Lanxang Ave., Vientiane Capital, Lao PDR</u></p>
30.1	<p>The publication of the contract award information following the completion of the contract negotiations and contract signing will be done as following: www.adb.org and www.mpwt.gov.la</p> <p>The publication will be done within <u>90</u> days after the contract signing.</p>
30.2	<p>Expected date for the commencement of the Services: Date: <u>April 2016</u> at: <u>Vientiane, Lao PDR</u></p>

Insert the Summary and Personnel Evaluation Sheet based on the type of Proposal used.

Appendix 1 – [Summary and Personnel Evaluation Sheet for Full Technical Proposal](#)

F. Disqualification of an Expert

	Zero (0%) rating resulting in disqualification will be given to a nominated expert in particular circumstances:	Reference
1.	The expert is not a citizen (determined from the passport the expert holds or other legal document in the case of national experts in certain countries who do not have passports) of an ADB member country.	ITC 6.1/2
2.	The expert is proposed for a national position but is not a citizen of that country.	ITC 6.2
3.	The expert failed to state his citizenship on the CV.	ITC 6.1/2, Section 6, TECH-6
4.	The expert's CV is not signed.	TECH-6
5.	The expert is a current employee of the Client.	ITC 6.2/6.3.4, TECH-6
6.	The Consultant and the expert failed to disclose any situation of an actual or potential conflict of interest about the expert.	ITC 3/6.2, Section 6

Section 3. Technical Proposal – Standard Forms

{Notes to Consultant shown in brackets { } throughout Section 3 provide guidance to the Consultant to prepare the Technical Proposal; they should not appear on the Proposals to be submitted.}

CHECKLIST OF REQUIRED FORMS

Required for FTP, STP or BTP, (√)			FORM	DESCRIPTION	Page Limit		
FTP	STP	BTP					
√	√	√	TECH-1	Technical Proposal Submission Form.			
√	√	√	TECH-1 Attachment	Proof of legal status and eligibility			
“√” If applicable			TECH-1 Attachment	If the Proposal is submitted by a joint venture, attach a letter of intent or a copy of an existing agreement.			
“√” If applicable			Power of Attorney	No pre-set format/form. In the case of a Joint Venture, several are required: a power of attorney for the authorized representative of each JV member, and a power of attorney for the representative of the lead member to represent all JV members			
FTP	STP	BTP			FTP	STP	BTP
√			TECH-2	Consultant’s Organization and Experience.			
√			TECH-2A	A. Consultant’s Organization	2	n/a	n/a
√			TECH-2B	B. Consultant’s Experience	20	n/a	n/a
√			TECH-3	Comments or Suggestions on the Terms of Reference and on Counterpart Staff and Facilities to be provided by the Client.	[See footnote] ³		
√			TECH-3A	A. On the Terms of Reference	n/a	n/a	n/a
√			TECH-3B	B. On the Counterpart Staff and Facilities	2	n/a	n/a
√	√		TECH-4	Description of the Approach, Methodology, and Work Plan for Performing the Assignment	50	10	1
√	√	√	TECH-5	Work Schedule and Planning for Deliverables	n/a	n/a	n/a
√	√	√	TECH-6	Team Composition, Key Experts Inputs, and attached Curriculum Vitae (CV)	5	5	5

³ For the FTP, the total number of pages for combined forms TECH-3(FTP) and TECH-4 (FTP) should not exceed 50. A page is defined as one printed side of A4 or letter-size paper.

FORM TECH-1**TECHNICAL PROPOSAL SUBMISSION FORM**

{Location, Date}

To: [Name and address of Client]

Dear Sirs:

We, the undersigned, offer to provide the consulting services for [Insert title of assignment] in accordance with your Request for Proposals dated [Insert Date] and our Proposal. [Select appropriate wording depending on the selection method stated in the RFP: “We are hereby submitting our Proposal, which includes this Technical Proposal and a Financial Proposal sealed in a separate envelope” or, if only a Technical Proposal is invited “We hereby are submitting our Proposal, which includes this Technical Proposal only in a sealed envelope.”].

{If the Consultant is a joint venture, insert the following: We are submitting our Proposal in a joint venture with: {Insert a list with full name and the legal address of each member, and indicate the lead member}. We have attached a copy {insert: “of our letter of intent to form a joint venture” or, if a JV is already formed, “of the JV agreement”} signed by every participating member, which details the likely legal structure of and the confirmation of joint and severable liability of the members of the said joint venture.

OR

If the Consultant’s Proposal includes Sub-consultants, insert the following: We are submitting our Proposal with the following firms as Sub-consultants: {Insert a list with full name and country of each Sub-consultant.}

We hereby declare that:

- (a) All the information and statements made in this Proposal are true and we accept that any misinterpretation or misrepresentation contained in this Proposal may lead to our disqualification by the Client and/or may be sanctioned by the Bank.
- (b) Our Proposal shall be valid and remain binding upon us for the period of time specified in the Data Sheet, Clause 12.1.
- (c) We have no conflict of interest in accordance with ITC 3.

-
- (d) We meet the eligibility requirements as stated in ITC 6.
 - (e) Neither we, nor our JV/associate partners/ sub-consultants or any of the proposed experts prepared the TOR for this consulting assignment
 - (f) Except as stated in the Data Sheet, Clause 12.1, we undertake to negotiate a Contract on the basis of the proposed Key Experts. We accept that the substitution of Key Experts for reasons other than those stated in ITC Clause 12 and ITC Clause 28.4 may lead to the termination of Contract negotiations.
 - (g) Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations.
 - (h) In competing for (and, if the award is made to us, in executing) the Contract, we undertake to observe the laws against fraud and corruption, including bribery, in force in the country of the Client.]

We undertake, if our Proposal is accepted and the Contract is signed, to initiate the Services related to the assignment no later than the date indicated in Clause 30.2 of the Data Sheet.

We understand that the Client is not bound to accept any Proposal that the Client receives.

We remain,

Yours sincerely,

Authorized Signature {In full and initials}: _____

Name and Title of Signatory: _____

Name of Consultant (company's name or JV's name): _____

In the capacity of: _____

Address: _____

Contact information (phone and e-mail): _____

{For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached}

FORM TECH-2 (FOR FULL TECHNICAL PROPOSAL ONLY)**CONSULTANT'S ORGANIZATION AND EXPERIENCE**

Form TECH-2: a brief description of the Consultant's organization and an outline of the recent experience of the Consultant that is most relevant to the assignment. In the case of a joint venture, information on similar assignments shall be provided for each partner. For each assignment, the outline should indicate the names of the Consultant's Key Experts and Sub-consultants who participated, the duration of the assignment, the contract amount (total and, if it was done in a form of a joint venture or a sub-consultancy, the amount paid to the Consultant), and the Consultant's role/involvement.

A - Consultant's Organization

1. Provide here a brief description of the background and organization of your company, and – in case of a joint venture – of each member for this assignment.
2. Include organizational chart, a list of Board of Directors, and beneficial ownership⁴.

B - Consultant's Experience

1. List only previous similar assignments successfully completed in the last [.....] years.
2. List only those assignments for which the Consultant was legally contracted by the Client as a company or was one of the joint venture partners. Assignments completed by the Consultant's individual experts working privately or through other consulting firms cannot be claimed as the relevant experience of the Consultant, or that of the Consultant's partners or sub-consultants, but can be claimed by the Experts themselves in their CVs. The Consultant should be prepared to substantiate the claimed experience by presenting copies of relevant documents and references if so requested by the Client.

⁴ Beneficial ownership shows all owners and major shareholders of the company, including any person or entity who enjoys the benefit of ownership including, but not limited to power of control and influence of the business transactions, receiving dividends or profit share. This includes direct or indirect ownership of the company (e.g. ownership by close relatives).

Duration	Assignment name/& brief description of main deliverables/outputs	Name of Client & Country of Assignment	Approx. Contract value (<i>in US\$ or EURO</i>)/ Amount paid to your firm	Role on the Assignment
{e.g., Jan.2009–Apr.2010}	{e.g., “Improvement quality of.....”: designed master plan for rationalization of; }	{e.g., Ministry of, country}	{e.g., US\$1 mill/US\$0.5 mill}	{e.g., Lead partner in a JV A&B&C}
{e.g., Jan-May 2008}	{e.g., “Support to sub-national government.....” : drafted secondary level regulations on.....}	{e.g., municipality of....., country}	{e.g., US\$0.2 mil/US\$0.2 mil}	{e.g., sole Consultant}

FORM TECH-3 (FOR FULL TECHNICAL PROPOSAL)**COMMENTS AND SUGGESTIONS ON THE TERMS OF REFERENCE, COUNTERPART STAFF, AND FACILITIES TO BE PROVIDED BY THE CLIENT**

Form TECH-3: comments and suggestions on the Terms of Reference that could improve the quality/effectiveness of the assignment; and on requirements for counterpart staff and facilities, which are provided by the Client, including: administrative support, office space, local transportation, equipment, data, etc.

A - On the Terms of Reference

{improvements to the Terms of Reference, if any}

B - On Counterpart Staff and Facilities

{Include comments on counterpart staff and facilities to be provided by the Client. For example, administrative support, office space, local transportation, equipment, data, background reports, etc., if any}

FORM TECH-4 (FOR FULL TECHNICAL PROPOSAL ONLY)**DESCRIPTION OF APPROACH, METHODOLOGY, AND WORK PLAN IN
RESPONDING TO THE TERMS OF REFERENCE**

Form TECH-4: a description of the approach, methodology and work plan for performing the assignment, including a detailed description of the proposed methodology and staffing for training, if the Terms of Reference specify training as a specific component of the assignment.

{Suggested structure of your Technical Proposal (in FTP format):

- a) Technical Approach and Methodology
- b) Work Plan
- c) Organization and Staffing}

- a) **Technical Approach and Methodology.** {Please explain your understanding of the objectives of the assignment as outlined in the Terms of Reference (TORs), the technical approach, and the methodology you would adopt for implementing the tasks to deliver the expected output(s), and the degree of detail of such output. Please do not repeat/copy the TORs in here.}
- b) **Work Plan.** {Please outline the plan for the implementation of the main activities/tasks of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Client), and tentative delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing your understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents (including reports) to be delivered as final output(s) should be included here. The work plan should be consistent with the Work Schedule Form.}
- c) **Organization and Staffing.** {Please describe the structure and composition of your team, including the list of the Key Experts, Non-Key Experts and relevant technical and administrative support staff.}

FORM TECH-4 (FOR SIMPLIFIED TECHNICAL PROPOSAL ONLY)**DESCRIPTION OF APPROACH, METHODOLOGY, AND WORK PLAN FOR
PERFORMING THE ASSIGNMENT**

Form TECH-4: a description of the approach, methodology, and work plan for performing the assignment, including a detailed description of the proposed methodology and staffing for training, if the Terms of Reference specify training as a specific component of the assignment.

{Suggested structure of your Technical Proposal}

- a) **Technical Approach, Methodology, and Organization of the Consultant's team.** {Please explain your understanding of the objectives of the assignment as outlined in the Terms of Reference (TOR), the technical approach, and the methodology you would adopt for implementing the tasks to deliver the expected output(s); the degree of detail of such output; and describe the structure and composition of your team. Please do not repeat/copy the TORs in here.}
- b) **Work Plan and Staffing.** {Please outline the plan for the implementation of the main activities/tasks of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Client), and tentative delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan and work schedule showing the assigned tasks for each expert. A list of the final documents (including reports) to be delivered as final output(s) should be included here. The work plan should be consistent with the Work Schedule Form.}
- c) **Comments (on the TOR and on counterpart staff and facilities)**
{Your suggestions should be concise and to the point, and incorporated in your Proposal. Please also include comments, if any, on counterpart staff and facilities to be provided by the Client. For example, administrative support, office space, local transportation, equipment, data, background reports, etc.}

FORM TECH-5 (FOR FTP, STP AND BTP)

WORK SCHEDULE AND PLANNING FOR DELIVERABLES

N°	Deliverables ¹ (D-..)	Months												
		1	2	3	4	5	6	7	8	9	n	TOTAL	
D-1	{e.g., Deliverable #1: Report A													
	1) data collection													
	2) drafting													
	3) inception report													
	4) incorporating comments													
	5)													
	6) delivery of final report to Client}													
D-2	{e.g., Deliverable #2:.....}													
n														

- 1 List the deliverables with the breakdown for activities required to produce them and other benchmarks such as the Client's approvals. For phased assignments, indicate the activities, delivery of reports, and benchmarks separately for each phase.
- 2 Duration of activities shall be indicated in a form of a bar chart.
- 3 Include a legend, if necessary, to help read the chart.

FORM TECH-6 (FOR FTP, STP AND BTP)

TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS' INPUTS

No	Name, Nationality and DOB	Expert's input (in person/month) per each Deliverable (listed in TECH-5)										Total time-input (in Months)			
		Position		D-1		D-2		D-3		D-...		Home	Field	Total
KEY EXPERTS															
International															
K-1	{e.g., Mr. Abbbb, PAK, 15.06.1954}	[Team Leader]	[Home]	[2 month]	[1.0]	[1.0]									
			[Field]	[0.5 m]	[2.5]	[0]									
K-2	e.g., Mr. Xxyyyy, USA, 20.04.1969}														
K-3															
National															
n															
											Subtotal				
NON-KEY EXPERTS															
N-1			[Home]												
			[Field]												
N-2															
n															
											Subtotal				
											Total				

- 1 For Key Experts, the input should be indicated individually for the same positions as required under the Data Sheet ITC21.1.
- 2 Months are counted from the start of the assignment/mobilization. One (1) month equals twenty two (22) working (billable) days. One working (billable) day shall be not less than eight (8) working (billable) hours.
- 3 "Home" means work in the office in the expert's country of residence. "Field" work means work carried out in the Client's country or any other country outside the expert's country of residence, at Client's request.



Full time input



Part time input

**FORM TECH-6
(CONTINUED)**

CURRICULUM VITAE (CV)

Position Title and No.	{e.g., K-1, TEAM LEADER}
Name of Firm	<i>Insert name of firm proposing the expert</i>
Name of Expert:	{Insert full name}
Date of Birth:	{day/month/year}
Citizenship	

Education: {List college/university or other specialized education, giving names of educational institutions, dates attended, degree(s)/diploma(s) obtained}

Employment record relevant to the assignment: {Starting with present position, list in reverse order. Please provide dates, name of employing organization, titles of positions held, *type of employment (full time, part time, contractual)*, types of activities performed and location of the assignment, and contact information of previous clients and employing organization(s) who can be contacted for references. Past employment that is not relevant to the assignment does not need to be included.}

Period	Employing organization and your title/position. Contact information for references	Country	Summary of activities performed relevant to the Assignment
[e.g., May 2005-present]	[e.g., Ministry of, advisor/consultant to... For references: Tel...../e-mail.....; Mr. Bbbbbb, deputy minister]		

Membership in Professional Associations and Publications:

Language Skills (indicate only languages in which you can work): _____

Adequacy for the Assignment:

Detailed Tasks Assigned on Consultant's Team of Experts:	Reference to Prior Work/Assignments that Best Illustrates Capability to Handle the Assigned Tasks
---	--

{List all deliverables/tasks as in TECH- 5 in which the Expert will be involved}	

Expert's contact information: (e-mail....., phone.....)

Certification:

I, the undersigned, certify to the best of my knowledge and belief that

(i) This CV correctly describes my qualifications and experience

(ii) I am not a current employee of the Executing or the Implementing Agency

(iii) In the absence of medical incapacity, I will undertake this assignment for the duration and in terms of the inputs specified for me in Form TECH 6 provided team mobilization takes place within the validity of this proposal.

(iv) I was not part of the team who wrote the terms of reference for this consulting services assignment

(v) I am not currently debarred by a multilateral development bank

(vi) I certify that I have been informed by the firm that it is including my CV in the Proposal for the {name of project and contract}. I confirm that I will be available to carry out the assignment for which my CV has been submitted in accordance with the implementation arrangements and schedule set out in the Proposal.

If CV is signed by the firm's authorized representative:

(vii) I, as the authorized representative of the firm submitting this Proposal for the {name of project and contract}, certify that I have obtained the consent of the named expert to submit his/her CV, and that s/he will be available to carry out the assignment in accordance with the implementation arrangements and schedule set out in the Proposal, and confirm his/her compliance with paras (i) to (v) above.

I understand that any willful misstatement described herein may lead to my disqualification or dismissal, if engaged.

_____ Date: _____
[Signature of expert or authorized representative of the firm]⁵ Day/Month/Year

Full name of authorized representative: _____

⁴ This CV can be signed by a senior representative of the Consultant provided during proposal submission. If the Consultant's proposal is ranked first, a copy of the CV signed by the expert and/or specialist must be submitted to the Client prior to the commencement of contract negotiations.

Section 4. Financial Proposal - Standard Forms

{*Notes to Consultant* shown in brackets { } provide guidance to the Consultant to prepare the Financial Proposals; they should not appear on the Financial Proposals to be submitted.}

Financial Proposal Standard Forms shall be used for the preparation of the Financial Proposal according to the instructions provided in Section 2.

NOTE: The authorized representative of the Consultant who signs the Proposal is advised to initial all pages of the original Financial Proposal.

FIN-1 Financial Proposal Submission Form

FIN-2 Summary of Costs

FIN-3 Breakdown of Remuneration

FIN-4 Other Expenses, Provisional Sums and Contingency

FORM FIN-1
FINANCIAL PROPOSAL SUBMISSION FORM

{Location, Date}

To: [Name and address of Client]

Dear Sirs:

We, the undersigned, offer to provide the consulting services for [Insert title of assignment] in accordance with your Request for Proposal dated [Insert Date] and our Technical Proposal.

Our attached Financial Proposal is for the amount of {Indicate the corresponding to the amount(s) currency(ies)} {Insert amount(s) in words and figures}, [Insert "including" or "excluding"] of all indirect local taxes in accordance with Clause 25.2 in the Data Sheet. The estimated amount of local indirect taxes is {Insert currency} {Insert amount in words and figures} which shall be confirmed or adjusted, if needed, during negotiations. {Please note that all amounts shall be the same as in Form FIN-2}.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, i.e. before the date indicated in Clause 12.1 of the Data Sheet.

Commissions, gratuities or fees paid or to be paid by us to an agent or any other party relating to preparation or submission of this Proposal and Contract execution, paid if we are awarded the Contract, are listed below:

Name and Address of Agent(s)/Other party	Amount and Currency	Purpose of Commission or Gratuity
_____	_____	_____
_____	_____	_____

{If no payments are made or promised, add the following statement: "No commissions, gratuities or fees have been or are to be paid by us to agents or any other party relating to this Proposal and, in the case of award, Contract execution."}

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

We remain,

Yours sincerely,

Authorized Signature {In full and initials}: _____

Name and Title of Signatory: _____

In the capacity of: _____

Address: _____

E-mail: _____

{For a joint venture, either all members shall sign or only the lead member/consultant, in which case the power of attorney to sign on behalf of all members shall be attached.}

FORM FIN-2 SUMMARY OF COSTS

Item	Cost			
	{Consultant must state the proposed Costs in accordance with Clause 16.4 of the Data Sheet. Payments will be made in the currency(ies) expressed. Delete columns which are not used.}			
	{Insert Foreign Currency # 1}	{Insert Foreign Currency # 2, if used}	{Insert Foreign Currency # 3, if used}	{Insert Local Currency, if used and/or required (16.4 Data
Competitive Components				
Remuneration, Key Experts				
Remuneration, Non-Key Experts				
Reimbursable Expenses				
Sub-Total				
Non-Competitive Components				
Provisional Sums				
Contingency				
Sub-Total				
Total Cost of the Financial Proposal ⁶				
Indirect Local Tax Estimates ⁷				
(i) {insert type of tax e.g., VAT or sales tax}				
(ii) {e.g., income tax on non-resident experts}				
(iii) {insert type of tax}				
<u>Total Estimate for Indirect Local Tax:</u>				

⁶ Should match the amount in Form FIN-1.

⁷ To be discussed and finalized at the negotiations if the Contract is awarded.

FORM FIN-3 BREAKDOWN OF REMUNERATION ⁸

When used for Lump-Sum contract assignment, information to be provided in this Form shall only be used to demonstrate the basis for the calculation of the Contract's ceiling amount; to calculate applicable taxes at contract negotiations; and, if needed, to establish payments to the Consultant for possible additional services requested by the Client. This Form shall not be used as a basis for payments under Lump-Sum contracts

No.	Name	Nationality	Currency	Person-month Remuneration Rate (Home)	Time Input in Person/Month (from TECH-6) (Home)	{Currency 1- as in FIN-2}	{Currency 2- as in FIN-2}	{Currency 3- as in FIN-2}	{Local Currency- as in FIN-2}
	Position (as in TECH-6)	Firm		Person-month Remuneration Rate (Field)	Time Input in Person/Month (from TECH-6) (Field)				
KEY EXPERTS (International)⁹									
1.									
2.									
Sub-Total Costs									
KEY EXPERTS (National)									
1.									
2.									
Sub-Total Costs									
Total Costs: Key Experts (International and National)									
NON-KEY EXPERTS									
1.									
2.									
Total Costs: Non-Key Experts									
TOTAL COSTS: KEY AND NON-KEY EXPERTS									

⁸ In the case of selections that do not include cost as an evaluation factor (i.e., QBS, CQS, and SSS), the Client may use an expanded version of this Form to add columns to request social charges, overhead, other charges (such as premium for field assignments in difficult locations) and the multiplier.

⁹ As identified in the Summary and Personnel Evaluation Sheet.

Sample Form

Consultant:
Assignment:

Country:
Date:

Consultant's Representations Regarding Costs and Charges

We hereby confirm that:

- (a) the basic fees indicated in the attached table are taken from the firm's payroll records and reflect the current rates of the Experts listed which have not been raised other than within the normal annual pay increase policy as applied to all the Consultant's Experts;*
- (b) attached are true copies of the latest pay slips of the Experts listed;*
- (c) the away- from- home office allowances indicated below are those that the Consultant has agreed to pay for this assignment to the Experts listed;*
- (d) the factors listed in the attached table for social charges and overhead are based on the firm's average cost experiences for the latest three years as represented by the firm's financial statements; and*
- (e) said factors for overhead and social charges do not include any bonuses or other means of profit-sharing.*

[Name of Consultant]

Signature of Authorized Representative

Date

Name: _____

Title: _____

FORM FIN-4 BREAKDOWN OF OTHER EXPENSES, PROVISIONAL SUMS AND CONTINGENCY

When used for Lump-Sum contract assignment, information to be provided in this Form shall only be used to demonstrate the basis for calculation of the Contract ceiling amount, to calculate applicable taxes at contract negotiations and, if needed, to establish payments to the Consultant for possible additional services requested by the Client. This form shall not be used as a basis for payments under Lump-Sum contracts

Type of Expenses, Provisional Sums and Contingency	Quantity	Unit	Currency	Unit Price	{Currency # 1- as in FIN-2}	{Currency # 2- as in FIN-2}	{Currency# 3- as in FIN-2}	{Local Currency- as in FIN-2}
Reimbursable Expenses								
{e.g., Per diem allowances}	{Day}							
{e.g., International flights}	{RT}							
{e.g., In/out airport transportation}	{Trip}							
{e.g., Communication costs}								
{ e.g., reproduction of reports}								
{e.g., Office rent}								
Sub-Total: Reimbursable Expenses								
Provisional Sums								
Item 1								
Item 2								
Sub-Total: Provisional Sums								
Contingency								
Total: Reimbursable Expenses + Provisional Sums + Contingency								

* Provisional Sums and Contingency must be expressed in the currency indicated in the data sheet.

Section 5. Eligible Countries

For the purpose of **ITC6.1**, the list of current member countries is available at <http://www.adb.org/About/membership.asp>

In reference to ITC6.3.2, for the information of shortlisted Consultants, at the present time firms, goods and services from the following countries are excluded from this selection:

Under the ITC 6.3.2 (a): _____ [list country/countries following approval by the Bank to apply the restriction *or* state “none”]

Under the ITC 6.3.2 (b): _____ [list country/countries *or* indicate “none”]

Section 6. Bank Policy – Corrupt and Fraudulent Practices

[“Notes to the Client”: this Section 6 shall not be modified]

ADB’s anticorruption policy requires that borrowers (including beneficiaries of ADB-financed activity), as well as consultants under ADB-financed contracts, observe the highest standard of ethics during the selection process and in execution of such contracts. In pursuance of this policy, in the context of these Guidelines, ADB

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) A “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
 - (ii) A “fraudulent practice” is any action or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) A “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (iv) A “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
 - (v) Abuse, this is theft, waste, or improper use of assets related to ADB-related activity, either committed intentionally or through reckless disregard;
 - (vi) Conflict of interest, which is any situation in which a party has interests that could improperly influence a party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;
 - (vii) “obstructive practice” is a)deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an ADB investigation; b) making false statements to investigators in order to materially impede an ADB investigation; c) threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or d) materially impeding ADB’s contractual rights of audit or access to information.
 - (viii) These terms collectively are called “integrity violations.”

-
- (b) will reject a proposal for an award if it determines that the consultant recommended for the award has directly, or through an agent, engaged in integrity violations in competing for the contract in question;
 - (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the borrower of ADB financing engaged in integrity violations during the consultant selection process or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation; and
 - (d) will sanction a firm or individual, at any time, in accordance with ADB's Anticorruption Policy and Integrity Principles and Guidelines (both as amended from time to time), including declaring ineligible, either indefinitely or for a stated period of time, such consulting firm, individual or successor from participation in ADB-financed or ADB-administered activities or to benefit from an ADB-financed or ADB-administered contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in integrity violations or other prohibited practices.

Section 7. Terms of Reference

Prepared by a separate, ABD hired consultant, not being part of this PPTA.

The ToR is included in the by ADB prepared Project Administration Manual, PAM.

PART II

Section 8. Conditions of Contract and Contract Forms

Foreword

1. Part II includes two types of standard Contract forms for Consulting Services (a Time-Based Contract and a Lump-Sum Contract) included in the Master Document for Selection of Consultants prepared by participating Multilateral Development Banks (MDBs).
2. **Time-Based Contract.** This type of contract is appropriate when it is difficult to define or fix the scope and the duration of the services, either because they are related to activities carried out by others for which the completion period may vary, or because the input of the consultants required for attaining the objectives of the assignment is difficult to assess. In time-based contracts the Consultant provides services on a timed basis according to quality specifications, and Consultant's remuneration is determined on the basis of the time actually spent by the Consultant in carrying out the Services and is based on (i) agreed upon unit rates for the Consultant's experts multiplied by the actual time spent by the experts in executing the assignment, and (ii) other expenses, provisional sums and contingency using actual expenses and/or agreed unit prices. This type of contract requires the Client to closely supervise the Consultant and to be involved in the daily execution of the assignment.
3. **Lump-Sum Contract.** This type of contract is used mainly for assignments in which the scope and the duration of the Services and the required output of the Consultant are clearly defined. Payments are linked to outputs (deliverables) such as reports, drawings, bill of quantities, bidding documents, or software programs. Lump-sum contracts are easier to administer because they operate on the principle of a fixed price for a fixed scope, and payments are due on clearly specified outputs and milestones. Nevertheless, quality control of the Consultant's outputs by the Client is paramount.
4. The templates are designed for use in assignments with consulting firms and shall not be used for contracting of individual experts. These standard Contract forms are to be used for complex and/or large value assignments, and/or for contracts above a monetary threshold established by the Asian Development Bank.

**HARMONIZED STANDARD FORM OF
CONTRACT**

Consultant's Services

Time-Based

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Preface

1. The standard Contract form consists of four parts: the Form of Contract to be signed by the Client and the Consultant, the General Conditions of Contract (GCC), including Attachment 1 (Bank's Policy – Corrupt and Fraudulent Practices); the Special Conditions of Contract (SCC); and the Appendices.
2. The General Conditions of Contract, including Attachment 1, shall not be modified. The Special Conditions of Contract that contain clauses specific to each Contract intend to supplement, but not over-write or otherwise contradict, the General Conditions.

CONTRACT FOR CONSULTANT'S SERVICES
Time-Based

Project Name: Project Management Consultancy Service for the Lao Road Sector
Governance and Maintenance Project

[Loan/Grant/Financing] No. _____

Contract No. _____

between

Ministry of Public Works and Transport
[Name of the Client]

and

[Name of the Consultant]

Dated: _____

I. Form of Contract

TIME-BASED

(Text in brackets [] is optional; all notes should be deleted in the final text)

This CONTRACT (hereinafter called the “Contract”) is made the *[number]* day of the month of *[month]*, *[year]*, between, on the one hand, *Ministry of Public Works and Transport* (hereinafter called the “Client”) and, on the other hand, *[name of Consultant]* (hereinafter called the “Consultant”).

*[Note: If the Consultant consist of more than one entity, the above should be partially amended to read as follows: “...(hereinafter called the “Client”) and, on the other hand, a Joint Venture (name of the JV) consisting of the following entities, each member of which will be jointly and severally liable to the Client for all the Consultant’s obligations under this Contract, namely, *[name of member]* and *[name of member]* (hereinafter called the “Consultant”).]*

WHEREAS

- (a) the Client has requested the Consultant to provide certain consulting services as defined in this Contract (hereinafter called the “Services”);
- (b) the Consultant, having represented to the Client that it has the required professional skills, expertise and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;
- (c) the Client has received *[or has applied for]* a loan *[or grant or financing]* from the Asian Development Bank: toward the cost of the Services and intends to apply a portion of the proceeds of this *[loan/grant/financing]* to eligible payments under this Contract, it being understood that (i) payments by the Bank will be made only at the request of the Client and upon approval by the Bank; (ii) such payments will be subject, in all respects, to the terms and conditions of the *[loan/grant/financing]* agreement, including prohibitions of withdrawal from the *[loan/grant/financing]* account for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Bank, is prohibited by the decision of the United Nations Security council taken under Chapter VII of the Charter of the United Nations/; and (iii) no party other than the Client shall derive any rights from the *[loan/grant/financing]* agreement or have any claim to the *[loan/grant/financing]* proceeds;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
 - (a) The General Conditions of Contract (including Attachment 1 “Bank Policy – Corrupt and Fraudulent Practices);
 - (b) The Special Conditions of Contract;
 - (c) Appendices:
 - Appendix A: Terms of Reference
 - Appendix B: Key Experts
 - Appendix C: Remuneration Cost Estimates
 - Appendix D: Other Expenses, Provisional Sums and Contingency Cost Estimates
 - Appendix E: Form of Advance Payments Guarantee

In the event of any inconsistency between the documents, the following order of precedence shall prevail: the Special Conditions of Contract; the General Conditions of Contract, including Attachment 1; Appendix A; Appendix B; Appendix C and Appendix D; Appendix E. Any reference to this Contract shall include, where the context permits, a reference to its Appendices.

2. The mutual rights and obligations of the Client and the Consultant shall be as set forth in the Contract, in particular:
 - (a) the Consultant shall carry out the Services in accordance with the provisions of the Contract; and
 - (b) the Client shall make payments to the Consultant in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of *[Name of Client]*

[Authorized Representative of the Client – name, title and signature]

For and on behalf of *[Name of Consultant or Name of a Joint Venture]*

[Authorized Representative of the Consultant – name and signature]

[Note: For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached.

For and on behalf of each of the members of the Consultant [insert the name of the Joint Venture]

[Name of the lead member]

[Authorized Representative on behalf of a Joint Venture]

[add signature blocks for each member if all are signing]

II. General Conditions of Contract

A. GENERAL PROVISIONS

1. Definitions

- 1.1. Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:
- (a) “Applicable Guidelines” means Guidelines on the Use of consultants by Asian Development Bank and its Borrowers.
 - (b) “Applicable Law” means the laws and any other instruments having the force of law in the Client’s country, or in such other country as may be specified in the **Special Conditions of Contract (SCC)**, as they may be issued and in force from time to time.
 - (c) “Bank” means the Asian Development Bank.
 - (d) “Borrower [*or Recipient or Beneficiary*]” means the Government, Government agency or other entity that signs the financing [*or loan/grant/project*] agreement with the Bank.
 - (e) “Client” means [*the implementing/ executing*] agency that signs the Contract for the Services with the Selected Consultant.
 - (f) “Consultant” means a legally-established professional consulting firm or entity selected by the Client to provide the Services under the signed Contract.
 - (g) “Contract” means the legally binding written agreement signed between the Client and the Consultant and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
 - (h) “Day” means a working day unless indicated otherwise.
 - (i) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GCC 11.
 - (j) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.
 - (k) “Foreign Currency” means any currency other than the currency of the Client’s country.
 - (l) “GCC” means these General Conditions of Contract.
 - (m) “Government” means the government of the Client’s country.
 - (n) “Joint Venture (JV)” means an association with or without a legal

personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Client for the performance of the Contract.

- (o) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was taken into account in the technical evaluation of the Consultant’s proposal.
- (p) “Local Currency” means the currency of the Client’s country.
- (q) “Non-Key Expert(s)” means an individual professional provided by the Consultant or its Sub-consultant to perform the Services or any part thereof under the Contract.
- (r) “Party” means the Client or the Consultant, as the case may be, and “Parties” means both of them.
- (s) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.
- (t) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.
- (u) “Sub-consultants” means an entity to whom/which the Consultant subcontracts any part of the Services while remaining solely liable for the execution of the Contract.
- (v) “Third Party” means any person or entity other than the Government, the Client, the Consultant or a Sub-consultant.

**2. Relationship
between the Parties**

2.1. Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Client and the Consultant. The Consultant, subject to this Contract, has complete charge of the Experts and Sub-consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

**3. Law Governing
Contract**

3.1. This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

4. Language

4.1. This Contract has been executed in the language specified in the SCC, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

5. Headings

5.1. The headings shall not limit, alter or affect the meaning of this Contract.

6. Communications

6.1. Any communication required or permitted to be given or made pursuant to this Contract shall be in writing in the language specified in

Clause GCC 4. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SCC.

6.2. A Party may change its address for notice hereunder by giving the other Party any communication of such change to the address specified in the SCC.

- 7. Location**
- 7.1. The Services shall be performed at such locations as are specified in **Appendix A** hereto and, where the location of a particular task is not so specified, at such locations, whether in the Government's country or elsewhere, as the Client may approve.
- 8. Authority of Member in Charge**
- 8.1. In case the Consultant is a Joint Venture, the members hereby authorize the member specified in the SCC to act on their behalf in exercising all the Consultant's rights and obligations towards the Client under this Contract, including without limitation the receiving of instructions and payments from the Client.
- 9. Authorized Representatives**
- 9.1. Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Client or the Consultant may be taken or executed by the officials specified in the SCC.
- 10. Corrupt and Fraudulent Practices**
- 10.1. The Bank requires compliance with its policy in regard to corrupt and fraudulent/prohibited practices as set forth in **Attachment 1** to the GCC.
- a. Commissions and Fees**
- 10.2. The Client requires the Consultant to disclose any commissions, gratuities or fees that may have been paid or are to be paid to agents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or the other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions and gratuities may result in termination of the Contract.

B. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

- 11. Effectiveness of Contract**
- 11.1. This Contract shall come into force and effect on the date (the "Effective Date") of the Client's notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the SCC have been met.
- 12. Termination of Contract for Failure to Become Effective**
- 12.1. If this Contract has not become effective within such time period after the date of Contract signature as specified in the SCC, either Party may, by not less than twenty two (22) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

- 13. Commencement of Services** 13.1. The Consultant shall confirm availability of Key Experts and begin carrying out the Services not later than the number of days after the Effective Date specified in the SCC.
- 14. Expiration of Contract** 14.1. Unless terminated earlier pursuant to Clause GCC 19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC.
- 15. Entire Agreement** 15.1. This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.
- 16. Modifications or Variations** 16.1. Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.
- 16.2. In cases of substantial modifications or variations, the prior written consent of the Bank is required.
- 17. Force Majeure**
- a. Definition** 17.1. For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements, includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action confiscation or any other action by Government agencies.
- 17.2. Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party’s Experts, Sub-consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.
- 17.3. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.
- b. No Breach of Contract** 17.4. The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.
- c. Measures to be Taken** 17.5. A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of

any event of Force Majeure.

17.6. A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) calendar days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

17.7. Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

17.8. During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Client, shall either:

- (a) demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Client, in reactivating the Services; or
- (b) continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.

17.9. In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clauses GCC 48 & 49.

18. Suspension

18.1. The Client may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Consultant of such notice of suspension.

19. Termination

19.1 This Contract may be terminated by either Party as per provisions set up below:

a. By the Client

19.1.1 The Client may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause. In such an occurrence the Client shall give at least thirty (30) calendar days' written notice of termination to the Consultant in case of the events referred to in (a) through (d); at least sixty (60) calendar days' written notice in case of the event referred to in (e); and at least five (5) calendar days' written notice in case of the event referred to in (f):

- (a) If the Consultant fails to remedy a failure in the performance

of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GCC 18;

- (b) If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
- (c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 49.1;
- (d) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days;
- (e) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;
- (f) If the Consultant fails to confirm availability of Key Experts as required in Clause GCC 13.

19.1.2 Furthermore, if the Client determines that the Consultant has engaged in corrupt, fraudulent, collusive, coercive [*or obstructive*] practices, in competing for or in executing the Contract, then the Client may, after giving fourteen (14) calendar days written notice to the Consultant, terminate the Consultant's employment under the Contract.

b. By the Consultant

19.1.3 The Consultant may terminate this Contract, by not less than thirty (30) calendar days' written notice to the Client, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause.

- (a) If the Client fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clauses GCC 49.1 within forty-five (45) calendar days after receiving written notice from the Consultant that such payment is overdue.
- (b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days.
- (c) If the Client fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 49.1.
- (d) If the Client is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the

Client of the Consultant's notice specifying such breach.

- c. Cessation of Rights and Obligations** 19.1.4 Upon termination of this Contract pursuant to Clauses GCC 12 or GCC 19 hereof, or upon expiration of this Contract pursuant to Clause GCC 14, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GCC 22, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GCC 25, and (iv) any right which a Party may have under the Applicable Law.
- d. Cessation of Services** 19.1.5 Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 19a or GCC 19b, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Client, the Consultant shall proceed as provided, respectively, by Clauses GCC 27 or GCC 28.
- e. Payment upon Termination** 19.1.6 Upon termination of this Contract, the Client shall make the following payments to the Consultant:
- (a) remuneration for Services satisfactorily performed prior to the effective date of termination, other expenses, provisional sums and contingency for expenditures actually incurred prior to the effective date of termination; and pursuant to Clause 42;
 - (b) in the case of termination pursuant to paragraphs (d) and (e) of Clause GCC 19.1.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

C. OBLIGATIONS OF THE CONSULTANT

20. General

- a. Standard of Performance** 20.1 The Consultant shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with the third parties.
- 20.2 The Consultant shall employ and provide such qualified and experienced Experts and Sub-consultants as are required to carry out the

Services.

20.3 The Consultant may subcontract part of the Services to an extent and with such Key Experts and Sub-consultants as may be approved in advance by the Client. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services.

**b. Law
Applicable to
Services**

20.4 The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any of its Experts and Sub-consultants, comply with the Applicable Law.

20.5 Throughout the execution of the Contract, the Consultant shall comply with the import of goods and services prohibitions in the Client's country when

- (a) as a matter of law or official regulations, [*the Borrower's/ Beneficiary's*] country prohibits commercial relations with that country; or
- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's Country prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

20.6 The Client shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

21. Conflict of Interests

21.1 The Consultant shall hold the Client's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

**a. Consultant
Not to Benefit
from
Commissions,
Discounts, etc.**

21.1.1 The payment of the Consultant pursuant to GCC F (Clauses GCC 41 through 46) shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC 21.1.3, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-consultants, as well as the Experts and agents of either of them, similarly shall not receive any such additional payment.

21.1.2 Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant shall comply with the Bank's Applicable Guidelines, and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Client.

b. Consultant

21.1.3 The Consultant agrees that, during the term of this Contract

- and Affiliates Not to Engage in Certain Activities**
- and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-consultants and any entity affiliated with such Sub-consultants, shall be disqualified from providing goods, works or non-consulting services resulting from or directly related to the Consultant's Services for the preparation or implementation of the project, unless otherwise indicated in the SCC.
- c. Prohibition of Conflicting Activities**
- 21.1.4 The Consultant shall not engage, and shall cause its Experts as well as its Sub-consultants not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.
- d. Strict Duty to Disclose Conflicting Activities**
- 21.1.5 The Consultant has an obligation and shall ensure that its Experts and Sub-consultants shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Client, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Contract.
- 22. Confidentiality**
- 22.1 Except with the prior written consent of the Client, the Consultant and the Experts shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Experts make public the recommendations formulated in the course of, or as a result of, the Services.
- 23. Liability of the Consultant**
- 23.1 Subject to additional provisions, if any, set forth in the SCC, the Consultant's liability under this Contract shall be as determined under the Applicable Law.
- 24. Insurance to be Taken out by the Consultant**
- 24.1 The Consultant (i) shall take out and maintain, and shall cause any Sub-consultants to take out and maintain, at its (or the Sub-consultants', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverage specified in the SCC, and (ii) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as stated in Clause GCC 13.
- 25. Accounting, Inspection and Auditing**
- 25.1 The Consultant shall keep, and shall make all reasonable efforts to cause its Sub-consultants to keep, accurate and systematic accounts and records in respect of the Services and in such form and detail as will clearly identify relevant time changes and costs.
- 25.2. The Consultant shall permit and shall cause its Sub-consultants to permit, the Bank and/or persons appointed by the Bank to inspect the Site and/or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the Bank if

requested by the Bank. The Consultant's attention is drawn to Clause GCC 10 which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under this Clause GCC25.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility under the Bank's prevailing sanctions procedures.)

26. Reporting Obligations

26.1 The Consultant shall submit to the Client the reports and documents specified in **Appendix A**, in the form, in the numbers and within the time periods set forth in the said Appendix.

27. Proprietary Rights of the Client in Reports and Records

27.1 Unless otherwise indicated in the **SCC**, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Client in the course of the Services shall be confidential and become and remain the absolute property of the Client. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof. The Consultant may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Client.

27.2 If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Consultant shall obtain the Client's prior written approval to such agreements, and the Client shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the **SCC**.

28. Equipment, Vehicles and Materials

28.1 Equipment, vehicles and materials made available to the Consultant by the Client, or purchased by the Consultant wholly or partly with funds provided by the Client, shall be the property of the Client and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Client an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Client's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the Client in writing, shall insure them at the expense of the Client in an amount equal to their full replacement value.

28.2 Any equipment or materials brought by the Consultant or its Experts into the Client's country for the use either for the project or personal use shall remain the property of the Consultant or the Experts concerned, as applicable.

D. CONSULTANT'S EXPERTS AND SUB-CONSULTANTS

29. Description of Key Experts

29.1 The title, agreed job description, minimum qualification and time-input estimates to carry out the Services of each of the Consultant's Key

Experts are described in **Appendix B**.

29.2 If required to comply with the provisions of Clause GCC 20a, adjustments with respect to the estimated time-input of Key Experts set forth in **Appendix B** may be made by the Consultant by a written notice to the Client, provided (i) that such adjustments shall not alter the original time-input estimates for any individual by more than 10% or one week, whichever is larger; and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in Clause GCC 41.2.

29.3 If additional work is required beyond the scope of the Services specified in **Appendix A**, the estimated time-input for the Key Experts may be increased by agreement in writing between the Client and the Consultant. In case where payments under this Contract exceed the ceilings set forth in Clause GCC 41.1, the Parties shall sign a Contract amendment.

30. Replacement of Key Experts

30.1 Except as the Client may otherwise agree in writing, no changes shall be made in the Key Experts.

30.2 Notwithstanding the above, the substitution of Key Experts during Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall forthwith provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

31. Approval of Additional Key Experts

31.1 If during execution of the Contract, additional Key Experts are required to carry out the Services, the Consultant shall submit to the Client for review and approval a copy of their Curricula Vitae (CVs). If the Client does not object in writing (stating the reasons for the objection) within twenty two (22) days from the date of receipt of such CVs, such additional Key Experts shall be deemed to have been approved by the Client.

32. Removal of Experts or Sub-consultants

32.1 If the Client finds that any of the Experts or Sub-consultant has committed serious misconduct or has been charged with having committed a criminal action, or shall the Client determine that Consultant's Expert of Sub-consultant have engaged in corrupt, fraudulent, collusive, coercive [*or obstructive*] practice while performing the Services, the Consultant shall, at the Client's written request, provide a replacement.

32.2 In the event that any of Key Experts, Non-Key Experts or Sub-consultants is found by the Client to be incompetent or incapable in discharging assigned duties, the Client, specifying the grounds therefore, may request the Consultant to provide a replacement.

32.3 Any replacement of the removed Experts or Sub-consultants shall possess better qualifications and experience and shall be acceptable to the Client.

33. Replacement/

33.1 Except as the Client may otherwise agree, (i) the Consultant shall

Removal of Experts – Impact on Payments bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid for any of the Experts provided as a replacement shall not exceed the remuneration which would have been payable to the Experts replaced or removed.

34. Working Hours, Overtime, Leave, etc.

34.1 Working hours and holidays for Experts are set forth in **Appendix B**. To account for travel time to/from the Client's country, experts carrying out Services inside the Client's country shall be deemed to have commenced or finished work in respect of the Services such number of days before their arrival in, or after their departure from, the Client's country as is specified in **Appendix B**.

34.2 The Experts shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in **Appendix B**, and the Consultant's remuneration shall be deemed to cover these items.

34.3 Any taking of leave by Key Experts shall be subject to the prior approval by the Consultant who shall ensure that absence for leave purposes will not delay the progress and or impact adequate supervision of the Services.

E. OBLIGATIONS OF THE CLIENT

35. Assistance and Exemptions

35.1 Unless otherwise specified in the **SCC**, the Client shall use its best efforts to:

- (a) Assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services.
- (b) Assist the Consultant with promptly obtaining, for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in the Client's country while carrying out the Services under the Contract.
- (c) Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Experts and their eligible dependents.
- (d) Issue to officials, agents and representatives of the Government all such instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services.
- (e) Assist the Consultant and the Experts and any Sub-consultants employed by the Consultant for the Services with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity in the Client's country according to the

applicable law in the Client's country.

- (f) Assist the Consultant, any Sub-consultants and the Experts of either of them with obtaining the privilege, pursuant to the applicable law in the Client's country, of bringing into the Client's country reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Experts and of withdrawing any such amounts as may be earned therein by the Experts in the execution of the Services.
- (g) Provide to the Consultant any such other assistance as may be specified in the **SCC**.

36. Access to Project Site 36.1 The Client warrants that the Consultant shall have, free of charge, unimpeded access to the project site in respect of which access is required for the performance of the Services. The Client will be responsible for any damage to the project site or any property thereon resulting from such access and will indemnify the Consultant and each of the experts in respect of liability for any such damage, unless such damage is caused by the willful default or negligence of the Consultant or any Sub-consultants or the Experts of either of them.

37. Change in the Applicable Law Related to Taxes and Duties 37.1 If, after the date of this Contract, there is any change in the applicable law in the Client's country with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause GCC 41.1

38. Services, Facilities and Property of the Client 38.1 The Client shall make available to the Consultant and the Experts, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference (**Appendix A**) at the times and in the manner specified in said **Appendix A**.

38.2 In case that such services, facilities and property shall not be made available to the Consultant as and when specified in **Appendix A**, the Parties shall agree on (i) any time extension that it may be appropriate to grant to the Consultant for the performance of the Services, (ii) the manner in which the Consultant shall procure any such services, facilities and property from other sources, and (iii) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to Clause GCC 41.3.

39. Counterpart Personnel 39.1 The Client shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the Client with the Consultant's advice, if specified in **Appendix A**.

39.2 If counterpart personnel are not provided by the Client to the Consultant as and when specified in **Appendix A**, the Client and the Consultant shall agree on (i) how the affected part of the Services shall be carried out, and (ii) the additional payments, if any, to be made by the

Client to the Consultant as a result thereof pursuant to Clause GCC 41.3.

39.3 Professional and support counterpart personnel, excluding Client's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Client shall not unreasonably refuse to act upon such request.

- 40. Payment Obligation** 40.1 In consideration of the Services performed by the Consultant under this Contract, the Client shall make such payments to the Consultant and in such manner as is provided by GCC F below.

F. PAYMENTS TO THE CONSULTANT

- 41. Ceiling Amount** 41.1 An estimate of the cost of the Services is set forth in **Appendix C** (Remuneration) and **Appendix D** (Other Expenses, Provisional Sums and Contingency).

41.2 Payments under this Contract shall not exceed the ceilings in foreign currency and in local currency specified in the **SCC**.

41.3 For any payments in excess of the ceilings specified in GCC41.2, an amendment to the Contract shall be signed by the Parties referring to the provision of this Contract that evokes such amendment.

- 42. Remuneration and Other Expenses, Provisional Sums and Contingency** 42.1 The Client shall pay to the Consultant (i) remuneration that shall be determined on the basis of time actually spent by each Expert in the performance of the Services after the date of commencing of Services or such other date as the Parties shall agree in writing; and (ii) other expenses, provisional sums and contingency that are actually and reasonably incurred by the Consultant in the performance of the Services.

42.2 All payments shall be at the rates set forth in **Appendix C** and **Appendix D**.

42.3 Unless the **SCC** provides for the price adjustment of the remuneration rates, said remuneration shall be fixed for the duration of the Contract.

42.4 The remuneration rates shall cover: (i) such salaries and allowances as the Consultant shall have agreed to pay to the Experts as well as factors for social charges and overheads (bonuses or other means of profit-sharing shall not be allowed as an element of overheads), (ii) the cost of backstopping by home office staff not included in the Experts' list in **Appendix B**, (iii) the Consultant's profit, and (iv) any other items as specified in the **SCC**.

42.5 Any rates specified for Experts not yet appointed shall be provisional and shall be subject to revision, with the written approval of the

Client, once the applicable remuneration rates and allowances are known.

43. Taxes and Duties

43.1 The Consultant, Sub-consultants and Experts are responsible for meeting any and all tax liabilities arising out of the Contract unless it is stated otherwise in the SCC.

43.2 As an exception to the above and as stated in the SCC, all local identifiable indirect taxes (itemized and finalized at Contract negotiations) are reimbursed to the Consultant or are paid by the Client on behalf of the Consultant.

44. Currency of Payment

44.1 Any payment under this Contract shall be made in the currency(ies) specified in the SCC.

45. Mode of Billing and Payment

45.1 Billings and payments in respect of the Services shall be made as follows:

- (a) Advance payment. Within the number of days after the Effective Date, the Client shall pay to the Consultant an advance payment as specified in the SCC. Unless otherwise indicated in the SCC, an advance payment shall be made against an advance payment bank guarantee acceptable to the Client in an amount (or amounts) and in a currency (or currencies) specified in the SCC. Such guarantee (i) is to remain effective until the advance payment has been fully set off, and (ii) is to be in the form set forth in **Appendix E**, or in such other form as the Client shall have approved in writing. The advance payments will be set off by the Client in equal installments against the statements for the number of months of the Services specified in the SCC until said advance payments have been fully set off.
- (b) The Itemized Invoices. As soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the Services, or after the end of each time interval otherwise indicated in the SCC, the Consultant shall submit to the Client, in duplicate, itemized invoices, accompanied by the receipts or other appropriate supporting documents, of the amounts payable pursuant to Clauses GCC 44 and GCC 45 for such interval, or any other period indicated in the SCC. Separate invoices shall be submitted for expenses incurred in foreign currency and in local currency. Each invoice shall show remuneration and reimbursable expenses separately.
- (c) The Client shall pay the Consultant's invoices within sixty (60) days after the receipt by the Client of such itemized invoices with supporting documents. Only such portion of an invoice that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Consultant, the Client may add or subtract the difference from any subsequent payments.
- (d) The Final Payment. The final payment under this Clause shall be made only after the final report and a final invoice, identified as such, shall

have been submitted by the Consultant and approved as satisfactory by the Client. The Services shall be deemed completed and finally accepted by the Client and the final report and final invoice shall be deemed approved by the Client as satisfactory ninety (90) calendar days after receipt of the final report and final invoice by the Client unless the Client, within such ninety (90) calendar day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report or final invoice. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated. Any amount that the Client has paid or has caused to be paid in accordance with this Clause in excess of the amounts payable in accordance with the provisions of this Contract shall be reimbursed by the Consultant to the Client within thirty (30) days after receipt by the Consultant of notice thereof. Any such claim by the Client for reimbursement must be made within twelve (12) calendar months after receipt by the Client of a final report and a final invoice approved by the Client in accordance with the above.

- (e) All payments under this Contract shall be made to the accounts of the Consultant specified in the SCC.
- (f) With the exception of the final payment under (d) above, payments do not constitute acceptance of the Services nor relieve the Consultant of any obligations hereunder.

46. Interest on Delayed Payments

46.1 If the Client had delayed payments beyond fifteen (15) days after the due date stated in Clause GCC 45.1 (c), interest shall be paid to the Consultant on any amount due by, not paid on, such due date for each day of delay at the annual rate stated in the SCC.

G. FAIRNESS AND GOOD FAITH

47. Good Faith

47.1 The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

H. SETTLEMENT OF DISPUTES

48. Amicable Settlement

48.1 The Parties shall seek to resolve any dispute amicably by mutual consultation.

48.2 If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within fourteen (14) days after receipt. If that Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days following the response of that Party, Clause GCC 49.1 shall apply.

49. Dispute Resolution

49.1 Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to by either Party to the adjudication/arbitration in accordance with the provisions specified in the SCC.

I. ELIGIBILITY

50. Eligibility

50.1 Compliance with the Bank's eligibility policy is required throughout the Contract's execution.

II. General Conditions

Attachment 1: Bank’s Policy – Corrupt and Fraudulent Practices

[“Notes to the Client”: the text in this Attachment 1 shall not be modified]

ADB’s anticorruption policy requires that borrowers (including beneficiaries of ADB-financed activity), as well as consultants under ADB-financed contracts, observe the highest standard of ethics during the selection process and in execution of such contracts. In pursuance of this policy, in the context of these Guidelines, ADB

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
- (i) A “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
 - (ii) A “fraudulent practice” is any action or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) A “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (iv) A “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
 - (v) Abuse, this is theft, waste, or improper use of assets related to ADB-related activity, either committed intentionally or through reckless disregard;
 - (vi) Conflict of interest, which is any situation in which a party has interests that could improperly influence a party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;
 - (vii) “obstructive practice” is a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an ADB investigation; b) making false statements to investigators in order to materially impede an ADB investigation; c) threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or d) materially impeding ADB’s contractual rights of audit or access to information.
 - (viii) These terms collectively are called “integrity violations.”

- (b) will reject a proposal for an award if it determines that the consultant recommended for the award has directly, or through an agent, engaged in integrity violations in competing for the contract in question;
- (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the borrower of ADB financing engaged in integrity violations during the consultant selection process or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation; and
- (d) will sanction a firm or individual, at any time, in accordance with ADB's Anticorruption Policy and Integrity Principles and Guidelines (both as amended from time to time), including declaring ineligible, either indefinitely or for a stated period of time, such consulting firm, individual or successor from participation in ADB-financed or ADB-administered activities or to benefit from an ADB-financed or ADB-administered contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in integrity violations or other prohibited practices.

III. Special Conditions of Contract

[Notes in brackets are for guidance purposes only and should be deleted in the final text of the signed contract]

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(b) and 3.1	<p>The Contract shall be construed in accordance with the law of <u>Lao PDR</u></p> <p>Note: Bank-financed contracts normally designate the law of the [Government's/Client's] country as the law governing the contract. However, the Parties may designate the law of another country, in which case the name of the respective country should be inserted, and the square brackets should be removed.]</p>
4.1	<p>The language is English.</p>
6.1 and 6.2	<p>The addresses are:</p> <p>Client : <u>Ministry of Public Works and Transport, Lanxang Ave., Vientiane Capital, Lao PDR</u></p> <p>Attention : <u>Mr. Litta Khattiya, DOR Deputy Director General</u></p> <p>Facsimile : <u>856-21 412250</u></p> <p>E-mail (where permitted): <u>webmaster@mpwt.gov.la</u></p> <p>Consultant : _____</p> <p>Attention : _____</p> <p>Facsimile : _____</p> <p>E-mail (where permitted) : _____</p>
8.1	<p><i>[Note: If the Consultant consists only of one entity, state "N/A";</i> <i>OR</i> <i>If the Consultant is a Joint Venture consisting of more than one entity, the name of the JV member whose address is specified in Clause SCC6.1 should be inserted here.]</i></p> <p>The Lead Member on behalf of the JV is _____ _____ [insert name of the member]</p>
9.1	<p>The Authorized Representatives are:</p> <p>For the Client: <u>Mr. Litta Khattiya, DOR Deputy Director General</u></p> <p>For the Consultant: [name, title] _____</p>
11.1	<p><i>[Note: If there are no effectiveness conditions, state "N/A"]</i></p>

	<p><i>OR</i></p> <p><i>List here any conditions of effectiveness of the Contract, e.g., approval of the Contract by the Bank, effectiveness of the Bank [loan/grant], receipt by the Consultant of an advance payment, and by the Client of an advance payment guarantee (see Clause SCC45.1(a)), etc.]</i></p> <p>The effectiveness conditions are the following: <i>[insert “N/A” or list the conditions]</i></p>
<p>12.1</p>	<p>Termination of Contract for Failure to Become Effective:</p> <p>The time period shall be _____ <i>[insert time period, e.g.: four months].</i></p>
<p>13.1</p>	<p>Commencement of Services:</p> <p>The number of days shall be <u>15</u>.</p> <p>Confirmation of Key Experts’ availability to start the Assignment shall be submitted to the Client in writing as a written statement signed by each Key Expert.</p>
<p>14.1</p>	<p>Expiration of Contract:</p> <p>The time period shall be <u>60 Months</u>.</p>
<p>21 b.</p>	<p>The Client reserves the right to determine on a case-by-case basis whether the Consultant should be disqualified from providing goods, works or non-consulting services due to a conflict of a nature described in Clause GCC 21.1.3</p> <p>Yes _____ No _____</p>
<p>23.1</p>	<p>No additional provisions.</p> <p><i>[OR</i></p> <p>The following limitation of the Consultant’s Liability towards the Client can be subject to the Contract’s negotiations:</p> <p>“Limitation of the Consultant’s Liability towards the Client:</p> <p>(a) Except in the case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or a firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Client’s property, shall not be liable to the Client:</p> <p>(i) for any indirect or consequential loss or damage; and</p>

	<p>(ii) for any direct loss or damage that exceeds [insert a multiplier, e.g.: one, two, three] times the total value of the Contract;</p> <p>(b) This limitation of liability shall not</p> <p>(i) affect the Consultant’s liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services;</p> <p>(ii) be construed as providing the Consultant with any limitation or exclusion from liability which is prohibited by the [insert “Applicable Law”, if it is the law of the Client’s country, or insert “applicable law in the Client’s country”, if the Applicable Law stated in Clause SCC1.1 (b) is different from the law of the Client’s country].</p> <p>[Notes to the Client and the Consultant: Any suggestions made by the Consultant in the Proposal to introduce exclusions/limitations of the Consultant’s liability under the Contract should be carefully scrutinized by the Client and discussed with the Bank <u>prior to accepting any changes</u> to what was included in the issued RFP. In this regard, the Parties should be aware of the Bank’s policy on this matter which is as follows:</p> <p>To be acceptable to the Bank, any limitation of the Consultant’s liability should at the very least be reasonably related to (a) the damage the Consultant might potentially cause to the Client, and (b) the Consultant’s ability to pay compensation using its own assets and reasonably obtainable insurance coverage. The Consultant’s liability shall not be limited to less than a multiplier of the total payments to the Consultant under the Contract for remuneration and reimbursable expenses. <u>A statement to the effect that the Consultant is liable only for the re-performance of faulty Services is not acceptable to the Bank.</u> Also, the Consultant’s liability should never be limited for loss or damage caused by the Consultant’s gross negligence or willful misconduct.</p> <p>The Bank does not accept a provision to the effect that the Client shall indemnify and hold harmless the Consultant against Third Party claims, except, of course, if a claim is based on loss or damage caused by a default or wrongful act of the Client to the extent permissible by the law applicable in the Client’s country.]</p>
<p>24.1</p>	<p>The insurance coverage against the risks shall be as follows:</p> <p>[Note: Delete what is not applicable except (a)].</p> <p>(a) Professional liability insurance, with a minimum coverage of <u>100% of the Contract amount</u> [insert amount and currency which should be not less than the total ceiling amount of the Contract];</p>

	<p>(b) Third Party motor vehicle liability insurance in respect of motor vehicles operated in the Client’s country by the Consultant or its Experts or Sub-consultants, with a minimum coverage of <i>[insert amount and currency or state “in accordance with the applicable law in the Client’s country”]</i>;</p> <p>(c) Third Party liability insurance, with a minimum coverage of <i>[insert amount and currency or state “in accordance with the applicable law in the Client’s country”]</i>;</p> <p>(d) employer’s liability and workers’ compensation insurance in respect of the experts and Sub-consultants in accordance with the relevant provisions of the applicable law in the Client’s country, as well as, with respect to such Experts, any such life, health, accident, travel or other insurance as may be appropriate; and</p> <p>(e) insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultant’s property used in the performance of the Services, and (iii) any documents prepared by the Consultant in the performance of the Services.</p>
<p>27.1</p>	<p><i>[Note: If applicable, insert any exceptions to proprietary rights provision _____]</i></p>
<p>27.2</p>	<p><i>[Note: If there is to be no restriction on the future use of these documents by either Party, this Clause SCC 27.2 should be deleted. If the Parties wish to restrict such use, any of the following options, or any other option agreed to by the Parties, could be used:</i></p> <p>[The Consultant shall not use these <i>[insert what applies.....documents and software.....]</i> for purposes unrelated to this Contract without the prior written approval of the Client.]</p> <p>OR</p> <p>[The Client shall not use these <i>[insert what applies.....documents and software.....]</i> for purposes unrelated to this Contract without the prior written approval of the Consultant.]</p> <p>OR</p> <p>[Neither Party shall use these <i>[insert what applies.....documents and software.....]</i> for purposes unrelated to this Contract without the prior written approval of the other Party.]</p>

<p>35.1 (a) through (e)</p>	<p>[Note: List here any changes or additions to Clause GCC 35.1. If there are no such changes or additions, delete this Clause SCC 35.1.]</p>
<p>35.1(f)</p>	<p>[Note: List here any other assistance to be provided by the Client. If there is no such other assistance, delete this Clause SCC 35.1(f).]</p>
<p>41.2</p>	<p>The ceiling in foreign currency or currencies is: _____ [insert amount and currency for each currency] [indicate: inclusive or exclusive] of local indirect taxes.</p> <p>The ceiling in local currency is: _____ [insert amount and currency] [indicate: inclusive or exclusive] of local indirect taxes.</p> <p>Any indirect local taxes chargeable in respect of this Contract for the Services provided by the Consultant shall [insert as appropriate: “be paid” or “reimbursed”] by the Client [insert as appropriate: “for” or “to”] the Consultant.</p>
<p>42.3</p>	<p>Price adjustment on the remuneration [insert “applies” or “does not apply”]</p> <p>[Note: If the Contract is less than 18 months, price adjustment does not apply.</p> <p>If the Contract has duration of more than 18 months, a price adjustment provision on the remuneration for foreign and/or local inflation shall be included here. The adjustment should be made every 12 months after the date of the contract for remuneration in foreign currency and – except if there is very high inflation in the Client’s country, in which case more frequent adjustments should be provided for – at the same intervals for remuneration in local currency. Remuneration in foreign currency should be adjusted by using the relevant index for salaries in the country of the respective foreign currency (which normally is the country of the Consultant) and remuneration in local currency by using the corresponding index for the Client’s country. A sample provision is provided below for guidance:</p> <p>{Payments for remuneration made in [foreign <i>and/or</i> local] currency shall be adjusted as follows:</p> <p>(1) Remuneration paid in foreign currency on the basis of the rates set forth in Appendix C shall be adjusted every 12 months (and, the first time, with effect for the remuneration earned in the 13th calendar month after the date of the Contract Effectiveness date) by applying the following formula:</p> $R_f = R_{fo} \times \frac{I_f}{I_{fo}} \quad \{ \text{or} \quad R_f = R_{fo} \times [0.1 + 0.9 \frac{I_f}{I_{fo}}] \}$ <p>where R_f is the adjusted remuneration;</p>

	<p>R_{fo} is the remuneration payable on the basis of the remuneration rates (Appendix C) in foreign currency; I_f is the official index for salaries in the country of the foreign currency for the first month for which the adjustment is supposed to have effect; and I_{fo} is the official index for salaries in the country of the foreign currency for the month of the date of the Contract.</p> <p>The Consultant shall state here the name, source institution, and any necessary identifying characteristics of the official index for salaries corresponding to I_f and I_{fo} in the adjustment formula for remuneration paid in foreign currency: [<i>Insert the name, source institution, and necessary identifying characteristics of the index for foreign currency, e.g. "Consumer Price Index for all Urban Consumers (CPI-U), not seasonally adjusted; U.S. Department of Labor, Bureau of Labor Statistics"</i>]</p> <p>(2) Remuneration paid in local currency pursuant to the rates set forth in Appendix D shall be adjusted every [<i>insert number</i>] months (and, for the first time, with effect for the remuneration earned in the [<i>insert number</i>]the calendar month after the date of the Contract) by applying the following formula:</p> $R_l = R_{lo} \times \frac{I_l}{I_{lo}} \quad \{ \text{or} \quad R_l = R_{lo} \times [0.1 + 0.9 \frac{I_l}{I_{lo}}] \}$ <p>where R_l is the adjusted remuneration; R_{lo} is the remuneration payable on the basis of the remuneration rates (Appendix D) in local currency; I_l is the official index for salaries in the Client's country for the first month for which the adjustment is to have effect; and I_{lo} is the official index for salaries in the Client's country for the month of the date of the Contract.</p> <p>The Client shall state here the name, source institution, and any necessary identifying characteristics of the official index for salaries corresponding to I_l and I_{lo} in the adjustment formula for remuneration paid in local currency: [<i>Insert the name, source institution, and necessary identifying characteristics of the index for foreign currency</i>]</p> <p>(3) Any part of the remuneration that is paid in a currency different from the currency of the official index for salaries used in the adjustment formula, shall be adjusted by a correction factor X_0/X. X_0 is the number of units of currency of the country of the official index, equivalent to one unit of the currency of payment on the date of the contract. X is the number of units of currency of the country of the official index, equivalent to one unit of the currency of payment on the first day of the first month for which the adjustment is supposed to have effect.</p>
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<p>43.1 and 43.2</p>	<p>[<i>Note:</i> The Bank leaves it to the Client to decide whether the Consultant (i) should be exempted from indirect local tax, or (ii) should be reimbursed by the Client for any such tax they might have to pay (or that the Client would pay such tax on behalf of the Consultant)]</p> <p>The Client warrants that [choose one applicable option consistent with the ITC 16.3 and the outcome of the Contract’s negotiations (Form FIN-2, part B “Indirect Local Tax – Estimates”):</p> <p>If ITC16.3 indicates a tax exemption status, include the following: “the Consultant, the Sub-consultants and the Experts shall be exempt from”</p> <p>OR</p> <p>If ITC16.3 does not indicate the exemption and, depending on whether the Client shall pay the withholding tax or the Consultant has to pay, include the following:</p> <p>“the Client shall pay on behalf of the Consultant, the Sub-consultants and the Experts,” OR “the Client shall reimburse the Consultant, the Sub-consultants and the Experts”]</p> <p>any indirect taxes, duties, fees, levies and other impositions imposed, under the applicable law in the Client’s country, on the Consultant, the Sub-consultants and the Experts in respect of:</p> <p>(a) any payments whatsoever made to the Consultant, Sub-consultants and the Experts (other than nationals or permanent residents of the Client’s country), in connection with the carrying out of the Services;</p> <p>(b) any equipment, materials and supplies brought into the Client’s country by the Consultant or Sub-consultants for the purpose of carrying out the Services and which, after having been brought into such territories, will be subsequently withdrawn by them;</p> <p>(c) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Client and which is treated as property of the Client;</p> <p>(d) any property brought into the Client’s country by the Consultant, any Sub-consultants or the Experts (other than nationals or permanent residents of the Client’s country), or the eligible dependents of such experts for their personal use and which will subsequently be withdrawn by them upon their respective departure from the Client’s country, provided that:</p> <p style="padding-left: 40px;">(i) the Consultant, Sub-consultants and experts shall follow the usual customs procedures of the Client’s country in importing property into the Client’s country; and</p> <p style="padding-left: 40px;">(ii) if the Consultant, Sub-consultants or Experts do not withdraw but dispose of any property in the Client’s</p>
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	<p>country upon which customs duties and taxes have been exempted, the Consultant, Sub-consultants or Experts, as the case may be, (a) shall bear such customs duties and taxes in conformity with the regulations of the Client’s country, or (b) shall reimburse them to the Client if they were paid by the Client at the time the property in question was brought into the Client’s country.</p>
<p>44.1</p>	<p>The currency [currencies] of payment shall be the following: [list currency(ies) which should be the same as in the Financial Proposal, Form FIN-2]</p>
<p>45.1(a)</p>	<p><i>[Note: The advance payment could be in either the foreign currency, or the local currency, or both; select the correct wording in the Clause here below. The advance bank payment guarantee should be in the same currency(ies)]</i></p> <p>The following provisions shall apply to the advance payment and the advance bank payment guarantee:</p> <p>(1) An advance payment [of <i>[insert amount]</i> in foreign currency] [and of <i>[insert amount]</i> in local currency] shall be made within <i>[insert number]</i> days after the Effective Date. The advance payment will be set off by the Client in equal installments against the statements for the first <i>[insert number]</i> months of the Services until the advance payment has been fully set off.</p> <p>(2) The advance bank payment guarantee shall be in the amount and in the currency of the currency(ies) of the advance payment.</p>
<p>45.1(b)</p>	<p><i>[Note: Delete this Clause SCC 45.1(b) if the Consultant shall have to submit its itemized statements monthly. Otherwise, the following text can be used to indicate the required intervals:</i></p> <p>The Consultant shall submit to the Client itemized statements at time intervals of _____ [e.g. “every quarter”, “every six months”, “every two weeks”, etc.].]</p>
<p>45.1(e)</p>	<p>The accounts are:</p> <p>for foreign currency: <i>[insert account]</i>.</p> <p>for local currency: <i>[insert account]</i>.</p>
<p>46.1</p>	<p>The interest rate is: <i>[insert rate]</i>.</p>
<p>49.</p>	<p><i>[Note: In contracts with foreign consultants, the Bank requires that the international commercial arbitration in a neutral venue is used.]</i></p>

	<p>Disputes shall be settled by arbitration in accordance with the following provisions:</p> <p>1. <u>Selection of Arbitrators.</u> Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions:</p> <p>(a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to <i>[name an appropriate international professional body, e.g., the Federation Internationale des Ingenieurs-Conseil (FIDIC) of Lausanne, Switzerland]</i> for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, <i>[insert the name of the same professional body as above]</i> shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.</p> <p>(b) Where the Parties do not agree that the dispute concerns a technical matter, the Client and the Consultant shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by <i>[name an appropriate international appointing authority, e.g., the Secretary General of the Permanent Court of Arbitration, The Hague; the Secretary General of the International Centre for Settlement of Investment Disputes, Washington, D.C.; the International Chamber of Commerce, Paris; etc.]</i>.</p> <p>(c) If, in a dispute subject to paragraph (b) above, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the <i>[name the same appointing authority as in said paragraph (b)]</i> to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.</p>
	<p>2. <u>Rules of Procedure.</u> Except as otherwise stated herein, arbitration</p>

	<p>proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.</p> <p>3. <u>Substitute Arbitrators.</u> If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator.</p> <p>4. <u>Nationality and Qualifications of Arbitrators.</u> The sole arbitrator or the third arbitrator appointed pursuant to paragraphs 1(a) through 1(c) above shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Consultant’s home country [<i>Note: If the Consultant consists of more than one entity, add: or of the home country of any of their members or Parties</i>] or of the Government’s country. For the purposes of this Clause, “home country” means any of:</p> <ul style="list-style-type: none"> (a) the country of incorporation of the Consultant [<i>Note: If the Consultant consists of more than one entity, add: or of any of their members or Parties</i>]; or (b) the country in which the Consultant’s [or any of their members’ or Parties’] principal place of business is located; or (c) the country of nationality of a majority of the Consultant’s [or of any members’ or Parties’] shareholders; or (d) the country of nationality of the Sub-consultants concerned, where the dispute involves a subcontract.
	<p>5. <u>Miscellaneous.</u> In any arbitration proceeding hereunder:</p> <ul style="list-style-type: none"> (a) proceedings shall, unless otherwise agreed by the Parties, be held in [<i>select a country which is neither the Client’s country nor the Consultant’s country</i>]; (b) the [<i>type of language</i>] language shall be the official language for all purposes; and (c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.

IV. Appendices

APPENDIX A – TERMS OF REFERENCE

[**Note:** This Appendix shall include the final Terms of Reference (TORs) worked out by the Client and the Consultant during the negotiations; dates for completion of various tasks; location of performance for different tasks; detailed reporting requirements; Client’s input, including counterpart personnel assigned by the Client to work on the Consultant’s team; specific tasks that require prior approval by the Client.

Insert the text based on the Section 7 (Terms of Reference) of the ITC in the RFP and modified based on the Forms TECH-1 through TECH-5 in the Consultant’s Proposal. Highlight the changes to Section 7 of the RFP]

If the Services consist of or include the supervision of civil works, the following action that require prior approval of the Client shall be added to the “Reporting Requirements” section of the TORs: Taking any action under a civil works contract designating the Consultant as “Engineer”, for which action, pursuant to such civil works contract, the written approval of the Client as “Employer” is required.]

APPENDIX B - KEY EXPERTS

[Insert a table based on Form TECH-6 of the Consultant’s Technical Proposal and finalized at the Contract’s negotiations. Attach the CVs (updated and signed by the respective Key Experts) demonstrating the qualifications of Key Experts.]

[Specify Hours of Work for Key Experts: List here the hours of work for Key Experts; travel time to/ from the Client’s country; entitlement, if any, to leave pay; public holidays in the Client’s country that may affect Consultant’s work; etc. Make sure there is consistency with Form TECH-6. In particular: one month equals twenty two (22) working (billable) days. One working (billable) day shall be not less than eight (8) working (billable) hours.]

APPENDIX C – REMUNERATION COST ESTIMATES

1. Monthly rates for the Experts:

{Insert the table with the remuneration rates. The table shall be based on [*Form FIN-3*] of the Consultant’s Proposal and reflect any changes agreed at the Contract negotiations, if

any. The footnote shall list such changes made to [*Form FIN-3*] at the negotiations or state that none has been made.}

Model Form I
Breakdown of Agreed Fixed Rates in Consultant's Contract

We hereby confirm that we have agreed to pay to the Experts listed, who will be involved in performing the Services, the basic fees and away from the home office allowances (if applicable) indicated below:

*(Expressed in [insert name of currency])**

<i>Experts</i>		<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>
<i>Name</i>	<i>Position</i>	<i>Basic Remuneration rate per Working Month/Day/Year</i>	<i>Social Charges¹</i>	<i>Overhead₁</i>	<i>Subtotal</i>	<i>Profit²</i>	<i>Away from Home Office Allowance</i>	<i>Agreed Fixed Rate per Working Month/Day/Hour</i>	<i>Agreed Fixed Rate per Working Month/Day/Hour¹</i>
<i>Home Office</i>									
<i>Work in the Client's Country</i>									

1 Expressed as percentage of 1

2 Expressed as percentage of 4

** If more than one currency, add a table*

Signature

Date

Name and Title: _____

APPENDIX D – OTHER EXPENSES AND PROVISIONAL SUMS

1. {Insert the table with the Other Expenses and Provisional Sums. The table shall be based on [Form FIN-4] of the Consultant's Proposal and reflect any changes agreed at the Contract negotiations, if any. The footnote shall list such changes made to [Form FIN-4] at the negotiations or state that none has been made.}

2. All other expenses and provisional sums shall be reimbursed at actual cost, unless otherwise explicitly provided in this Appendix, and in no event shall reimbursement be made in excess of the Contract amount.

APPENDIX E - FORM OF ADVANCE PAYMENTS GUARANTEE

[See Clause GCC 45.1 (a) and SCC 45.1 (a)]

{Guarantor letterhead or SWIFT identifier code}

Bank Guarantee for Advance Payment

Guarantor: _____ *[insert commercial Bank's Name, and Address of Issuing Branch or Office]*

Beneficiary: _____ *[name and address of Client]*

Date: _____ *[insert date]*

ADVANCE PAYMENT GUARANTEE No.: _____ *[insert number]*

We have been informed that _____ *[name of Consultant or a name of the Joint Venture, same as appears on the signed Contract]* (hereinafter called "the Consultant") has entered into Contract No. _____ *[reference number of the contract]* dated _____ *[insert date]* with the Beneficiary, for the provision of _____ *[brief description of Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of _____ *[insert amount in figures]* (_____) *[amount in words]* is to be made against an advance payment guarantee.

At the request of the Consultant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ *[amount in figures]* (_____) *[amount in words]*¹ upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's written statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Consultant is in breach of their obligation under the Contract because the Consultant has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Consultant has filed to repay.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Consultant on their account number _____ at _____ *[name and address of bank]*.

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Consultant as indicated in certified statements or invoices marked as “paid” by the Client which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of the payment certificate or paid invoice indicating that the Consultant has made full repayment of the amount of the advance payment, or on the ___ day of _____ [month], _____ [year],² whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 revision, ICC Publication No. 758.

[signature(s)]

Note: All italicized text is for indicative purposes only to assist in preparing this form and shall be deleted from the final product.

² Insert the expected expiration date. In the event of an extension of the time for completion of the Contract, the Client would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Client might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Client’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”

**NARRATIVE EVALUATION CRITERIA (NEC)
FOR FULL TECHNICAL PROPOSAL (FTP)
(ALL SELECTION METHODS)**

I. QUALIFICATIONS OF PROPOSER (100 points)

A. Experience in Similar Projects (TECH-2)

Reference projects included in the proposal should demonstrate experience in: (i). project management (ii) capacity building and (iii) design and construction supervision of road maintenance works

Each reference project included in the technical proposal (as described in the format shown in Form TECH-2 of the RFP) is to be judged against the criteria established. The scoring method is to be based on number of reference relevant projects. Rating will be carried out against the basic number of reference projects considered necessary for the project at hand. Three or more projects will be 100%, 2 projects 75% and minimum of 1 project 50%.

Maximum 50 points will be given for extensive experience.

B. Experience in Similar Geographical Areas (TECH-2)

Experience in similar geographical areas refers to experience in Road Maintenance projects in Southeast Asia and/or other regions of similar economic development and social environment

Maximum 50 points will be given for experience in the Southeast Asia region, 30 points for comparable Asian region and 20 points for other developing regions. No points will be given where no equivalent experience is demonstrated.

II. APPROACH AND METHODOLOGY (200 points)

A. Understanding of Objectives (40 points)

A clear understanding of the project objectives and background must be demonstrated as indicated in the Terms of Reference (TOR). The following points are to be given if all aspects are obtained positively:

General understanding	20
Components coverage	15
Site visit	05

B. Quality of Methodology (40 points)

The degree of which the presented written methodology/approach addresses/matches the requirements of the TOR will be assessed together with the methodology and its appropriateness to the institutional background of the road

sector in Laos and the Southeast Asia region. Assessment of the inter-relationship of work program and methodology will also be considered.

Ability to demonstrate up-to-date knowledge and understanding of requirements of TOR and appropriate approach will be given maximum points.

C. Innovativeness/Comments on Terms of Reference (20 points)

Points will be given to suggestions and comments on the TOR, which could improve the quality of the project.

D. Work Program (40 points)

A work program showing graphical presentation of activities (bar chart) and an organizational chart showing relationship between ADB, Executing Agency and the Consultant should also be provided.

The work program showing logical sequence of events will be evaluated. The organization chart will be evaluated on the Consultant's understanding of relationship between ADB, Executing Agency and the Consultant.

Maximum points will be given if the two aspects are positively assessed:

Work program	25 points
Organizational chart	15 points

E. Personnel Schedule (30 points)

A personnel schedule in the format attached in Section 3 of the RFP is required.

The Personnel Schedule will be assessed from TECH-5 and TECH-6 of the RFP. The assessment may address phasing of activities of the work program and allocation and timing of expert's individual inputs. Total requirements close to estimated work requirements are evaluated as well as the appropriateness of the allocation of time and expert's task to be performed. The balance between field and home office time and the proposed number of trips will also be considered in the evaluation.

F. Counterpart Personnel and Facilities (20 points)

Requirement for counterpart personnel, office space, transportation, equipment and services should be mentioned. Assessment of reasonableness and completeness of requirements and understanding of local conditions will also be done.

G. Proposal Presentation (10 points)

Clarity and ease of assessment of the entire proposal (including material presentation) as requested in the RFP are covered in a clear and easily understandable form and if the proposal is assembled in a professional manner, maximum points are to be given.

III. **PERSONNEL** (700 points)

Separate assessment of each key expert listed on the Personnel Evaluation Sheet (PES). Each key expert is to be evaluated against the tasks assigned in accordance with three main criteria:

- (i) general qualifications such as academic and/or professional qualifications, membership in professional associations, and the number of years of working related experience (10%-20%);
- (ii) project-related experience based on the number of relevant projects implemented. The evaluation should strive to identify and differentiate the relevance of each project or experience presented in the CV (60%-70%);
- (iii) overseas/country experience, especially in developing countries in the region (10%-20%); and
- (iv) for national key experts: proficiency in English language (10%-20%).

**Annex AJ – Standard Bidding Documents [SBD] for
Procurement of Goods**

STANDARD BIDDING DOCUMENT

Procurement of Goods

**Single-Stage: One-Envelope
Bidding Procedure**

Asian Development Bank

September 2010

BIDDING DOCUMENT

Procurement of Goods

Road Asset Management System

Issued on:

Invitation for Bids No.:

ICB No.:

**Employer: Ministry of Public Works and Transport through Department of
Roads**

Country: Lao PDR

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Section I. Instructions to Bidders

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A. General

- 1. Scope of Bid**
 - 1.1 The Purchaser indicated in the **BDS** issues this Bidding Document for the supply of Goods and Related Services incidental thereto as specified in Section VI, Schedule of Supply. The name, identification, and number of lots of the International Competitive Bidding (ICB) are provided in the **BDS**.
 - 1.2 Throughout this Bidding Document :
 - (a) the term “in writing” means communicated in written form with proof of receipt;
 - (b) if the context so requires, singular means plural and vice versa; and
 - (c) “day” means calendar day.
- 2. Source of Funds**
 - 2.1 The Borrower or Recipient (hereinafter called “Borrower”) indicated in the **BDS** has applied for or received financing (hereinafter called “funds”) from the Asian Development Bank (hereinafter called “the ADB”) toward the cost of the project named in the **BDS**. The Borrower intends to apply a portion of the funds to eligible payments under the contract for which this Bidding Document is issued.
 - 2.2 Payments by the ADB will be made only at the request of the Borrower and upon approval by the ADB in accordance with the terms and conditions of the financing agreement between the Borrower and the ADB (hereinafter called the Loan Agreement), and will be subject in all respects to the terms and conditions of that Loan Agreement. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the funds.
- 3. Corrupt Practices**
 - 3.1 ADB’s Anticorruption Policy requires borrowers (including beneficiaries of ADB-financed activity), as well as bidders, suppliers, and contractors under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the ADB:
 - (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, anything of value to influence improperly the actions of another

- party;
- (ii) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
- (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract; and
 - (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation; and
 - (d) will sanction a firm or an individual, at any time, in accordance with ADB’s Anticorruption Policy and Integrity Principles and Guidelines (both as amended from time to time), including declaring ineligible, either indefinitely or for a stated period of time, to participate in ADB-financed or ADB-administered activities or to benefit from an ADB-financed or ADB-administered contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive or other prohibited practices.
- 3.2 Furthermore, Bidders shall be aware of the provision stated in Sub-Clause 3.2 and Sub-Clause 35.1 (c) of the General Conditions of Contract.
- 4. Eligible Bidders**
- 4.1 A Bidder may be a natural person, private entity, government-owned entity (subject to ITB 4.5) or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture (JV). In the case of a JV:
 - (a) all parties to the JV shall be jointly and severally liable;

and

- (b) a JV shall nominate a Representative who shall have the authority to conduct all businesses for and on behalf of any and all the parties of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.
- 4.2 A Bidder, and all parties constituting the Bidder, shall have the nationality of an eligible country, in accordance with Section V, Eligible Countries. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.
- 4.3 ADB considers a conflict of interest to be a situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations, and that such conflict of interest may contribute to or constitute a prohibited practice under ADB's Anticorruption Policy. In pursuance of ADB's Anticorruption Policy's requirement that Borrowers (including beneficiaries of ADB-financed activity), as well as bidders, suppliers, and contractors under ADB-financed contracts, observe the highest standard of ethics. ADB will take appropriate actions, which include not financing of the contract, if it determines that a conflict of interest has flawed the integrity of any procurement process. Consequently all Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to be in a conflict of interest with one or more parties in this bidding process if, including but not limited to:
- (a) have controlling shareholders in common; or
 - (b) receive or have received any direct or indirect subsidy from any of them; or
 - (c) have the same legal representative for purposes of this Bid; or
 - (d) have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of the Purchaser regarding this bidding process; or
 - (e) a Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid

will result in the disqualification of all Bids in which it is involved. However, this does not limit the inclusion of the same subcontractor, not otherwise participating as a Bidder, in more than one bid; or

- (f) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods and services that are the subject of the bid.

4.4 A firm shall not be eligible to participate in any procurement activities under an ADB-financed or ADB-supported project while under sanction by ADB pursuant to its Anticorruption Policy (see ITB 3), whether such sanction was directly imposed by ADB, or imposed by ADB pursuant to the Agreement for Mutual Enforcement of Debarment Decisions. A bid from a sanctioned or cross-debarred firm will be rejected.

4.5 Government-owned enterprises in the Purchaser's country shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under the principles of commercial law, and (iii) are not dependent agencies of the Purchaser.

4.6 Bidders shall provide such evidence of their continued eligibility satisfactory to the Purchaser, as the Purchaser shall reasonably request.

4.7 Firms shall be excluded if by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods or contracting of works or services from that country or any payments to persons or entities in that country.

5. Eligible Goods and Related Services

5.1 All goods and related services to be supplied under the Contract and financed by the ADB, shall have as their country of origin an eligible country of the ADB (see Section V, Eligible Countries).

5.2 For purposes of this Clause, the term "goods" includes commodities, raw material, machinery, equipment, and industrial plants; and "related services" includes services such as insurance, transportation, installation, commissioning, training, and initial maintenance.

5.3 The term "country of origin" means the country where the goods have been mined, grown, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components.

5.4 The nationality of the firm that produces, assembles, distributes,

or sells the goods shall not determine their origin.

B. Contents of Bidding Document

- 6. Sections of the Bidding Document**
- 6.1 The Bidding Document consist of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB 8.
- PART 1 Bidding Procedures**
- Section I. Instructions to Bidders (ITB)
 - Section II. Bid Data Sheet (BDS)
 - Section III. Evaluation and Qualification Criteria
 - Section IV. Bidding Forms
 - Section V. Eligible Countries
- PART 2 Supply Requirements**
- Section VI. Schedule of Supply
- PART 3 Conditions of Contract and Contract Forms**
- Section VII. General Conditions of Contract (GCC)
 - Section VIII. Special Conditions of Contract (SCC)
 - Section IX. Contract Forms
- 6.2 The Invitation for Bids issued by the Purchaser is not part of the Bidding Document.
- 6.3 The Purchaser is not responsible for the completeness of the Bidding Document and its addenda, if they were not obtained directly from the Purchaser.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document, may result in the rejection of the Bid.
- 7. Clarification of Bidding Document**
- 7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Purchaser in writing at the Purchaser's address indicated in the **BDS**. The Purchaser will respond in writing to any request for clarification, provided that such request is received no later than twenty-one (21) days prior to the deadline for submission of Bids. The Purchaser shall forward copies of its response to all Bidders who have acquired the Bidding Document directly from it, including a description of the inquiry but without identifying its source. Should the Purchaser deem it necessary to amend the Bidding Document as a result of a clarification, it shall do so following the procedure under ITB 8 and 24.2.
- 8. Amendment of Bidding Document**
- 8.1 At any time prior to the deadline for submission of the Bids, the Purchaser may amend the Bidding Document by issuing addenda.

- 8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document directly from the Purchaser.
- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Purchaser may, at its discretion, extend the deadline for the submission of the Bids, pursuant to ITB 24.2

C. Preparation of Bids

- 9. Cost of Bidding**
- 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Purchaser shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 10. Language of Bid**
- 10.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Purchaser, shall be written in the language specified in the **BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the **BDS**, in which case, for purposes of interpretation of the Bid, such translation shall govern.
- 11. Documents Comprising the Bid**
- 11.1 The Bid shall comprise the following:
- (a) Bid Submission Sheet and the applicable Price Schedules, in accordance with ITB Clauses 12, 14, and 15;
 - (b) Bid Security or Bid-Securing Declaration, in accordance with ITB 21, if required;
 - (c) alternative bids, if permissible, in accordance with ITB 13;
 - (d) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 22;
 - (e) documentary evidence in accordance with ITB 16 establishing the Bidder's eligibility to bid;
 - (f) documentary evidence in accordance with ITB 17, that the Goods and Related Services to be supplied by the Bidder are of eligible origin;
 - (g) documentary evidence in accordance with ITB Clauses 18 and 31, that the Goods and Related Services conform to the Bidding Document;
 - (h) documentary evidence in accordance with ITB 19 establishing the Bidder's qualifications to perform the contract if its Bid is accepted; and

- (i) any other document required in the **BDS**.
- 12. Bid Submission Sheet and Price Schedules**
- 12.1 The Bidder shall submit the Bid Submission Sheet using the form furnished in Section IV, Bidding Forms. This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.
- 12.2 The Bidder shall submit the Price Schedules for Goods and Related Services, according to their origin as appropriate, using the forms furnished in Section IV, Bidding Forms.
- 13. Alternative Bids**
- 13.1 Unless otherwise indicated in the **BDS**, alternative bids shall not be considered.
- 14. Bid Prices and Discounts**
- 14.1 The prices and discounts quoted by the Bidder in the Bid Submission Sheet and in the Price Schedules shall conform to the requirements specified below.
- 14.2 All items in the Schedule of Supply must be listed and priced separately in the Price Schedules. If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. Items not listed in the Price Schedule shall be assumed not to be included in the Bid, and provided that the Bid is substantially responsive, the corresponding adjustment shall be applied in accordance with ITB 32.3
- 14.3 The price to be quoted in the Bid Submission Sheet shall be the total price of the Bid excluding any discounts offered.
- 14.4 The Bidder shall quote any unconditional discounts and the methodology for their application in the Bid Submission Sheet.
- 14.5 The terms EXW, CIF, CIP, and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by The International Chamber of Commerce, at the date of the Invitation for Bids or as specified in the **BDS**.
- 14.6 Prices shall be quoted as specified in each Price Schedule included in Section IV, Bidding Forms. The disaggregation of price components is required solely for the purpose of facilitating the comparison of Bids by the Purchaser. This shall not in any way limit the Purchaser's right to contract on any of the terms offered:
- (a) For Goods offered from within the Purchaser's country :
- (i) the price of the goods quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties

and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of goods quoted ex works or ex factory, or on the previously imported goods of foreign origin quoted ex warehouse, ex showroom, or off-the-shelf;

- (ii) sales tax and all other taxes applicable in the Purchaser's country and payable on the Goods if the Contract is awarded to the Bidder; and
 - (iii) the total price for the item.
- (b) For Goods offered from outside the Purchaser's country :
- (i) the price of the goods quoted CIF(named port of destination), or CIP (border point), or CIP (named place of destination), in the Purchaser's country, as specified in the **BDS**;
 - (ii) the price of the goods quoted FOB port of shipment (or FCA, as the case may be), if specified in the **BDS**;
 - (iii) the total price for the item.
- (c) For Related Services whenever such Related Services are specified in the Schedule of Requirements:
- (i) the local currency cost component of each item comprising the Related Services; and
 - (ii) the foreign currency cost component of each item comprising the Related Services,
- inclusive of all custom duties, sales and other similar taxes applicable in the Purchaser's country, payable on the Related Services, if the Contract is awarded to the Bidder

14.7 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account, unless otherwise specified in the **BDS**. A Bid submitted with an adjustable price quotation shall be treated as nonresponsive and shall be rejected, pursuant to ITB 31. However, if in accordance with the **BDS**, prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract, a Bid submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

14.8 If so indicated pursuant to ITB 1.1, Bids are being invited for individual contracts (lots) or for any combination of contracts (packages). Unless otherwise indicated in the **BDS**, prices quoted shall correspond to 100% of the items specified for each lot and to 100% of the quantities specified for each item of a lot.

Bidders wishing to offer any price reduction for the award of more than one Contract shall specify the applicable price reductions in accordance with ITB 14.4, provided the bids for all lots are submitted and opened at the same time.

- 15. Currencies of Bid**
- 15.1 Bid prices shall be quoted in the following currencies:
- (a) Bidders may express their bid price in any fully convertible currency. If a Bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but shall use no more than three currencies in addition to the currency of the Purchaser's country.
 - (b) If some of the expenditures for the Related Services are to be incurred in the borrowing country, such expenditures should be expressed in the Bid and will be payable in the Purchaser's currency.
- 16. Documents Establishing the Eligibility of the Bidder**
- 16.1 To establish their eligibility in accordance with ITB 4, Bidders shall:
- (a) complete the eligibility declarations in the Bid Submission Sheet, included in Section IV, Bidding Forms; and
 - (b) if the Bidder is an existing or intended JV in accordance with ITB 4.1, submit a copy of the JV Agreement, or a letter of intent to enter into such an Agreement. The respective document shall be signed by all legally authorized signatories of all the parties to the existing or intended JV, as appropriate.
- 17. Documents Establishing the Eligibility of the Goods and Related Services**
- 17.1 To establish the eligibility of the Goods and Related Services, in accordance with ITB 5, Bidders shall complete the country of origin declarations in the Price Schedule Forms, included in Section IV, Bidding Forms.
- 18. Documents Establishing the Conformity of the Goods and Related Services to the Bidding Document**
- 18.1 To establish the conformity of the Goods and Related Services to the Bidding Document, the Bidder shall furnish as part of its Bid the documentary evidence that the Goods and Related Services conform to the requirements specified in Section VI, Supply Requirements.
- 18.2 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item-by-item description of the essential technical and performance characteristics of the Goods and Related Services, demonstrating substantial responsiveness of the Goods and

Related Services to those requirements, and if applicable, a statement of deviations and exceptions to the provisions of Section VI, Schedule of Supply.

18.3 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Purchaser in the Section VI, Schedule of Supply, are intended to be descriptive only and not restrictive. The Bidder may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Purchaser's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in Section VI, Schedule of Supply.

**19. Documents
Establishing
the
Qualifications
of the Bidder**

19.1 The documentary evidence of the Bidder's qualifications to perform the contract, if its bid is accepted, shall establish to the Purchaser's satisfaction that the Bidder meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.

19.2 If so required in the **BDS**, a Bidder that does not manufacture or produce the Goods it offers to supply shall submit the Manufacturer's Authorization using the form included in Section IV, Bidding Forms to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods in the Purchaser's country.

19.3 If so required in the **BDS**, a Bidder that does not conduct business within the Purchaser's Country shall submit evidence that it will be represented by an Agent in the country equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

**20. Period of
Validity of
Bids**

20.1 Bids shall remain valid for the period specified in the **BDS** after the bid submission deadline date prescribed by the Purchaser. A Bid valid for a shorter period shall be rejected by the Purchaser as nonresponsive.

20.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Purchaser may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB 21, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its Bid.

21. Bid Security

21.1 Unless otherwise specified in the **BDS**, the Bidder shall furnish as part of its bid, in original form, either a Bid Securing

Declaration or a Bid Security as specified in the **BDS**. In the case of a Bid Security, the amount shall be as specified in the **BDS**.

21.2 If a Bid-Securing Declaration is specified pursuant to ITB 21.1 the Bidder shall use the form included in Section IV, Bidding Forms.

21.3 If a bid security is specified pursuant to ITB 21.1, the bid security shall be a demand guarantee in any of the following forms at the Bidder's option:

- (a) a bank guarantee;
- (b) an irrevocable letter of credit; or
- (c) a cashier's or certified check;

all from a reputable bank from an eligible country. In case of a bank guarantee, the Bid Security shall be submitted using the Bid Security Form included in Section IV, Bidding Forms, or another form acceptable to the Purchaser. The form must include the complete name of the Bidder. The Bid Security shall be valid for twenty-eight days (28) beyond the end of the validity period of the bid. This shall also apply if the period for bid validity is extended.

21.4 If a Bid Security is required in accordance with ITB 21.2, any Bid not accompanied by a substantially compliant Bid Security in accordance with ITB 21.3, shall be rejected by the Purchaser as non-responsive.

21.5 If a Bid Security is specified pursuant to ITB 21.1, the Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder furnishing of the signed Contract Agreement and the Performance Security pursuant to ITB 43 and ITB 44.

21.6 If a Bid Security is specified pursuant to ITB 21.1, the Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract Agreement and furnished the required Performance Security.

21.7 The Bid Security may be forfeited or the Bid-Securing Declaration executed:

- (a) if a Bidder withdraws its Bid during the period of bid validity specified by the Bidder on the Bid Submission Sheet, except as provided in ITB 20.2; or
- (b) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB 43;
 - (ii) furnish a Performance Security in accordance with

ITB 44; or.

- (iii) accept the arithmetical correction in accordance with ITB 33.

21.8 The Bid Security or the Bid-Securing Declaration of a JV must be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security or the Bid-Securing Declaration shall be in the names of all future partners as named in the letter of intent mentioned in ITB 16.1.

22. Format and Signing of Bid

22.1 The Bidder shall prepare one original of the documents comprising the Bid as described in ITB 11 and clearly mark it "ORIGINAL." In addition, the Bidder shall submit copies of the Bid, in the number specified in the **BDS** and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

22.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the **BDS** and shall be attached to the Bid.

22.3 Any amendments such as interlineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

D. Submission and Opening of Bids

23. Sealing and Marking of Bids

23.1 Bidders may always submit their bids by mail or by hand. When so specified in the **BDS**, Bidders have the option of submitting their bids electronically. Bidders submitting bids electronically shall follow the electronic bid submission procedures specified in the **BDS**.

23.2 Bidders submitting bids by mail or by hand shall enclose the original and each copy of the Bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL", "ALTERNATIVE" and "COPY." These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB 23.3 and 23.4.

23.3 The inner and outer envelopes shall:

- (a) bear the name and address of the Bidder;
- (b) be addressed to the Purchaser in accordance with ITB 24.1;

- (c) bear the specific identification of this bidding process pursuant to ITB 1.1 and any additional identification marks as specified in the **BDS**; and
 - (d) bear a warning not to open before the time and date for bid opening, in accordance with ITB 27.1.
- 23.4 If all envelopes are not sealed and marked as required, the Purchaser will assume no responsibility for the misplacement or premature opening of the bid.
- 24. Deadline for Submission of Bids**
 - 24.1 Bids must be received by the Purchaser at the address and no later than the date and time indicated in the **BDS**.
 - 24.2 The Purchaser may, at its discretion, extend the deadline for the submission of Bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.
- 25. Late Bids**
 - 25.1 The Purchaser shall not consider any Bid that arrives after the deadline for submission of Bids, in accordance with ITB 24. Any Bid received by the Purchaser after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.
- 26. Withdrawal, Substitution, and Modification of Bids**
 - 26.1 A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written Notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 22.2 (except that Withdrawal Notices do not require copies). The corresponding substitution or modification of the Bid must accompany the respective written Notice. All Notices must be:
 - (a) submitted in accordance with ITB Clauses 22 and 23 (except that Withdrawal Notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Withdrawal,” “Substitution,” “Modification”; and
 - (b) received by the Purchaser prior to the deadline prescribed for submission of bids, in accordance with ITB 24.
 - 26.2 Bids requested to be withdrawn in accordance with ITB 26.1 shall be returned unopened to the Bidders.
 - 26.3 No Bid shall be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Bid Submission Sheet or any extension thereof.

- 27. Bid Opening**
- 27.1 The Purchaser shall conduct the bid opening in public at the address, date and time specified in the **BDS**. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 23.1, shall be as specified in the **BDS**.
- 27.2 First, envelopes marked “WITHDRAWAL” shall be opened, read out, and recorded, and the envelope containing the corresponding Bid shall not be opened, but returned to the Bidder. If the withdrawal notice is not accompanied by a copy of the valid authorization pursuant to ITB 22.2, the withdrawal shall not be permitted and the corresponding Bid will be opened. Next, envelopes marked “SUBSTITUTION” shall be opened, read out, recorded, and exchanged for the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid shall be substituted unless the corresponding Substitution Notice contains a valid authorization to request the substitution and is read out and recorded at bid opening. Envelopes marked “MODIFICATION” shall be opened, read out, and recorded with the corresponding Bid. No Bid shall be modified unless the corresponding Modification Notice contains a valid authorization to request the modification and is read out and recorded at bid opening. Only envelopes that are opened, read out, and recorded at bid opening shall be considered further.
- 27.3 All other envelopes shall be opened one at a time, and the following read out and recorded: the name of the Bidder and whether there is a modification; the Bid Prices (per lot if applicable), any discounts and alternative offers; the presence of a Bid Security, if required; and any other details as the Purchaser may consider appropriate. Only discounts and alternative offers read out and recorded at bid opening shall be considered for evaluation. No Bid shall be rejected at bid opening except for late bids, in accordance with ITB 25.1.
- 27.4 The Purchaser shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot if applicable, any discounts and alternative offers if they were permitted; and the presence or absence of a Bid Security or Bid-Securing Declaration, if one was required. The Bidders’ representatives who are present shall be requested to sign the record. The omission of a Bidder’s signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted bids in time, and posted on line if electronic bidding was permitted. The Bidders’ representatives who are present shall also be requested to sign the attendance sheet.

E. Evaluation and Comparison of Bids

- 28. Confidentiality**
- 28.1 Information relating to the examination, evaluation, comparison, and postqualification of Bids, and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until publication of the Contract award; thereafter, information will be disclosed in accordance with ITB 42.3.
- 28.2 Any attempt by a Bidder to influence the Purchaser in the examination, evaluation, comparison, and postqualification of the Bids or Contract award decisions may result in the rejection of its Bid.
- 28.3 Notwithstanding ITB 28.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Purchaser on any matter related to the bidding process, it should do so in writing.
- 29. Clarification of Bids**
- 29.1 To assist in the examination, evaluation, comparison and post-qualification of the Bids, the Purchaser may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder with regard to its Bid and that is not in response to a request by the Purchaser shall not be considered. The Purchaser's request for clarification and the response shall be in writing. No change in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the evaluation of the Bids, in accordance with ITB 33.
- 30. Deviations, Reservations, and Omissions**
- 30.1 During the evaluation of bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Bidding Document;
 - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and
 - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.
- 31. Determination of Responsiveness**
- 31.1 The Purchaser's determination of the responsiveness of a Bid is to be based on the contents of the Bid itself, as defined in ITB11.
- 31.2 A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,
- (a) if accepted, would:
 - (i) affect in any substantial way the scope, quality, or performance of the Goods and Related Services specified in Section VI, Schedule of Supply; or

- (ii) limits in any substantial way, inconsistent with the Bidding Document, the Purchaser's rights or the Bidder's obligations under the proposed Contract;
or
 - (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.
- 31.3 The Purchaser shall examine the technical aspects of the bid in particular, to confirm that all requirements of Section VI, Schedule of Supply have been met without any material deviation or reservation.
- 32. Nonmaterial Nonconformities**
 - 32.1 Provided that a Bid is substantially responsive, the Purchaser may waive any nonconformities in the bid that do not constitute a material deviation, reservation or omission.
 - 32.2 Provided that a Bid is substantially responsive, the Purchaser may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.
 - 32.3 Provided that a Bid is substantially responsive, the Purchaser shall rectify nonmaterial nonconformities or omissions. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of the missing or non-conforming item or component. The adjustment shall be made using the method indicated in Section III, Evaluation and Qualification Criteria.
- 33. Correction of Arithmetical Errors**
 - 33.1 Provided that the Bid is substantially responsive, the Purchaser shall correct arithmetical errors on the following basis:
 - (a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
 - (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
 - (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in

which case the amount in figures shall prevail subject to (a) and (b) above.

33.2 If the Bidder that submitted the lowest evaluated Bid does not accept the correction of errors, its Bid shall be rejected, and its bid security shall be forfeited, or its bid securing declaration shall be executed.

34. Conversion to Single Currency

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

35. Margin of Preference

35.1 Unless otherwise specified in the **BDS**, no margin of preference shall apply.

36. Evaluation of Bids

36.1 The Purchaser shall evaluate each Bid that has been determined, up to this stage of the evaluation, to be substantially responsive.

36.2 To evaluate a Bid, the Purchaser shall only use all the criteria and methodologies defined in this Clause and in Section III, Evaluation and Qualification Criteria. No other criteria or methodology shall be permitted.

36.3 To evaluate a Bid, the Purchaser shall consider the following:

- (a) the bid price as quoted in accordance with ITB 14;
- (b) price adjustment for correction of arithmetic errors in accordance with ITB 33.1;
- (c) price adjustment due to discounts offered in accordance with ITB 14.4; and
- (d) price adjustment due to application of the evaluation criteria specified in Section III, Evaluation and Qualification Criteria. These criteria may include factors related to the characteristics, performance, and terms and conditions of purchase of the Goods and Related Services which shall be expressed to the extent practicable in monetary terms to facilitate comparison of bids unless otherwise specified in Section III.

36.4 The Purchaser's evaluation of a bid will exclude and not take into account:

- (a) in the case of Goods offered from within the Purchaser's country, all sales tax and all other taxes, applicable in the Purchaser's country and payable on the Goods if the Contract is awarded to the Bidder;
- (b) in the case of Goods offered from outside the Purchaser's country, all customs duties, sales tax, and other taxes, applicable in the Purchaser's country and payable on the

Goods if the Contract is awarded to the Bidder; and

- (c) any allowance for price adjustment during the period of performance of the Contract, if provided in the Bid.

- 37. Comparison of Bids** 37.1 The Purchaser shall compare all substantially responsive bids to determine the lowest-evaluated bid, in accordance with ITB 36.
- 38. Post-qualification of the Bidder** 38.1 The Purchaser shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive Bid is qualified to perform the Contract satisfactorily.
- 38.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 19.
- 38.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the Bid, in which event the Purchaser shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.
- 39. Purchaser's Right to Accept Any Bid, and to Reject Any or All Bids** 39.1 The Purchaser reserves the right to accept or reject any Bid, and to annul the bidding process and reject all Bids at any time prior to Contract award, without thereby incurring any liability to the Bidders.

F. Award of Contract

- 40. Award Criteria** 40.1 The Purchaser shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated Bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.
- 41. Purchaser's Right to Vary Quantities at Time of Award** 41.1 At the time the Contract is awarded, the Purchaser reserves the right to increase or decrease the quantity of Goods and Related Services originally specified in Section VI, Schedule of Supply, provided this does not exceed the percentages indicated in the **BDS**, and without any change in the unit prices or other terms and conditions of the Bid and the Bidding Document.
- 42. Notification of Award** 42.1 Prior to the expiration of the period of bid validity, the Purchaser shall notify the successful Bidder, in writing, that its Bid has been accepted.
- 42.2 Until a formal Contract is prepared and executed, the

notification of award shall constitute a binding Contract.

42.3 The Purchaser will publish in an English language newspaper or well-known freely accessible website the results identifying the bid and lot numbers and the following information: (i) name of each Bidder who submitted a Bid; (ii) bid prices as read out at bid opening; (iii) name and evaluated prices of each Bid that was evaluated; (iv) name of bidders whose bids were rejected and the reasons for their rejection; and (v) name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded. After publication of the award, unsuccessful bidders may request in writing to the Purchaser for a debriefing seeking explanations on the grounds on which their bids were not selected. The Purchaser shall promptly respond in writing to any unsuccessful Bidder who, after Publication of contract award, requests a debriefing.

43. Signing of Contract

43.1 Promptly after notification, the Purchaser shall send to the successful Bidder the Contract Agreement and the Special Conditions of Contract.

43.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Purchaser.

44. Performance Security

44.1 Within twenty-eight (28) days of the receipt of notification of award from the Purchaser, the successful Bidder shall furnish the Performance Security in accordance with the GCC, using for that purpose the Performance Security Form included in Section IX, Contract Forms, or another form acceptable to the Purchaser.

44.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security or execution of the Bid-Securing Declaration. In that event the Purchaser may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily.

Section II. Bid Data Sheet

This Section includes provisions that are specific to each procurement and that supplement Section I, Instructions to Bidders. Whenever there is a conflict, the provisions herein shall prevail over those in Section I.

A. Introduction	
ITB 1.1	The Purchaser is: Ministry of Public Works and Transport through its Department of Roads
ITB 1.1	The name of the ICB is: Procurement of Road Asset Management System The identification number of the ICB is: G-2 The number and identification of lots comprising this ICB is: 1
ITB 2.1	The Borrower is: Ministry of Public Works and Transport
ITB 2.1	The name of the Project is: Road Sector Governance and Maintenance Project
B. Bidding Document	
ITB 7.1	For clarification purposes only, the Purchaser's address is: Department of Roads – Ministry of Public Works and Transport Attention: DOR Director General Street Address: Lanxang Avenue Floor/Room number: 2nd Floor City: Vientiane Capital ZIP Code: Country: Lao PDR Telephone: 856-21 412255 Facsimile number: 856-21 412250 Electronic mail address: webmaster@mpwt.gov.la
C. Preparation of Bids	
ITB 10.1	The language of the Bid is: English

ITB 11.1 (i)	The Bidder shall submit the following additional documents with its Bid: Certificate of Manufacturer
ITB 13.1	Alternative Bids <i>is not</i> permitted
ITB 14.5	The Incoterms edition is: INCOTERM 2010
ITB 14.6 (b) (i)	For Goods offered from outside the Purchaser's country, the Bidder shall quote prices using the following Incoterms: EXW
ITB 14.6 (b) (ii)	In addition to the above, the Bidder shall quote prices for Goods offered from outside the Purchaser's country using the following Incoterms: CIP
ITB 14.7	The prices quoted by the Bidder shall be: Lao Kip
ITB 19.2	The Bidder is required to include with its bid, the Manufacturer's Authorization.
ITB 19.3	The Bidder is required to include with its bid, evidence that it will be represented by an Agent in the Purchaser's country.
ITB 20.1	The bid validity period shall be 90 days.
ITB 21.1	A Bid Security is required, which shall be valid for 28 days beyond the bid validity period. Bid-Securing Declaration is not required. If a bid security shall be required, the amount and currency of the bid security shall be : (2% of the Bid price)
ITB 22.1	In addition to the original of the Bid, the number of copies is: five (5)
ITB 22.2	The written confirmation of Authorization to sign on behalf of the Bidder shall consist of: Special Power or Attorney
D. Submission and Opening of Bids	
ITB 23.1	Bidders <i>shall not have</i> the option of submitting their bids electronically. If bidders submit their bids electronically, the electronic bidding submission procedures shall be: Not Applicable
ITB 23.3 (c)	The additional identification marks are: None

ITB 24.1	For bid submission purposes only, the Purchaser's address is : Attention: Director General – Department of Roads, Ministry of Public Works and Transport Street Address: Lanxang Avenue Floor/Room number: City: Vientiane Capital Country: Lao PDR
ITB 24.1	The deadline for bid submission is: Date: ___2017 Time: 10:00 AM
ITB 27.1	The bid opening shall take place at: Department of Roads, Ministry of Public Works and Transport Street Address: Lanxang Avenue Floor/Room number: City : Vientiane Capital Country: Lao PDR Date: ___2017 Time: 10:00 AM
ITB 27.1	If electronic bid submission is permitted in accordance with ITB 23.1, the specific bid opening procedures shall be: Not Applicable
E. Evaluation, and Comparison of Bids	
ITB 34.1	Bid prices quoted in different currencies shall be converted into: Lao kip The source of the selling exchange rate shall be: National Bank of Lao PDR The date for the selling exchange rate shall be: 28 days prior to bid opening
ITB 35.1	A margin of preference shall not apply.
F. Award of Contract	
ITB 41.1	The maximum percentage by which quantities may be increased is: 15% The maximum percentage by which quantities may be decreased is: 15%

Section III. Evaluation and Qualification Criteria

Table of Criteria

Evaluation Criteria

Scope

Multiple Contracts

Technical Criteria

Economic Criteria

Qualification Criteria

Financial Criteria

Experience Criteria

Supply Capacity

Litigation History

Evaluation Criteria

1. Scope

1.1 *Local Handling and Inland Transportation*

Costs for inland transportation, insurance, and other incidental costs for delivery of the goods from the EXW premises, or port of entry, or border point to Project Site as defined in Section VI, Schedule of Supply, shall be quoted in the PRICE SCHEDULE FOR RELATED SERVICES TO BE OFFERED FROM OUTSIDE AND WITHIN THE PURCHASER'S COUNTRY provided in Section IV, Bidding Forms. These costs will be taken into account during bid evaluation. If a Bidder fails to include such costs in its Bid, then these costs will be estimated by the Purchaser on the basis of published tariffs by the rail or road transport agencies, insurance companies, or other appropriate sources, and added to EXW or CIF or CIP price.

1.2 *Minor Omissions or Missing Items*

Pursuant to Sub-Clause 32.3 of the Instructions to Bidders, the cost of all quantifiable nonmaterial nonconformities or omissions from the contractual and commercial conditions shall be evaluated. The Purchaser will make its own - assessment of the cost of any nonmaterial nonconformities and omissions for the - purpose of ensuring fair comparison of Bids. A price equal to the highest quoted price for the same items by the other responsive bidders will be assigned to the missing items for evaluation purposes.

1.3 *Incorrect Quantities*

The quantities of items in the Price Schedule shall not altered by the Bidder but if so, the Purchaser will correct them and the unit rate entered by the Bidder shall be considered applicable to the corrected quantity.

1.4 *Basis of Price Proposal Evaluation*

In accordance with ITB 36.4, bids will be compared on the basis of prices entered by the Bidder on the Price Schedules in Section IV;

- (a) for Goods offered from within **Lao PDR**, the EXW cost in accordance with ITB14.6(a)-(i)
- (b) for Goods offered from outside **Lao PDR**, the CIP cost in accordance with ITB 14.6 (b)-(i).
- (c) for Related Services, the costs of both foreign and local currency components including all taxes and duties.

2. **Multiple Contracts** - Not applicable

3. **Technical Criteria**

Satisfying technical requirements of the bidder will be determined through “pass” or “fail” on basis of analyzing and evaluation of the minimum technical criteria for each item of goods are specified in Section VI, Schedule of Supply.

The cost of all quantifiable deviations or deficiencies from the technical requirements as specified in Section VI, Schedule of Supply shall be evaluated. The Purchaser will make its own assessment of the cost of these deviations or deficiencies for the purpose of ensuring fair comparison of Bids.

4. Economic Criteria

4.1 Adjustment for Deviations from the Terms of Payment

Deviations from the Terms of Payment as specified in Special Conditions of Contract, Sub-Clause 16.1, are not permitted and any such deviations will make the Bid not responsive.

4.2 Adjustment for Deviations in the Delivery and Completion Schedule

Deviations from the Delivery and Completion Schedule specified in Section VI, Schedule of Supply, are not permitted and any such deviations will make the Bid not responsive.

4.3 Spare Parts The list of items and quantities of spare parts for each of the vehicle, equipment and hardware likely to be required during the initial period of three (3) years of operation is indicated in Section VI, Schedule of Supply. The total cost of these items at the unit prices quoted in each Bid shall be added to the Bid Price.

Qualification Criteria

All the following criteria shall be evaluated on a Pass/Fail basis.

For the purpose of assessing the Bidder's ability to enable a satisfactory execution of the contract if to be awarded, the following criteria shall be used individually or in combination to establish one or several critical qualifications of the Bidder. If one of these criteria fails, the bid shall reject.

1. Financial Criteria

1.1 Financial Position

The Bidder shall submit audited financial statements or financial statements certified by applicable tax authority in accordance with local legislation for the last **3 years (2012, 2013, 2014)** to demonstrate the current soundness of the Bidder's financial position. As a minimum, a Bidder's net worth calculated as the difference between total assets and total liabilities should be positive. In the case of a Joint venture, each JV partner must meet this requirement by itself. Bidder shall use Form FIN-1 in Section IV.

1.2 Size of Operation

The minimum average annual turnover shall be 2.82 million **Lao kip** calculated as total certified payments received by bidder for contracts in progress or completed within the last three (3) years. In the case of a Joint venture, all partner combined must meet the requirement, while one partner must meet 40 % and each partner must meet 25% of the requirement. Bidder shall use Form FIN-2 in Section IV.

2. Experience Criteria

The Bidder shall provide evidence to demonstrate the following experience in the supply of the types of Goods offered.

The bidder within the last five (5) years shall one (1) have successfully completed contract valued at _____ **Lao Kip** as main supplier for the similar Road Asset Management System as described in Section VI, at minimum, involve *Road Condition Survey tools and/or Road Roughness Survey Tool*.

The contract details and names and addresses of the client for at least one similar contract in each of the past five years.

3. Technical Experience

The Bidder shall provide evidence to demonstrate the following experience of the manufacturer:

The Manufacturer shall have at least *five (5)* years of experience in producing *Road Asset Management System*. During the last 5 years, the Manufacturer must have sold a minimum of **one (1) Road Asset Management System** which have been operating without major defects. A list of end-users and contact details for the Purchaser's reference shall be submitted.

4. Litigation History

All pending litigation shall be treated as resolved against the Bidder and so shall in total not represent more than 50% percent of the Bidder's net worth calculated as the difference between total assets and total liabilities. In the case of a Joint venture, each JV partner must meet this requirement by itself. Bidder shall use Form LIT in Section IV.

Section IV. Bidding Forms

Table of Forms

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Price Schedule For Goods To Be Offered From Within The Purchaser's Country	4
Price Schedule For Goods To Be Offered From Outside The Purchaser's Country.....	5
Price Schedule For Related Services	6
Form of Bid Security	7
Form of Bid-Securing Declaration	8
Manufacturer's Authorization	9
Bidder's Qualification	10

Bid Submission Sheet

Date: _____
 ICB No.: _____
 Invitation for Bid No.: _____
 Alternative No.: _____

To: _____

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Document, including Addenda No.: _____;
- (b) We offer to supply in conformity with the Bidding Document and in accordance with the delivery schedule specified in the Schedule of Supply, the following Goods and Related Services: _____
_____;
- (c) The total price of our Bid, excluding any discounts offered in item (d) below is: _____
_____;
- (d) The discounts offered and the methodology for their application are: _____

_____;
- (e) Our Bid shall be valid for a period of _____ days from the date fixed for the bid submission deadline in accordance with the Bidding Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) If our Bid is accepted, we commit to obtain a Performance Security in the amount of _____ percent of the Contract Price for the due performance of the Contract;
- (g) Our firm, including any subcontractors or suppliers for any part of the Contract, have nationalities from the following eligible countries _____;
- (h) We are not participating, as Bidders, in more than one Bid in this bidding process, other than alternative offers in accordance with the Bidding Document;

- (i) Our firm, its affiliates or subsidiaries, including any subcontractors or suppliers for any part of the Contract, has not been declared ineligible by the ADB;
- (j) We are not a government owned entity / We are a government owned entity but meet the requirements of ITB 4.5;
- (k) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the bidding process or execution of the Contract:

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

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

- (l) We understand that this Bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal Contract is prepared and executed.
- (m) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.
- (n) We agree to permit ADB or its representative to inspect our accounts and records and other documents relating to the bid submission and to have them audited by auditors appointed by ADB.

Name _____

In the capacity of _____

Signed _____

Duly authorized to sign the Bid for and on behalf of _____

Date _____

Price Schedule For Goods To Be Offered From Within The Purchaser's Country

Name of Bidder _____ IFB Number _____ Page ___ of ___

1	2	3	4	5	6	7	8	9
Item	Description	Country of Origin	Domestic Value Added in Percent	Quantity and Unit of Measurement	Unit Price EXW	Total EXW Price per item	Sales and Other Taxes Per Item	Total Price per Item including Taxes
						5 x 6		7 + 8
Total Amount								

Notes:

Column 4: In accordance with margin of preference ITB Clause 35, if applicable.
Domestic Value Added comprises domestic labor, the domestic content of materials, domestic overheads and profits from the stage of mining the raw material until final assembly.

Column 6: Incoterm in accordance with ITB Clause 14
Currency in accordance with ITB Clause 15
Price shall include all customs duties and sales and other taxes already paid or payable on the components and raw materials used in the manufacture or assembly of the item or the custom duties and sales and other taxes already paid on previously imported items.

Column 8: Payable in the Purchaser's country if Contract is awarded

Name _____

In the capacity of _____

Signed _____

Duly authorized to sign the Bid for and on behalf of _____

Date _____

Price Schedule For Goods To Be Offered From Outside The Purchaser's Country

Name of Bidder _____ IFB Number _____ Page ___ of ___

1	2	3	4	5	6	7	8
Item	Description	Country of Origin	Quantity and Unit of Measurement	Unit Price CIF (...) or CIP (...)	Unit Price FOB (...) or FCA (...)	Total Price CIF or CIP per Item	Total Price FOB or FCA per Item
						4 x 5	4 x 6
Total Amount							

Notes:

Column 5 and 6: Incoterm in accordance with ITB Clause 14
Currency in accordance with ITB Clause 15

Column 6: Only to be used if the Purchaser wishes to reserve transportation and insurance to domestic companies or other designated sources. Identification of the lowest evaluated bid must be on the basis of the CIF or CIP price, but the Purchaser may sign the contract on FOB or FCA terms and make its own arrangement for transportation and/or insurance.

Name _____

In the capacity of _____

Signed _____

Duly authorized to sign the Bid for and on behalf of _____

Date _____

Price Schedule For Related Services To Be Offered From Outside And Within The Purchaser's Country

Name of Bidder _____ IFB Number _____ Page ___ of ___

1 Item No.	2 Description	3 Country of Origin	4 Quantity and Unit of Measure- ment	5		6	
				Unit Price		Total Price per Item	
				(a)	(b)	(a)	(b)
				Foreign Currency	Local Currency	Foreign Currency	Local Currency
						4 x 5(a)	4 x 5(b)
Total Amount							

Notes:

Column 5 and 6: Currencies in accordance with ITB Clause 15

Prices are to be quoted inclusive of all custom duties, sales and other similar taxes applicable in the Purchaser's country and payable on the Related Services, if the Contract is awarded to the Bidder

Name _____

In the capacity of _____

Signed _____

Duly authorized to sign the Bid for and on behalf of _____

Date _____

Form of Bid Security

[insert Bank's Name, and Address of Issuing Branch or Office]

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

Date: *[insert date]*

BID GUARANTEE No.: *[insert number]*

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

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

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

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or
- (b) does not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter "the ITB"); or
- (c) having been notified of the acceptance of its Bid by the Purchaser during the period of bid validity, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to furnish the performance security, in accordance with the ITB.

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

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

Name _____

In the capacity of _____

Signed _____

Duly authorized to sign the Bid Security for and on behalf of _____

Date _____

Form of Bid-Securing Declaration

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

Bid No.: *[insert number of bidding process]*

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

To: *[insert complete name of Purchaser]*

We, the undersigned, declare that:

We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Borrower for the period of time of *[Purchaser to indicate here the period of time for which the Purchaser will declare a Bidder ineligible to be awarded a Contract if the Bid Securing Declaration is to be executed.]* starting on the date that we receive a notification from the Purchaser that our Bid Securing Declaration is executed, if we are in breach of our obligation(s) under the bid conditions, because we:

- (a) have withdrawn our Bid during the period of bid validity specified in the Form of Bid; or
- (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB.

We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.

Signed: *[insert signature of person whose name and capacity are shown]* In the capacity of *[insert legal capacity of person signing the Bid-Securing Declaration]*

Name: *[insert complete name of person signing the Bid-Securing Declaration]*

Duly authorized to sign the bid for and on behalf of: *[insert complete name of Bidder]*

Dated on _____ day of _____, _____ *[insert date of signing]*

Corporate Seal (where appropriate)

[Note: In case of a Joint Venture, the Bid-Securing Declaration must be in the name of all partners to the Joint Venture that submits the bid.]

Manufacturer's Authorization

Date: _____

ICB No.: _____

Invitation for Bid No.: _____

Alternative No.: _____

To: _____

WHEREAS _____ who are official manufacturers of _____ having factories at _____ do hereby authorize _____ to submit a Bid in relation to the Invitation for Bids indicated above, the purpose of which is to provide the following Goods, manufactured by us _____ and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 28 of the General Conditions of Contract, with respect to the Goods offered by the above firm in reply to this Invitation for Bids.

Name _____

In the capacity of: _____

Signed _____

Duly authorized to sign the Authorization for and on behalf of _____

Date _____

Bidder's Qualification

Form ELI - 1: Bidder's Information Sheet

Bidder's Information	
Bidder's legal name	
In case of JV, legal name of each partner	
Bidder's country of constitution	
Bidder's year of constitution	
Bidder's legal address in country of constitution	
Bidder's authorized representative (name, address, telephone numbers, fax numbers, e-mail address)	
<p>Attached are copies of the following original documents.</p> <p><input type="checkbox"/> 1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2.</p> <p><input type="checkbox"/> 2. Authorization to represent the firm or JV named in above, in accordance with ITB 22.2.</p> <p><input type="checkbox"/> 3. In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1.</p> <p><input type="checkbox"/> 4. In case of a government-owned entity, any additional documents not covered under 1 above required to comply with ITB 4.5.</p>	

Form ELI - 2: JV Information Sheet

Each member of a JV must fill in this form

JV / Specialist Subcontractor Information	
Bidder's legal name	
JV Partner's or Subcontractor's legal name	
JV Partner's or Subcontractor's country of constitution	
JV Partner's or Subcontractor's year of constitution	
JV Partner's or Subcontractor's legal address in country of constitution	
JV Partner's or Subcontractor's authorized representative information (name, address, telephone numbers, fax numbers, e-mail address)	
<p>Attached are copies of the following original documents.</p> <p><input type="checkbox"/> 1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2.</p> <p><input type="checkbox"/> 2. Authorization to represent the firm named above, in accordance with ITB 22.2.</p> <p><input type="checkbox"/> 3. In the case of government-owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.5.</p>	

Form FIN - 1: Historical Financial Performance

Each Bidder or member of a JV must fill in this form

Financial Data for Previous _____ Years [US\$ Equivalent]		
Year 1:	Year 2:	Year __:

Information from Balance Sheet

Total Assets			
Total Liabilities			
Net Worth			
Current Assets			
Current Liabilities			

Information from Income Statement

Total Revenues			
Profits Before Taxes			
Profits After Taxes			

Attached are copies of financial statements (balance sheets including all related notes, and income statements) for the last _____ years, as indicated above, complying with the following conditions.

- Unless otherwise required by Section 3 of the Bidding Document, all such documents reflect the financial situation of the legal entity or entities comprising the Bidder and not the Bidder's parent companies, subsidiaries or affiliates.
- Historic financial statements must be audited by a certified accountant.
- Historic financial statements must be complete, including all notes to the financial statements.
- Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

Form FIN - 2: Average Annual Turnover

Each Bidder or member of a JV must fill in this form

The information supplied should be the Annual Turnover of the Bidder or each member of a JV in terms of the amounts billed to clients for each year for contract in progress or completed, converted to US Dollars at the rate of exchange at the end of the period reported.

Annual Turnover Data for the Last 3 Years			
Year	Amount Currency	Exchange Rate	US\$ Equivalent
Average Annual Turnover			

Form LIT - Pending Litigation

Each Bidder or member of a JV must fill in this form if so required under Criterion 4 of Section 3 (Evaluation and Qualification Criteria).

Pending Litigation			
<input type="checkbox"/> No pending litigation			
<input type="checkbox"/> Below is a description of all pending litigation involving the Bidder (or each JV member if Bidder is a Joint Venture)			
Year	Matter in Dispute	Value of Pending Claim in US\$ Equivalent	Value of Pending Claim as a Percentage of Net Worth

Section V. Eligible Countries

List of Eligible Countries of the Asian Development Bank

Regional Members

- | | |
|--------------------------------------|-------------------------------------|
| 1. Afghanistan | 25. Micronesia, Federated States of |
| 2. Armenia | 26. Mongolia |
| 3. Australia | 27. Myanmar |
| 4. Azerbaijan | 28. Nauru |
| 5. Bangladesh | 29. Nepal |
| 6. Bhutan | 30. New Zealand |
| 7. Brunei Darussalam | 31. Pakistan |
| 8. Cambodia | 32. Palau |
| 9. China, People's Republic of | 33. Papua New Guinea |
| 10. Cook Islands | 34. Philippines |
| 11. Fiji Islands | 35. Samoa |
| 12. Georgia | 36. Singapore |
| 13. Hong Kong, China | 37. Solomon Islands |
| 14. India | 38. Sri Lanka |
| 15. Indonesia | 39. Taipei, China |
| 16. Japan | 40. Tajikistan |
| 17. Kazakhstan | 41. Thailand |
| 18. Kiribati | 42. Timor Leste |
| 19. Korea, Republic of | 43. Tonga |
| 20. Kyrgyz Republic | 44. Turkmenistan |
| 21. Lao People's Democratic Republic | 45. Tuvalu |
| 22. Malaysia | 46. Uzbekistan |
| 23. Maldives | 47. Vanuatu |
| 24. Marshall Islands | 48. Vietnam |

Non-Regional Members

- | | |
|---------------|---------------------|
| 1. Austria | 11. The Netherlands |
| 2. Belgium | 12. Norway |
| 3. Canada | 13. Portugal |
| 4. Denmark | 14. Spain |
| 5. Finland | 15. Sweden |
| 6. France | 16. Switzerland |
| 7. Germany | 17. Turkey |
| 8. Ireland | 18. United Kingdom |
| 9. Italy | 19. United States |
| 10. Luxemburg | |

(Source: website www.adb.org of Asian Development Bank)

Section VI. Schedule of Supply

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1. List of Goods and Related Services

The Road Asset Management System shall include the following items to make it complete and operational.

Item No. : 1				
Item Name : Road Condition Survey Tools				
Item No.	Name of Goods or Related Services	Description	Unit of Measurement	Quantity
1.	Video Recorder	To record data during surveys	set	6
2.	Image Analysis System	Image analysis Software	set	6
3.	Manual (Laos Translation)		book	1

Item No. : 2				
Item Name : Road Roughness Survey Tools				
Item No.	Name of Goods or Related Services	Description	Unit of Measurement	Quantity
1	Accelerometer, GPS and data converter	To collect data on road roughness	set	6
2	Roughness analysis system	Software on rough analysis	set	6
3.	Manual (Laos Translation)		book	1

Item No. : 3				
Item Name : Computers/Networks/Server				
Item No.	Name of Goods or Related Services	Description	Unit of Measurement	Quantity
1	Computers with OS and basic software	For data storage and analysis	set	6
2	Server		set	6
3.	Network		set	3

Item No. : 4				
Item Name : Related Services				
Item No.	Name of Goods or Related Services	Description	Unit of Measurement	Quantity
1	Installation, Testing and commissioning	To install, test and commission the units	ls	1
2	Training of end-user	Training of the MPWT staff on the operation of the complete system	ls	1
3.	After Sales services	Assistance during the warranty period	-	-

2. Delivery and Completion Schedule

The delivery period shall start as of _____.

Item No.	Description of Goods or Related Services	Delivery Schedule (Duration)	Location	Required Arrival Date of Goods or Completion Date of Related Services
1	Road Condition Survey Tools	Within 6 months	Vientiane, Laos	Within 3 months upon delivery and installation of the system
2	Road Roughness Survey Tools	Within 6 months	Vientiane, Laos	Within 3 months upon delivery and installation of the system
3	Computers/Networks/Server	Within 6 months	Vientiane, Laos	Within 3 months upon delivery and installation of the system

3. Technical Specifications

Item No.	Name of Goods or Related Services	Technical Description, Specifications, and Standards
	Image Analysis System	<ol style="list-style-type: none"> 1. System able to run on the Windows 7 and Windows 8. 2. System developed based on a commercial software available in the market. 3. System without patents or if any patent, system that can be used with user registration/fee. 4. System allowed to use in Lao PDR without any legal restriction. 5. System to analyze image recorded by the video to identify type, location and size of road defects. Types of road defect include (i) rutting, (ii) crack, (iii) pothole. 6. System includes reporting function to demonstrate type, location and size of road defects mentioned above.
	Roughness analysis system	<ol style="list-style-type: none"> 1 to 4. Ditto 5. System to analyze degree and location of road roughness from the road survey using accelerometer and GPS. Minimum length for roughness analysis to be confirmed by the mutual agreement between ADB and MPWT 6. System includes reporting function to show degree and location of road roughness by International Roughness Index defined by the World Bank. Analyzed road length for reporting purpose to be 50 meter to 100 meter.

4. Drawings

Section VII. General Conditions of Contract

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1. Definitions

- 1.1 The following words and expressions shall have the meanings hereby assigned to them:
- (a) “Contract” means the Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
 - (b) “Contract Documents” means the documents listed in the Agreement, including any amendments thereto.
 - (c) “Contract Price” means the price payable to the Supplier as specified in the Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
 - (d) “Day” means calendar day.
 - (e) “Delivery” means the transfer of the Goods from the Supplier to the Purchaser in accordance with the terms and conditions set forth in the Contract.
 - (f) “Completion” means the fulfillment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
 - (g) “Eligible Countries” means the countries and territories eligible as listed in Section V.
 - (h) “GCC” means the General Conditions of Contract.
 - (i) “Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.
 - (j) “Purchaser’s Country” is the country specified in the Special Conditions of Contract (SCC).
 - (k) “Purchaser” means the entity purchasing the Goods and Related Services, as specified in the SCC.
 - (l) “Related Services” means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other similar obligations of the Supplier under the Contract.

- (m) “SCC” means the Special Conditions of Contract.
 - (n) “Subcontractor” means any natural person, private or government entity, or a combination of the above, including its legal successors or permitted assigns, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.
 - (o) “Supplier” means the natural person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Purchaser and is named as such in the Agreement, and includes the legal successors or permitted assigns of the Supplier.
 - (p) “The ADB” is the Asian Development Bank.
 - (q) “The Site,” where applicable, means the place named in the SCC.
- 2. Contract Documents** 2.1 Subject to the order of precedence set forth in the Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory.
- 3. Corrupt Practices** 3.1 ADB’s Anticorruption Policy requires borrowers (including beneficiaries of ADB-financed activity), as well as bidders, suppliers, and contractors under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the ADB:
- (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, anything of value to influence improperly the actions of another party;
 - (ii) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper

purpose, including influencing improperly the actions of another party;

- (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract;
- (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation; and
- (d) will sanction a firm or an individual, at any time, in accordance with ADB's Anticorruption Policy and Integrity Principles and Guidelines (both as amended from time to time), including declaring ineligible, either indefinitely or for a stated period of time, to participate in ADB-financed or ADB-administered activities or to benefit from an ADB-financed or ADB-administered contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive or other prohibited practices.

3.2 The Supplier shall permit the ADB to inspect the Supplier's accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by the ADB, if so required by the ADB.

4. Interpretation

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

4.2 Incoterms

- (a) The meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.
- (b) EXW, CIF, CIP, and other similar terms, shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce at the date of the Invitation for Bids or as

specified in the SCC.

4.3 Entire Agreement

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

4.4 Amendment

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

4.5 Nonwaiver

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

4.6 Severability

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

5. Language

- 5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in the language specified in the SCC. Supporting documents and printed literature that are part of the Contract may be in another language provided they are

- accompanied by an accurate translation of the relevant passages in the language specified in the SCC, in which case, for purposes of interpretation of the Contract, this translation shall govern.
- 5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.
- 6. Joint Venture, Consortium or Association**
- 6.1 Unless otherwise specified in the SCC, if the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.
- 7. Eligibility**
- 7.1 The Supplier and its Subcontractors shall have the nationality of an eligible country. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted or incorporated, and operates in conformity with the provisions of the laws of that country.
- 7.2 All Goods and Related Services to be supplied under the Contract and financed by the ADB shall have their origin in Eligible Countries. For the purpose of this Clause, origin means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components.
- 8. Notices**
- 8.1 Any Notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the SCC. The term “in writing” means communicated in written form with proof of receipt.
- 8.2 A Notice shall be effective when delivered or on the Notice’s effective date, whichever is later.
- 9. Governing Law**
- 9.1 The Contract shall be governed by and interpreted in accordance with the laws of the Purchaser’s country, unless otherwise specified in the SCC.
- 10. Settlement of Disputes**
- 10.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in

connection with the Contract.

10.2 If the parties fail to resolve such a dispute or difference by mutual consultation within twenty-eight (28) days from the commencement of such consultation, either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

11. Scope of Supply

11.1 Subject to the SCC, the Goods and Related Services to be supplied shall be as specified in Section VI, Schedule of Supply.

11.2 Unless otherwise stipulated in the Contract, the Scope of Supply shall include all such items not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Delivery and Completion of the Goods and Related Services as if such items were expressly mentioned in the Contract.

12. Delivery

12.1 Subject to GCC Sub-Clause 33.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Section VI, Schedule of Supply. The details of shipping and other documents to be furnished by the Supplier are specified in the SCC.

13. Supplier's Responsibilities

13.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 11, and the Delivery and Completion Schedule, as per GCC Clause 12.

14. Purchaser's Responsibilities

14.1 Whenever the supply of Goods and Related Services requires that the Supplier obtain permits, approvals, and import and other licenses from local public authorities, the Purchaser shall, if so required by the Supplier, make its best effort to assist the Supplier in complying with such requirements in a timely and expeditious manner.

14.2 The Purchaser shall pay all costs involved in the performance of its responsibilities, in accordance with GCC Sub-Clause 14.1.

15. Contract Price

15.1 The Contract Price shall be as specified in the Agreement subject to any additions and adjustments thereto, or deductions therefrom, as may be made pursuant to the Contract.

- 15.2 Prices charged by the Supplier for the Goods delivered and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any price adjustments authorized in the SCC.
- 16. Terms of Payment**
- 16.1 The Contract Price shall be paid as specified in the SCC.
- 16.2 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 12 and upon fulfillment of all the obligations stipulated in the Contract.
- 16.3 Payments shall be made promptly by the Purchaser, no later than sixty (60) days after submission of an invoice or request for payment by the Supplier, and the Purchaser has accepted it.
- 16.4 The currency or currencies in which payments shall be made to the Supplier under this Contract shall be specified in the SCC.
- 17. Taxes and Duties**
- 17.1 For goods supplied from outside the Purchaser's country, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Purchaser's country.
- 17.2 For goods supplied from within the Purchaser's country, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.
- 17.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the Purchaser's Country, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.
- 18. Performance Security**
- 18.1 The Supplier shall, within twenty-eight (28) days of the notification of Contract award, provide a Performance Security for the due performance of the Contract in the amounts and currencies specified in the SCC.
- 18.2 The proceeds of the Performance Security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 18.3 The Performance Security shall be denominated in the currencies of the Contract, or in a freely convertible currency

acceptable to the Purchaser, and shall be in one of the forms stipulated by the Purchaser in the SCC, or in another form acceptable to the Purchaser.

- 18.4 The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.
- 19. Copyright**
- 19.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.
- 20. Confidential Information**
- 20.1 The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 20.
- 20.2 The Purchaser shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the Contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Purchaser for any purpose other than the design, procurement, or other work and services required for the performance of the Contract.
- 20.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:
- (a) the Purchaser or Supplier need to share with the ADB or other institutions participating in the financing of the Contract;

- (b) now or hereafter enters the public domain through no fault of that party;
- (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
- (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

21. Subcontracting 21.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the Bid. Subcontracting shall in no event relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.

21.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

22. Specifications and Standards 22.1 Technical Specifications and Drawings

- (a) The Supplier shall ensure that the Goods and Related Services comply with the technical specifications and other provisions of the Contract.
- (b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.
- (c) The Goods and Related Services supplied under this Contract shall conform to the standards mentioned in Section VI, Schedule of Supply and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is

appropriate to the country of origin of the Goods.

- 22.2 Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Section VI, Schedule of Supply. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GCC Clause 33.
- 23. Packing and Documents**
- 23.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the final destination of the Goods and the absence of heavy handling facilities at all points in transit.
- 23.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the SCC, and in any other instructions ordered by the Purchaser.
- 24. Insurance**
- 24.1 Unless otherwise specified in the SCC, the Goods supplied under the Contract shall be fully insured, in a freely convertible currency from an eligible country, against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the SCC.
- 25. Transportation**
- 25.1 Unless otherwise specified in the SCC, obligations for transportation of the Goods shall be in accordance with the Incoterms specified in Sections VI, Schedule of Supply.
- 26. Inspections and Tests**
- 26.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as are specified in Sections VI, Schedule of Supply.
- 26.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the final destination of the Goods, or in another place in the Purchaser's country as specified in the SCC. Subject to GCC

Sub-Clause 26.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.

- 26.3 The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 26.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 26.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.
- 26.5 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications, codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 26.6 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.
- 26.7 The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-Clause 26.4.
- 26.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC Sub-Clause 26.6, shall release the Supplier from any warranties or other obligations under the

Contract.

27. Liquidated Damages

27.1 Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the Goods or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the Contract Price for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the SCC. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause 35.

28. Warranty

28.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

28.2 Subject to GCC Sub-Clause 22.1, the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.

28.3 Unless otherwise specified in the SCC, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the SCC, or for eighteen (18) months after the date of shipment or loading in the country of origin, whichever period concludes earlier.

28.4 The Purchaser shall give Notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.

28.5 Upon receipt of such Notice, the Supplier shall, within the period specified in the SCC, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.

28.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the SCC, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser

may have against the Supplier under the Contract.

**29. Patent
Indemnity**

- 29.1 The Supplier shall, subject to the Purchaser's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:
- (a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and
 - (b) the sale in any country of the products produced by the Goods.

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

- 29.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Sub-Clause 29.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 29.3 If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.
- 29.4 The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

29.5 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

30. Limitation of Liability

30.1 Except in cases of gross negligence or willful misconduct :

- (a) neither party shall be liable to the other party for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser; and
- (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort, or otherwise, shall not exceed the amount specified in the SCC, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the Purchaser with respect to patent infringement.

31. Change in Laws and Regulations

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

32. Force

32.1 The Supplier shall not be liable for forfeiture of its

Majeure

Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

- 32.2 For purposes of this Clause, “Force Majeure” means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 32.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

33. Change Orders and Contract Amendments

- 33.1 The Purchaser may at any time order the Supplier through Notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:
- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
 - (b) the method of shipment or packing;
 - (c) the place of delivery; and
 - (d) the Related Services to be provided by the Supplier.
- 33.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier’s performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery and Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier’s receipt of the Purchaser’s change order.
- 33.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and

shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

34. Extensions of Time

- 34.1 If at any time during performance of the Contract, the Supplier or its Subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 12, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.
- 34.2 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 27, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

35. Termination

35.1 Termination for Default

- (a) The Purchaser, without prejudice to any other remedy for breach of Contract, by Notice of default sent to the Supplier, may terminate the Contract in whole or in part:
- (i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 34; or
 - (ii) if the Supplier fails to perform any other obligation under the Contract.
- (b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.
- (c) if the Supplier, in the judgment of the Purchaser has engaged in corrupt, fraudulent, collusive, or coercive practices, as defined in GCC Clause 3, in competing for

or in executing the Contract.

35.2 Termination for Insolvency

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

35.3 Termination for Convenience

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

36. Assignment

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

Section VIII. Special Conditions of Contract

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

GCC 1.1(j)	The Purchaser's country is: <u>Lao PDR</u>
GCC 1.1(k)	The Purchaser is: <u>Ministry of Public Works and Transport through Department of Roads</u>
GCC 1.1 (q)	The Site is: <u>Vientiane Capital</u>
GCC 4.2 (a)	The version of Incoterms shall be: <u>INCOTERMS 2010</u>
GCC 5.1	The language shall be: <u>English</u>
GCC 6.1	The individuals or firms in a joint venture, consortium or association <u>shall be</u> jointly and severally liable.
GCC 8.1	For <u>notices</u> , the Purchaser's address shall be: Attention: <u>DOR Director General</u> Street Address: <u>Lanxang Avenue</u> Floor/Room number: City: <u>Vientiane Capital</u> ZIP Code: Country: <u>Lao PDR</u> Telephone: <u>856-21 412255</u> Facsimile number: <u>856-21 412250</u> Electronic mail address: <u>webmaster@mpwt.gov.la</u>
GCC 9.1	The governing law shall be: <u>the Law of Lao PDR</u>
GCC 10.2	For Foreign Firms the formal mechanism for the resolution of disputes shall be <u>in accordance with the provisions of the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules. In case of Local Firms the mechanism for the resolution of disputes shall be according to the Economic Arbitration Authority of Laos.</u>

GCC 11.1	<p>The scope of supply shall be defined in: <u>Section VI - Schedule of Supply. At the time of awarding the Contract, the Purchaser shall specify any change in the Scope of Supply with respect to Section VI- Schedule of Supply included in the Bidding Document. Such changes may be due, for instance, if the quantities of Goods and Related Services are increased or decreased at the time of award</u></p>
GCC 12.1	<p>Details of shipping and documents to be furnished by the Supplier shall be: For Goods supplied from abroad as per Incoterms CIP:</p> <p>Upon transport, the Supplier shall notify the Purchaser and the insurance company by telex or fax, the full details of the shipment, including Contract number, description of Goods, quantity, the vessel, the bill of lading number and date, port of loading, date of shipment, port of discharge etc. The Supplier shall send the following documents to the Purchaser, with a copy to the insurance company:</p> <ul style="list-style-type: none"> (a) 2 copies of the Supplier’s invoice showing the description of the Goods, quantity, unit price, and total amount; (b) original and 2 copies of the negotiable, clean on-board bill of lading marked “freight prepaid” and 2 copies of non-negotiable bill of lading; (c) 2 copies of the packing list identifying contents of each package (d) insurance certificate; (e) Manufacturer’s or Supplier’s warranty certificate; (f) the Supplier’s factory inspection report; and (g) certificate of origin. <p>The Purchaser shall receive the above documents at least one week before arrival of the Goods at the place of arrival and, if not received, the Supplier shall be responsible for any consequent expenses.</p> <p>For Goods from within Lao PDR as per Incoterms EXW:</p> <p>Upon delivery of the Goods to the transporter, the Supplier shall notify the Purchaser and send the following documents to the Purchaser:</p> <ul style="list-style-type: none"> (a) 2 copies of the Supplier’s invoice showing the description of the Goods, quantity, unit price, and total amount; (b) delivery note, road/railway receipt or truck receipt; (c) Manufacturer’s or Supplier’s warranty certificate; (d) the Supplier’s factory inspection report; and (e) certificate of origin.

	The Purchaser shall receive the above documents before arrival of the Goods and, if not received, the Supplier shall be responsible for any consequent expenses.
GCC 15.2	The price adjustment shall be: <u>None</u>
GCC 16.1	The terms of payment shall be: <u>(to be determined and discussed with DOR)</u>
GCC 16.4	The currencies for payments shall be: <u>currency or currencies stated in the Supplier's bid</u>
GCC 18.1	The Supplier shall provide a Performance Security of ten (10) percent of the Contract Price. The Performance Security shall be denominated in the following amounts and currencies: <u>Lao Kip</u>
GCC 18.3	The Performance Security shall be in the following form: <u>Bank Guarantee in the format included in Section IX, Contract Forms, or a cashier's or certified check, or cash.</u>
GCC 18.4	Discharge of Performance Security shall take place: <u>upon completion of delivery</u>

GCC 23.2	<p>The packing, marking and documentation within and outside the packages shall be: Protected against deterioration or damage by handling, rain, or sea water.</p> <p>Each package shall be marked as follows:</p> <ul style="list-style-type: none"> a) Contract No.: b) Name of Project: c) The Purchaser: d) Consignee: e) Port of Destination: f) Destination site: g) Case No./Total number of cases: h) Gross/Net weight (kg): i) Measurement (length x width x height in cms): j) Names and types of goods: <p>The following documents shall be enclosed in each package of the goods:</p> <ul style="list-style-type: none"> a) Detailed packing list in two (2) copies. b) Quality and inspection certificate issued by the Supplier in two (2) copies. c) Technical documents of relevant material in one (1) copy. d) One (1) copy of packing list contained in water proof envelope shall be fastened to outside of the package in case the goods are supplied in wooden cases.
GCC 24.1	<p>The insurance coverage shall be in accordance with: <u>Pursuant to GCC, Sub-Clause 24.1, the Supplier must insure the Goods in an amount equal to 110 percent of the CIF, CIP or EXW price of the Goods from “Warehouse” to “Warehouse” on “All Risks” basis, including War Risks and Strikes.</u></p>
GCC 25.1	<p>Obligations for transportation of the Goods shall be in accordance with: <u>INCOTERMS 2010</u></p>
GCC 26.2	<p>Tests and Inspections specified in Section VI, Schedule of Supply, shall be carried out at the following times or milestones, and places : <u>(to be determined and discussed with DOR)</u></p>

GCC 27.1	The liquidated damage shall be: <u>0.5% of the Contract Price per week or part thereof</u>
GCC 27.1	The maximum amount of liquidated damages shall be: <u>ten percent (10%) of the Contract Price</u>
GCC 28.3	The period of validity of the Warranty shall be: <u>12 months after delivery and acceptance of the Goods by the Purchaser at the final destination.</u>
GCC 28.5	The Supplier shall correct any defects covered by the Warranty within : <u>thirty (30) days</u> of being notified by the Purchaser of the occurrence of such defects
GCC 30.1	The amount of aggregate liability shall be: <u>100% of the Contract Price</u>

Section IX. Contract Forms

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Agreement

THIS AGREEMENT made the _____ day of _____, _____, between _____ of _____ (hereinafter “the Purchaser”), of the one part, and _____ of _____ (hereinafter “the Supplier”), of the other part:

WHEREAS the Purchaser invited bids for certain Goods and Related Services, viz., _____ and has accepted a Bid by the Supplier for the supply of those Goods and Related Services in the sum of _____ (hereinafter “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:
 - (a) the Purchaser’s Notification to the Supplier of Award of Contract;
 - (b) the Bid Submission Sheet and the Price Schedules submitted by the Supplier;
 - (c) the Special Conditions of Contract;
 - (d) the General Conditions of Contract;
 - (e) the Schedule of Supply; and
 - (f) _____.

This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.

3. In consideration of the payments to be made by the Purchaser to the Supplier as indicated in this Agreement, the Supplier hereby covenants with the Purchaser to provide the Goods and Related Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and Related Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

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

Signed by _____ (for the Purchaser)

Signed by _____ (for the Supplier)

Performance Security

Date: _____

Contract Name and No. : _____

To: _____

WHEREAS _____ (hereinafter “the Supplier”) has undertaken, pursuant to Contract No. _____ dated _____, _____ to supply _____ (hereinafter “the Contract”).

AND WHEREAS it has been stipulated by you in the aforementioned Contract that the Supplier shall furnish you with a security _____ issued by a reputable guarantor for the sum specified therein as security for compliance with the Supplier’s performance obligations in accordance with the Contract.

AND WHEREAS the undersigned _____, legally domiciled in _____, (hereinafter “the Guarantor”), have agreed to give the Supplier a security:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the Supplier, up to a total of _____ and we undertake to pay you, upon your first written demand declaring the Supplier to be in default under the Contract, without cavil or argument, any sum or sums within the limits of _____ as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This security is valid until the _____ day of _____, _____.

Name _____

In the capacity of _____

Signed _____

Duly authorized to sign the security for and on behalf of _____

Date _____

Advance Payment Security

Date: _____

Contract Name and No. : _____

To: _____

In accordance with the payment provision included in the Contract, in relation to advance payments, _____ (hereinafter called “the Supplier”) shall deposit with the Purchaser a security consisting of _____, to guarantee its proper and faithful performance of the obligations imposed by said Clause of the Contract, in the amount of _____.

We, the undersigned _____, legally domiciled in _____ (hereinafter “the Guarantor”), as instructed by the Supplier, agree unconditionally and irrevocably to guarantee as primary obligor and not as surety merely, the payment to the Purchaser on its first demand without whatsoever right of objection on our part and without its first claim to the Supplier, in the amount not exceeding _____.

This security shall remain valid and in full effect from the date of the advance payment received by the Supplier under the Contract until _____, _____.

Name _____

In the capacity of _____

Signed _____

Duly authorized to sign the security for and on behalf of _____

Date _____

Lao Peoples Democratic Republic

Vientiane Capital: _____ 2016

IFB No.: G-2

INVITATION TO BID

Project : **Road Sector Governance and Maintenance Project**

Contract number and title: **G-2 – Supply, Delivery and Installation of Road Asset Management System**

Deadline of bid submission : **10:00 am on _____ 2016**

1. Government of the Lao People's Democratic Republic has received a loan from the Asian Development Bank (hereinafter called "ADB") for Road Sector Governance and Maintenance Project. Part of this loan will be used to pay for the contract named above. Bidding is open to bidders from eligible source countries of ADB
2. **Ministry of Public Works and Transport through Department of Roads** ("the Employer") invites sealed bids from eligible bidders for the **Supply, delivery and installation of Road Asset Management System**
3. **International competitive bidding** will be conducted out in accordance with the ADB's "single stage – one envelope" bidding procedure and is open to all Bidders from eligible source countries
4. Only eligible bidders with the following key qualifications should participate in this bidding:
 - a. **Financial Criteria**
 - a.1 Financial Position - The Bidder shall submit audited financial statements or financial statements certified by applicable tax authority in accordance with local legislation for the last 3 years (2012, 2013, 2014) to demonstrate the current soundness of the Bidder's financial position. As a minimum, a Bidder's net worth calculated as the difference between total assets and total liabilities should be positive. In the case of a Joint venture, each JV partner must meet this requirement by itself.
 - a.2 Size of Operation - The minimum average annual turnover shall be _____ calculated as total certified payments received by bidder for contracts in progress or completed within the last three (3) years. In the case of a Joint venture, all partner combined must meet the requirement, while one partner must meet 40% and each partner must meet 25% of the requirement.
 - b. **Experience Criteria.** The Bidder shall provide evidence to demonstrate the following experience in the supply of the types of Goods offered.

The bidder within the last five (5) years shall have one (1) successfully completed contract valued at _____ as main supplier for the similar Road Asset Management System as described in Section VI, at minimum, involve *Road Condition Survey tools and Road Roughness Survey Tool*.

The bidder shall submit with its bid End-user's certification of good operation of the supplied tools and contact details of the end-user for the Purchaser's reference.
5. Interested eligible bidders may obtain further information and inspect the bidding documents, by contacting:

Department of Roads – Ministry of Public Works and Transport

Attention: DOR Director General

Street Address: Lanxang Avenue

Floor/Room number: 2nd Floor

City: Vientiane Capital

Country: Lao PDR

Telephone: 856-21 412255

Facsimile number: 856-21 412250

Electronic mail address: webmaster@mpwt.gov.la

6. To purchase the bidding documents, eligible bidders should:
 - Submit a written application to the address above requesting for the Bidding Documents for the **Supply, delivery and installation of Road Asset Management System**
 - Pay a non-refundable fee of _____ by cash, or bank transfer to the following bank account:
 - Account No: _____
 - Account Name: _____
 - Name of Bank: _____
 - The Bidding Document may also be sent through the courier for an additional fee of _____. No liability will be accepted for loss or late delivery
7. Bids must be submitted to:

Department of Roads – Ministry of Public Works and Transportation
Attention: DOR Director General
Street Address: Lanxang Avenue
Floor/Room number: 2nd Floor
City: Vientiane Capital
Country: Lao PDR

On or before the deadline for submission of bids: 10:00 am date _____ 2016.
All Bids must be accompanied by a Bid Security in a form specified in the Bidding Documents.
8. Late bids shall be rejected. Bids will be opened immediately after the deadline for submission of bid at the address mentioned above in the presence of Bidder's representatives who choose to attend.
9. Department of Roads of the Ministry of Public Works and Transport will not be responsible for any costs or expenses incurred by Bidders in connection with the preparation or delivery of Bids.
10. In the comparison of Bids, ADB's Domestic Preference Scheme will be applied in accordance with the provisions stipulated in the Bidding Documents.

Department of Roads of the Ministry of Public Works and Transport
Director General