



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

## BIDDING DOCUMENTS

### *Humanitarian Hubs Project*

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### **CONSTRUCTION OF RECREATIONAL AREA AT RED ROOF**

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ITB-NG30-18-003

*IOM Nigeria  
Sub-Office at No. 4, Gombole, Giwa Barrack Road,  
Maiduguri, Borno State*

*June 21, 2018*

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**INVITATION FOR BIDS**  
IFB No.: **ITB-NG30-18-003**

Date: 21 June 2018

The International Organization for Migration (**IOM**) the United Nations Migration Agency established in 1951 and is committed to the principle that humane and orderly migration benefits both migrants and society.

In the framework of "[Humanitarian Hubs Project](#)", the IOM Bids Evaluation and Awards Committee ("BEAC") now invites interested Bidders to submit "Bid" for execution of the Construction of Recreation area in the Red Roof, Maiduguri Humanitarian Hub, namely:

1. *Construction of perimeter fence around proposed recreational area;*
2. *Construction of spectator stand;*
3. *Construction of multipurpose court;*
4. *Construction of barbecue shed;*
5. *Construction of five a-side football pitch;*
6. *Construction of walkway and fence around utilities.*

IOM reserves the right to award the contracts of the 6 lots of works listed above to one or several contractors, depending on the outcome of the evaluation of the quotations that may be submitted in response to the Bidding Doc.

Bids shall be valid for a period of **60 calendar days** after submission and shall be delivered to the Bids Evaluation and Awards Committee (BEAC) at No. 4, Gombole, Giwa Barrack Road, Opp. Capital Primary School, Maiduguri, Borno State. not later than **16:00, July 5, 2018**. Bidding Documents can be downloaded from IOM Nigeria website <https://nigeria.iom.int/current-tenders>

Late bids shall be rejected.

IOM encourages the bidders to recruit qualified community members, residing in the communities, where the social infrastructure objects are located, for execution of the construction works. The desirable amount of locally hired staff is at least 20% of the total amount of staff involved into the renovation works execution and will be considered as additional advantage during the bids evaluation and comparison.

IOM encourages the bidders to visit the object of renovation prior to preparing the cost estimates, which shall be considered as additional advantage during the bids evaluation and comparison.

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

Very truly yours,  
BEAC Chairperson

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

## Section I. Instructions to Bidders

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## Instructions to Bidders

### A. General

#### 1. Scope of Bid

- 1.1 *IOM invites bids for execution of Construction of Recreation area in the Red Roof, Maiduguri Humanitarian Hub, namely:*
  1. *Construction of perimeter fence around proposed recreational area;*
  2. *Construction of spectator stand;*
  3. *Construction of multipurpose court;*
  4. *Construction of barbecue shed;*
  5. *Construction of five a-side football pitch;*
  6. *Construction of walkway and fence around utilities.*
- 1.2 The successful Bidder will be expected to complete the Works by the Intended Completion Date, according to the quotation and the work schedule, specified in the correspondent Construction Agreement.

#### 2. Eligible Bidders

- 2.1 This Invitation for Bids is open to all Bidders from eligible source countries. Detailed list of the eligible countries is given in the Practical Guide to contracting procedures for European Union external actions (PRAG), Annex A2a.  
The Contractor shall fill up and submit the standard IOM Vendor Information Sheet (VIS) to establish the Contractor's eligibility. To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria:
  - (a) Annual volume of construction work of at least equivalent to tendered construction works for the last two years;
  - (b) Experience as prime Contractor in the construction of at least two works of a nature and complexity equivalent to the tendered construction works over the last two years, to comply with this requirement, cost of works cited should be at least equivalent to 100 percent of the estimated project cost and should be at least 70 percent complete;
  - (c) Proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed in the Qualification Information; and
  - (d) A Contract Manager with five years' experience in works of an equivalent nature and volume, including no less than three years as Manager.
- 2.2 Bidders should not be associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by IOM to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services to be purchased under this Invitation for Bids.
- 2.3 Bidders shall not be under a declaration of ineligibility for corrupt, fraudulent and coercive practices issued by IOM in accordance with ITB Clause 3
- 2.4 Bidders shall not be involved in terrorist act/criminal activities or associated with individuals and/or entities associated with terrorist act/criminal activities. For this

purpose, Bidders shall not be included in the proscribed list of individuals and/or entities as contained in the 1267 Committee of the UN Security Council Counter Terrorism Committee (CTC).

### **3. Corrupt, Fraudulent, Collusive and Coercive Practices**

- 3.1 IOM requires that all IOM Staff, Bidders, Manufacturers, suppliers or distributors, observe the highest standard of ethics during procurement and execution of all contracts. IOM shall reject any Bids put forward by Bidders or where applicable terminate their contract, if it is determined that they have engaged in corrupt, fraudulent, collusive or coercive practices. In pursuance of this policy, IOM:
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) "corrupt practice" means the offering, giving, receiving or soliciting directly or indirectly anything of value to influence the action of the Procuring/Contracting Entity in the procurement process or in contract execution;
    - (ii) "fraudulent practice" is any acts or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, the Procuring/Contracting Entity in the procurement process or the execution of a contract, to obtain a financial gain or other benefit to avoid an obligation;
    - (iii) "collusive practice" is an undisclosed arrangement between two or more Bidders designed to artificially alter the results of the tender procedure to obtain a financial gain or benefit;
    - (iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any participant in the tender process to influence improperly its activities in a procurement process, or after the execution of a contract.
  - (b) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt, fraudulent, collusive or coercive practices in competing for the contract in question;
  - (c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded an IOM financed contract if it at any time determines that the firm has engaged in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, an IOM financed contract.

### **4. Eligible Goods and Services**

- 4.1 All goods and related services to be supplied under the contract shall have their origin in eligible source countries, and all expenditures made under the contract will be limited to such goods and services.
- 4.2 For purposes of this clause, "origin" means the place where the goods are mined, grown, or produced, or the place from which the related services are supplied. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 4.3 The origin of goods and services is distinct from the nationality of the Bidder.

## B. The Bidding Documents

### 5. Contents of the Bidding Documents

- 5.1 The goods required, bidding procedures, and contract terms are prescribed in the bidding documents. In addition to the Invitation for Bids, the bidding documents include:
- a) Instructions to Bidders (ITB);
  - b) Construction agreement template;
  - c) Schedule of Requirements;
  - d) Technical Specifications;
  - e) Official Bid Template(s)/Price Schedule Template(s);
  - f) Sample Forms.
- 5.2 The Bidder is expected to examine all instructions, forms, terms, and specifications in the bidding documents. Failure to furnish all information required in the bidding documents or to submit a bid not substantially responsive to the bidding documents in every respect will be at the Bidder's risk and may result in the rejection of its bid.

### 6. Clarification of the Bidding Documents

- 6.1 A prospective Bidder requiring any clarification of the bidding documents may notify IOM in writing at IOM's address indicated in ITB Clause 19.2. IOM will respond in writing to any request for clarification of the bidding documents, which it receives no later than five (5) working days prior to the deadline for the submission of bids. Written copies of IOM's response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective bidders that have received the bidding documents.

### 7. Amendments of the Bidding Documents

- 7.1 At any time prior to the deadline for submission of bids, IOM, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, may modify the bidding documents by amendment.
- 7.2 All prospective bidders that have received the bidding documents will be notified of the amendment in writing and will be binding on them.
- 7.3 In order to allow prospective bidders reasonable time in which to take the amendment into account in preparing their bids, IOM, at its discretion, may extend the deadline for the submission of bids.

## **C. Preparation of Bids**

### **8. Cost of the Bidding**

- 8.1 The Bidder shall bear all costs associated with the preparation and submission of its bid, and IOM will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

### **9. Languages of the Bid**

- 9.1 The bid prepared by the Bidder, as well as all correspondence and documents relating to the bid exchanged by the Bidder and IOM, shall be written in English language. Supporting documents and printed literature furnished by the Bidder may be in another language provided they are accompanied by an accurate translation of the relevant passages in English language, in which case, for purposes of interpretation of the Bid, the translation shall govern.

### **10. Documents Comprising the Bid**

- 10.1 The bid prepared by the Bidder shall comprise the following components:

- (a) Standard Bid Form completed in accordance with ITB Clauses 11.1;
- (b) Detailed estimates of costs separately for each object in accordance with clauses 11.2-11.3;
- (c) Gantt chart of the offered works execution;
- (d) Bid security in the form of bank guarantee from a reputable commercial banking institution or insurance company, or Declaration of Bid Security (to be submitted according to ITB Clause 17);
- (e) Vendor information sheet (to be provided by filling in the correspondent template);
- (f) Certificate of Registration from government agency in Nigeria or abroad;
- (g) Confirmations of Tax Identification Number and certificate of tax payer, issued by respective government agencies in Nigeria or abroad;
- (h) Valid Government Permits/Licenses regarding the activity, related to the subject of the current tender;
- (i) Documentary evidence of the financial capacity for the last 3 years;
- (j) List of main contracts (i.e., key customers) entered by the bidder into as a contractor or subcontractor for the last 3 years;

- (k) List of contractor's equipment units, which are owned, leased, and/or under purchase agreements, supported by certification of availability of equipment from the equipment lessor/vendor for the duration of the project;
- (l) List of contractor's personnel (viz., Project Manager, Project Engineers, Materials Engineers, and Foremen), to be assigned to the contract to be Bid, with their complete qualification and experience data;
- (m) In case the Bidder is going to assign any subcontractors for installation or after-sales services, the Bidder should provide full scope of documents specified in the clause 10.1 for the subcontractors.

## **11. Bid Form**

- 11.1 The Bidder shall complete the Bid Form and the appropriate Price Schedule furnished in the bidding documents, indicating the works to be executed, quantity, and prices.
- 11.2 The Bidder shall additionally present the unit prices of works (cost estimates) in NGN, without VAT according to the BoQ attached. IOM reserves the right to reject any or all bids that include VAT. IOM reserves the right to request soft copy of calculation.
- 11.3 The Bidders shall clearly indicate the articles of the materials to be used for works execution in the correspondent resource lists, to be submitted along with the bid documents.

## **12. Bid Prices and Payment Schedule**

- 12.1 The Bidder shall indicate on the appropriate Price Schedule the unit prices and total bid price of the works it proposes to supply under the contract.
- 12.2 The Bidder's separation of price components in accordance with ITB Clause 11.2 above will be solely for the purpose of facilitating the comparison of bids by IOM and will not in any way limit IOM's right to contract on any of the terms offered.
- 12.3 Prices quoted by the Bidder shall be fixed during the winning Bidder's performance of the contract and not subject to variation on any account, unless otherwise specified. A bid submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to ITB Clause 25. If, however, specified in these instructions, prices quoted by the Bidder shall be subject to adjustment during the performance of the contract, a bid submitted with a fixed price quotation will not be rejected, but the price adjustment would be treated as zero.
- 12.4 IOM's preferred payment schedule is:
  - First Payment – 30% of the contract amount upon the Contractor's completion of 33% of the works as certified in a Progress Report signed by the IOM Program Manager for Humanitarian Hub Project.
  - Second Payment – 30% of the contract amount upon the Contractor's completion of 66% of the works as certified in a Progress Report signed by the IOM Program Manager for Humanitarian Hub Project.
  - Third Payment – 30% of the contract amount upon the Contractor's completion and IOM's acceptance of 100% completed works as certified in a Certificate of Provisional Acceptance signed by the IOM Program Manager for Humanitarian Hub Project.

- Fourth Payment (Retention) – 10% of the contract amount due 12 months after IOM's issuance of the Certificate of Provisional Acceptance. Release of the Retention shall be supported with a Certificate Final Acceptance signed by the IOM Program Manager for Humanitarian Hub Project. Mandatory requirement: the amount of 10% of the Agreement total value is to be retained by IOM for the period of 12 month from the date of signing the Certificate of provisional acceptance (IOM template).

In case this payment schedule is not feasible to the Bidder, the Bidder shall submit their proposed payment schedule.

### **13. Bid Currencies**

- 13.1 Prices shall be quoted in the official currency of the bidding exercise. The official currency for this bidding exercise shall be Nigerian Naira (NGN). All bids must be submitted in NGN. The resulting contract shall likewise be in NGN. However, if the vendor decides to be paid in USD/EUR, the invoice amount due for payment shall be converted to USD/EUR using the official foreign exchange being used by the United Nations on the date of the invoice issuing. IOM shall not be responsible for any loses the winning bidder may incur due to the fluctuation of the currency exchange.

### **14. Documents Establishing Bidder's Eligibility and Qualification**

- 14.1 Pursuant to ITB Clause 10.1, the Bidder shall furnish, as part of its bid, documents establishing the Bidder's eligibility to bid and its qualifications to perform the contract if its bid is accepted. Bidders must submit at least the IOM Vendor Information Sheet (VIS), business registration documents with the government and latest audited financial statement.
- 14.2 The documentary evidence of the Bidder's eligibility to bid shall establish to IOM's satisfaction that the Bidder, at the time of submission of its bid, is from an eligible country as defined under ITB Clause 4.
- 14.3 The documentary evidence of the Bidder's qualifications to perform the contract if its bid is accepted include but not limited to:
- (a) Authorization documents (i.e., permits) from the government issued to the bidder authorizing them to execute/implement contracts for projects with similar technical requirements as the project being bidden out;
  - (b) Proof of the Bidder's financial capacity (i.e., financial statement for the last 3 years of operation) and technical credentials to implement the project (e.g., training certificates of technical staff, curriculum vitae of technical managers who will oversee the project, list of similar projects implemented including photos of actual progress of the works, commendations/certificates issued by previous clients, copies of contracts signed for similar projects, etc.); and
  - (c) List of technical tools/machinery/equipment/vehicles that would be used in the implementation of the project.
- 14.4 If the Bidder is an existing accredited vendor of IOM Nigeria and wishes to use the existing VIS or Company Profile on file with IOM to establish their eligibility, the Bidders should submit a confirmation letter together with their bids that the entries in the VIS remain the same. In case there are changes in their profile, the bidder shall prepare and submit their updated VIS.

## **15. Period of Validity of Bids**

- 15.1 Bids shall remain valid for the period of **60 calendar days** after the date of bid opening prescribed by IOM, pursuant to ITB Clause 20. IOM Nigeria reserves the right to reject any or all bids with shorter validity period.
- 15.2 In exceptional circumstances, prior to expiry of the bid validity, IOM may request that the bidders extend the period of validity for a specified additional period fifteen (15) calendar days. The request and the bidders' responses shall be made in writing.
- 15.3 Bidders may refuse IOM's request for extension of the bid validity without forfeiting their Bid Security. Bidders who will agree to extend the validity of their bids shall confirm their agreement in writing but shall not be allowed to revise their bids, and in compliance with Clause 17 in all respects.

## **16. Bid Security**

- 16.1 Pursuant to ITB Clause 10, the Bidder shall furnish, as part of its bid, a bid security equivalent to 2% of the amount of the total bid valid for at least sixty (60) calendar days from the date of bid submission.
- 16.2 The bid security is required to protect IOM against the risk of Bidder's conduct, which would warrant the security's forfeiture, pursuant to ITB Clause 17.6. The bid security shall be denominated in NGN/USD (using the official foreign exchange being used by the United Nations <https://treasury.un.org/operationalrates/OperationalRates.php>) in form of bank guarantee callable on demand acquired from a bank acceptable to IOM.
- 16.3 Any bid not secured in accordance with ITB Clauses 17.1 will be rejected by IOM as non-responsive, pursuant to ITB Clause 25.
- 16.4 Unsuccessful bidders' bid security will be discharged or returned as promptly as possible but not later than thirty (30) days after the expiration of the period of bid validity prescribed by IOM pursuant to ITB Clause 16.
- 16.5 The winning Bidder's bid security will be discharged upon the Bidder signing the contract, pursuant to ITB Clause 35, and furnishing the performance security, pursuant to ITB Clause 34.
- 16.6 The bid security may be forfeited:
  - (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Form; or
  - (b) in the case of a successful Bidder, if the Bidder fails to:
    - (i) sign the contract in accordance with ITB Clause 35; or
    - (ii) furnish performance security in accordance with ITB Clause 34.

## **17. Format and Signing of Bid**

- 17.1 The Bidder shall prepare an Original bid, as appropriate.
- 17.2 The original of the bid shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the contract. All pages of the bid, shall be initialed by the person or persons signing the bid.
- 17.3 Any interlineations, erasures, or overwriting shall be valid only if they are initialed by the person or persons signing the bid.

## D. Submission of Bids

### **18. Sealing and Marking of Bids**

- 18.1 Bidders shall submit their bids placed in a sealed envelope.
- 18.2 The envelope must be properly sealed. The official representative of the bidding company shall sign across the flaps of the sealed envelope. The official seal of the bidding company shall likewise be stamped across the sealed flaps of both envelopes. The envelope shall have the markings below:

#### ORIGINAL BID

Bid for: \_\_\_\_\_ (Project name and ITB No.) **ITB-NG30-18-003**

Bids Evaluation & Awards Committee

IOM Nigeria

Sub-Office at No. 4, Gombole, Giwa Barrack Road,  
Opp. Capital Primary School, Maiduguri, Borno State.

Do not open before: 16:00 Hours 5 July 2018

Please note that **offers are mandatory to be registered in IOM bids registry located at above address**. For the companies, who wish to send their offers via electronic medium, can send through e-mails at [apradhan@iom.int](mailto:apradhan@iom.int); [imasih@iom.int](mailto:imasih@iom.int); [beaciomnigeria@iom.int](mailto:beaciomnigeria@iom.int) and original should be submitted by hand or through courier service before closing date. Only companies who send official notification on post service delivery will be put in bid registry.

### **19. Deadline for Submission of Bids**

- 19.1 Bids must be received by IOM at the address specified under ITB Clause 19.2 no later than '**16:00 hours, 5 July 2018**'.
- 19.2 Along with sending the hard copy of the original bid to the following **address Sub-Office at No. 4, Gombole, Giwa Barrack Road, Opp. Capital Primary School, Maiduguri, Borno State, Nigeria.**, Bidders shall be ready to deposit the electronic versions of the bid documents, including a clear scanned copy of the Bid Security on a file hosting service (Dropbox, One Drive, etc.) and shall send the link of the folder containing the bids in response to IOM written request.
- 19.3 IOM may, at its discretion, extend this deadline for the submission of bids by amending the bidding documents in accordance with ITB Clause 7, in which case all rights and obligations of IOM and bidders previously subject to the deadline will thereafter be subject to the deadline as extended.

### **20. Late Bids**

- 20.1 IOM Nigeria reserves the right to reject any or all bids received after the deadline for submission of bids prescribed by IOM pursuant to ITB Clause 20.
- 20.2 IOM shall inform in writing all the Bidders whose bids were rejected by IOM. The bidder will assume the responsibility and expenses for the re-possession of the returned bid documents within 1 week after being informed of the rejection of their

bids. IOM reserves the right to dispose any or all unclaimed rejected bids at the end of prescribed period.

**21. Modification and Withdrawal of Bids**

- 21.1 The Bidder may modify or withdraw its bid after the bid's submission, provided that written notice of the modification, including substitution or withdrawal of the bids, is received by IOM prior to the deadline prescribed for submission of bids.
- 21.2 The Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of ITB Clause 18. A withdrawal notice will be in writing and should be received by IOM not later than the deadline for submission of bids.
- 21.3 No bid may be modified after the deadline for submission of bids.
- 21.4 No bid may be withdrawn 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 Form. Withdrawal of a bid during this interval may result in the Bidder's forfeiture of its bid security, pursuant to the ITB Clause 17.6.

## **E. Opening and Evaluation of Bids**

### **22. Opening of Bids**

- 22.1 IOM will open all bids in its office in Maiduguri. The BEAC members and donor's representatives (in case the donor is willing to participate in the bids opening) shall sign the minutes of bids opening.
- 22.2 The bidders' names, bid modifications or withdrawals, bid prices, discounts, and the presence or absence of requisite bid security and such other details that IOM at its discretion, may consider appropriate, will be announced at the opening. No bid shall be rejected at bid opening, except for late bids, which shall be returned to the Bidder pursuant to ITB Clause 21.
- 22.3 Bids (and modifications sent pursuant to ITB Clause 22.2) that are not opened and read out at bid opening shall not be considered further for evaluation, irrespective of the circumstances. Withdrawn bids will be returned unopened to the bidders.
- 22.4 IOM will prepare minutes of the bid opening.

### **23. Clarification of Bids and Contacting IOM**

During evaluation of the bids, IOM may, at its discretion, ask the Bidder for a clarification of its bid. The request for clarification and the response shall be in writing, and no change in the prices or substance of the bid shall be sought, offered, or permitted.

### **24. Preliminary Examination**

- 24.1 IOM will examine the bids to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the bids are generally in order.
- 24.2 Arithmetical errors will be rectified on the following basis. 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. If the Supplier does not accept the correction of the errors, its bid will be rejected, and its bid security may be forfeited. If there is a discrepancy between words and figures, the amount in words will prevail.
- 24.3 IOM may waive any minor informality, nonconformity, in a bid which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Bidder.
- 24.4 Prior to the detailed evaluation, pursuant to ITB Clause 27, IOM will determine the substantial responsiveness of each bid to the bidding documents. For purposes of these Clauses, a substantially responsive bid is one, which conforms to all the terms and conditions of the bidding documents without material deviations. Deviations from, or objection or reservations to critical provisions, such as those concerning Bid Security (ITB Clause 17), Price Schedule (ITB Clause 9) will be deemed to be a material deviation. IOM's determination of a bid's responsiveness is to be based on the contents of the bid itself without recourse to extrinsic evidence.
- 24.5 If a bid is not substantially responsive, it will be rejected by IOM and may not subsequently be made responsive by the Bidder by correction of the nonconformity.

**25. Conversion to Single Currency (if applicable)**

- 25.1 To facilitate evaluation and comparison, IOM will convert all bid prices expressed in the amounts in various currencies in USD according to official United Nations exchange rate for the current month and year.

**26. Evaluation and Comparison of Bids**

- 26.1 IOM will evaluate and compare the bids, which have been determined to be substantially responsive, pursuant to ITB Clause 25.
- 26.2 IOM's evaluation of a bid will exclude and not take into account any allowance for price adjustment during the period of execution of the contract, if provided in the bid.
- 26.3 Merit Point System. Bids shall be evaluated based on the following criteria:

	<b>Criteria</b>	<b>Max. score</b>
1	Offered contract price	35
2	Compliance with ToR	30
3	Period of work execution	20
4	Relevant experience and assessed capacity, reference-list and customer references	10
5	Provision of Bid Security in form of the bank guarantee or insurance company	5
	<b>Total</b>	<b>100</b>

**27. Clarification of Bids and Contacting**

- 27.1 Subject to ITB Clause 24, no Bidder shall contact IOM on any matter relating to its bid, from the time of the bid opening to the time the contract is awarded. If the Bidder wishes to bring additional information to the notice of IOM, it should do so in writing. For any clarification regarding this the Project, please send requests for clarification to [apradhan@iom.int](mailto:apradhan@iom.int); [imasih@iom.int](mailto:imasih@iom.int); [beaciomnigeria@iom.int](mailto:beaciomnigeria@iom.int), not later 16:00 hours 28 June 2018. IOM will respond to any request for clarification received on or before 1 week prior to deadline of submission of the quotations.
- 27.2 Any effort by a Bidder to influence IOM in its decisions on bid evaluation, bid comparison, or contract award may result in the rejection of the Bidder's bid.

**28. Post-qualification**

- 28.1 In the absence of pre-qualification, IOM will determine to its satisfaction whether the Bidder that is selected as having submitted the highest rated responsive bid is qualified to perform the contract satisfactorily, in accordance with the criteria listed in ITB Clause 14.
- 28.2 The determination will take into account the Bidder's financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB Clause 14, as well as such other information as IOM deems necessary and appropriate.

- 28.3 Prior to award, IOM shall verify and validate any documents/ information submitted and if necessary shall conduct ocular inspection of the Bidder office, plant/warehouse and equipment.
- 28.4 An affirmative determination will be a pre-requisite for award of the contract to the Bidder. A negative determination will result in rejection of the Bidder's bid, in which event IOM will proceed to the next highest rated bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.

**29. IOM's Right to Accept any Bid and to Reject any or All Bids**

- 29.1 IOM 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 affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for IOM's action.

## **F. Award of Contract**

### **30. Award Criteria**

- 30.1 IOM will award the contract to the successful Bidder(s) whose bid has been determined to be substantially responsive and has been determined to be the highest rated evaluated bid in accordance with the merit point system – clause 26.3, provided further that the Bidder is determined to be qualified to perform the contract satisfactorily.
- 30.2 Bids evaluation and comparison will be done by lots of request.

### **31. IOM's Right to Vary Quantities at Time of Award**

IOM reserves the right at the time of contract award to increase or decrease, by 10%, the quantity of goods and services originally specified in the Schedule of Requirements without any change in unit price or other terms and conditions

### **32. Notification of Award**

- 33.1 Prior to the expiration of the period of bid validity, IOM will notify the successful Bidder through a Notice of Award (NOA), that its bid has been accepted.
- 33.2 The notification of award will constitute the formation of the Contract.
- 33.3 Upon the successful Bidder's furnishing of the performance security pursuant to ITB Clause 35, IOM will promptly notify each unsuccessful Bidder and will discharge its bid security, pursuant to ITB Clause 17.

### **33. Performance Security**

- 34.1 Within five (5) working days of the receipt of notification of award from IOM, the successful Bidder shall furnish a performance security equivalent to 10% of the winning bid amount in accordance with the Conditions of Contract, in the form provided in the bidding documents, or in another form acceptable to IOM.
- 34.2 Failure of the successful Bidder to comply with the requirement of ITB Clause 33 or ITB Clause 34.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security, in which event IOM may make the award to the next lowest evaluated Bidder or call for new bids.

### **34. Signing of Contract**

- 35.1 At the same time as IOM notifies the successful Bidder that its bid has been accepted, IOM will send the Bidder the Contract provided in the bidding documents, incorporating all agreements between the parties.
- 35.2 Within five (5) working days of receipt of the Contract, the successful Bidder shall sign and date the contract and return it to IOM.

## **Section II. Technical Specifications - prepared on separate volume**

## **Section III. Contract**

*FPU SF 19.19  
GSPU.SF-9.19*

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

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

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

### **1. Introduction and Integral Documents**

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

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

## 2. Scope of Work

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

## 3. Contract Price

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

#### **4. Manner of Payment**

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

- 4.6 A Certificate of Provisional Acceptance of completed Works shall be issued by IOM when each of the requirements under Article 4.5 have been fulfilled to its satisfaction.
- 4.7 A Certificate of Provisional Acceptance of terminated Works shall be issued by IOM if IOM terminates the contract in accordance with Article 25. This Certificate will indicate the Completion Rate as per Article 6.2 and the Contractor shall remain responsible for the rectification of non-conforming or defective portions of the Works in accordance with Article 14.2.
- 4.8 A Certificate of Final Acceptance shall be issued by IOM 12 (twelve) months after the date a Certificate of Provisional Acceptance of the completed or terminated Works is issued provided that any works required during the warranty period have been completed to its satisfaction.

## 5. Completion Period

- 5.1 The Contractor shall mobilize all necessary and appropriate resources and coordinate all work activities with IOM to ensure commencement of the Works on [date] and completion and turn-over of the Works to IOM with in 45 days after the contract agreement signed. by [date] (“**Completion Date**”).
- 5.2 Where the Contractor is unable to complete the Works by the date specified in Article 5.1, the Contractor may request a time extension in writing explaining the reasons for the delay.
- 5.3 IOM shall not approve requests for time extension for reasons such as but not limited to:
  - (a) Project location, conditions and restrictions identified during time of tender and award of the Agreement ;
  - (b) Normal weather and climatic conditions prevailing at the site location;
  - (c) Logistics, implementation, coordination problems and other reasons within the control of the Contractor;
  - (d) Financial, operational and labor difficulties of the Contractor or any of its sub-Contractor/s or supplier/s;
  - (e) Any required rectification of non-conforming work items; and
  - (f) Nature and condition of terrain.
- 5.4 IOM may revise the Completion Date as stated in Article 5.1 in response to the Contractor’s request for time extension caused by any of the following:
  - (a) Force Majeure as described in Article 16;
  - (b) Approved Work Variation Order/s requiring additional time for completion by the Contractor, as agreed between the Parties;
  - (c) IOM’s failure to make timely payments for the Works completed to IOM’s satisfaction;

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

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

## 6. Work Schedule

- 6.1 Within the timeframe specified in the NoA and no later than the date of signature of this Agreement, the Contractor shall submit to IOM a work schedule (the "**Work Schedule**") showing the order and timing for all the activities in the Works.
- 6.2 The Contractor shall keep and update a daily logbook on all progress and matters relating to the Works in accordance with industry standards. The logbook shall be inspected and verified for accuracy, daily or at an interval designated by IOM, by a designated IOM staff or its authorized representatives. The logbook shall be the authoritative source of information for determining the extent of the Works completed (the "**Completion Rate**"). In case the Contractor fails to update the logbook properly with the required verification, IOM shall have the right to solely determine the Completion Rate which cannot be challenged by the Contractor.
- 6.3 The Contractor shall submit an updated Work Schedule as and when requested by IOM or its Project Manager.
- 6.4 The Contractor shall notify IOM through its Project Manager of any proposed change in the Work Schedule. Any change shall be subject to prior written approval by IOM. The Contractor shall also submit to the Project Manager for approval a revised schedule within 7 (seven) calendar days from the date of proposing the change.
- 6.5 If at any time IOM deems that Contractor's actual progress is inadequate to meet the requirements of this Agreement, IOM may notify the Contractor to take such steps as may be necessary to improve its progress. If after a reasonable period, as determined by IOM, the Contractor still does not improve its performance, IOM may require an increase in Contractor's labour force, the number of shifts, workdays per week, overtime hours, amount of

equipment, or require expedited shipment of equipment and materials, all at the Contractor's cost and without additional cost to IOM.

- 6.6 If at any time the Contractor's labour force is inactive due to unpaid wages, the Contractor shall be liable to IOM for liquidated damages equivalent to 0.1% (one-tenth of one percent) of the total Contract Price for each day of work stoppage until the entire labour force resumes work on the Project. This penalty shall be applied independently of any other sanction or penalty allowed for in this Agreement.

## 7. **Work Variation**

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

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

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

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

- 9.1 The Contractor shall, within the timeframe specified in the NoA, furnish IOM with a performance bond in the amount equivalent to 10% (ten percent) of the Contract Price, to be issued by a reputable bank or surety company in a form acceptable to IOM (the "**Performance Bond**").

- 9.2 The Performance Bond shall serve as the guarantee for the Contractor's faithful performance and compliance with the terms and conditions of this Agreement.
- 9.3 The amount of the Performance Bond shall not be construed as the limit of the Contractor's liability to IOM in any event.
- 9.4 The Performance Bond shall be effective from the date of commencement of the Works until the date of Provisional Acceptance as per Articles 4.6 or 4.7.

## **10. Retention**

- 10.1 Upon issuance of the Certificate of Provisional Acceptance for completed Works as per Article 4.6, an amount equivalent to 10% (ten per cent) of the Contract Price shall be retained by IOM to be used for repairs or reconstruction of defective works due to poor workmanship and/or inferior quality of material used which are discovered within a period of 12 (twelve) months from the date of Provisional Acceptance.
- 10.2 In case a Certificate of Provisional Acceptance for terminated Works has been issued as per Article 4.7, an amount equivalent to 10% (ten per cent) of the Contract Price corresponding to the Completion Rate as per Article 6.2 shall be retained by IOM to use for repairs and reconstruction of defective works due to poor workmanship and/or inferior quality of material used for which the Contractor was responsible under this Agreement which are discovered within a period of 12 (twelve) months from the date of Provisional Acceptance.
- 10.3 The Contractor may, from the date of Provisional Acceptance and until the expiration of Retention period, request IOM to release the amount retained as per Article 10.1 or Article 10.2 by submitting an unconditional bank guarantee. Such bank guarantee shall be in a form and by a bank acceptable to IOM and in an amount and currency equal to the amount retained and effective until the expiration of Retention period..

## **11. Contractor's Responsibility**

- 11.1 All government permits and licenses required for the execution of the Works under this Agreement shall be obtained prior to the commencement of the Works and paid for by the Contractor.
- 11.2 The Contractor shall comply with local and national building regulations imposed by appropriate government agencies, and shall keep IOM indemnified against all fines, penalties and losses incurred by reason of any breach of this clause.
- 11.3 The Contractor shall assume full responsibility for the Works under this Agreement until its final acceptance by IOM as per Article 4.8. The Contractor shall have entire control and supervision of the Works and services herein agreed upon and shall be solely liable for the salaries, wages and other employment benefits of all employees and sub-contractors. Should the Contractor breach this clause, IOM has the right to proceed against the

Performance Bond or Bank Guarantee or to use the Retention Amount, without prejudice to demanding direct reimbursement from the Contractor in the event that the amount of the Performance Bond Bank Guarantee or Retention Amount is insufficient.

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

## 12. **Inspection of Works**

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

## 13. **Insurance**

- 13.1 Without limiting the Contractor's liability pursuant to Article 11 (Contractor's Responsibility), the following insurance cover is to be provided and maintained by the Contractor for the entire duration of this Agreement:
  - (a) Third party liability for any one claim or series of claims arising out of any one accident or event;
  - (b) Workmen's compensation and/or employer's liability insurance which complies with applicable legislation;
  - (c) Automobile public liability and property damage insurance; and

- (d) Cover against loss or damage to the Works and materials during the construction.
- 13.2 The amount of coverage for each type of insurance is to be in line with relevant industry standards and in an amount acceptable to IOM.
- 13.3 Policies and certificates of insurance are to be provided to IOM prior to the commencement of the Works.

#### **14. Warranties**

- 14.1 The Contractor represents and warrants that it is financially sound and duly licensed, with the adequate labor/human resources, equipment and tools, competence, expertise and skills necessary to carry out fully and satisfactorily, within the stipulated completion period, the Works in accordance with this Agreement .
- 14.2 The Contractor guarantees and warrants the performance and completion of the design and construction work to the full and complete satisfaction of IOM. The Contractor remains responsible for the damages caused or identified within 12 (twelve) months from the date of IOM's Provisional Acceptance of the Works as per Articles 4.6 or 4.7, on account of defects in the construction, or the use of materials of inferior quality furnished by it, or due to any violation of the terms of the Agreement.
- 14.3 In case of any defect in workmanship or materials, which may become apparent in the course of construction, the Contractor shall, within 7 (seven) calendar days from IOM's demand, at Contractor's own cost and expense, remedy such portion of the Works done by the Contractor as in the opinion or judgment of IOM is unsound, incorrect or defective or not in accordance with the plans and specifications.
- 14.4 In case of Contractor's default, failure or refusal to carry out such order to remove and replace the unsound, incorrect or defective portion of the Works within 7 (seven) days as required by the previous clause, IOM may terminate this Agreement and/or engage the services of other persons to carry out the same. The Contractor shall bear all expenses arising there from or incidental thereto. IOM may require direct reimbursement for the cost of such action from the Contractor, deduct the expenses from any amount due to the Contractor, or deduct the amount from Performance Bond, the Bank Guarantee or the Retention Amount.
- 14.5 If any defects or imperfections are discovered by IOM and communicated to the Contractor after provisional acceptance but prior to final acceptance of the Works due to defective or improper workmanship and/or inferior quality of the material used, the Contractor shall immediately correct such defects within a period of 5 (five) days of receipt of written notice from IOM. Where the Contractor fails to act within this period, IOM may engage the services of a third party to correct the defect and hold the Contractor liable for the cost of such services. In such circumstances the Contractor shall reimburse IOM the cost of such repair, with interest at 2% (two percent) per month from the time

such expenses were incurred until fully reimbursed. The Performance Bond, Bank Guarantee and Retention, if not yet released at the time the said defects are found, may be used for this purpose.

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

14.7 The Contractor further warrants that:

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

14.8 The Contractor further warrants that it shall:

- (a) Take all appropriate measures to prohibit and prevent actual, attempted and threatened sexual exploitation and abuse (SEA) by its employees or any other persons engaged and controlled by it to perform activities under this Agreement ("other personnel"). For the purpose of this Agreement, SEA shall include:
  1. Exchanging any money, goods, services, preferential treatment, job opportunities or other advantages for sexual favours or activities, including humiliating or degrading treatment of a sexual nature; abusing a position of vulnerability, differential power or trust for sexual

- purposes, and physical intrusion of a sexual nature whether by force or under unequal or coercive conditions.
2. Engaging in sexual activity with a person under the age of 18 (“child”), except if the child is legally married to the concerned employee or other personnel and is over the age of majority or consent both in the child’s country of citizenship and in the country of citizenship of the concerned employee or other personnel.
    - (b) Strongly discourage its employees or other personnel having sexual relationships with IOM beneficiaries.
    - (c) Report timely to IOM any allegations or suspicions of SEA, and investigate and take appropriate corrective measures, including imposing disciplinary measures on the person who has committed SEA.
    - (d) Ensure that the SEA provisions are included in all subcontracts.
    - (e) Adhere to above commitments at all times. Failure to comply with (a)-(d) shall constitute grounds for immediate termination of this Agreement.

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

## **15. Assignment of Agreement and Subcontracting**

- 15.1 The Contractor shall not assign or subcontract the Agreement or any work under this Agreement in part or all, unless agreed upon in writing in advance by IOM. Any subcontract entered into by the Contractor without approval in writing by IOM may be cause for termination of the Agreement.
- 15.2 In certain exceptional circumstances by prior written approval of IOM, specific jobs and portions of the Project may be assigned to a subcontractor. Notwithstanding the said written approval, the Contractor shall not be relieved of any liability or obligation under this Agreement nor shall it create any contractual relation between the subcontractor and IOM. The Contractor remains bound and liable thereunder and it shall be directly responsible to IOM for any faulty performance under the subcontract. The subcontractor shall have no cause of action against IOM for any breach of the sub-contract.

## **16. Force Majeure**

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

## **17. Independent Contractor**

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

## **18. Audit**

The Contractor agrees to maintain records, in accordance with sound and generally accepted accounting procedures, of all direct and indirect costs of whatever nature involving transactions related to the provision of services under this Agreement. The Contractor shall make all such records available to IOM or IOM's designated representative at all reasonable times until the expiration of 7 (seven) years after the date of final payment, for inspection, audit, or reproduction. On request, employees of the Contractor shall be available for interview.

**19. Confidentiality**

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

**20. Notices**

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

**International Organization for Migration (IOM)**

Attn: [Name of IOM contact person]

[IOM's address]

Email: [IOM's email address]

**[Full name of the Contractor]**

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

[Contractor's address]

Email: [Contractor's email address]

**21. Dispute Resolution**

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

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

21.3. In the event that such conciliation is unsuccessful, either Party may submit the dispute, controversy or claim to arbitration no later than 3 (three) months following the date of termination of conciliation proceedings as per Article 15 of the UNCITRAL Conciliation Rules. The arbitration will be carried out in

accordance with the 2010 UNCITRAL arbitration rules as adopted in 2013. The number of arbitrators shall be one and the language of arbitral proceedings shall be English, unless otherwise agreed by the Parties in writing. The arbitral tribunal shall have no authority to award punitive damages. The arbitral award will be final and binding.

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

**22. Use of IOM Name**

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

**23. Status of IOM**

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

**24. No Waiver Clause**

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

**25. Termination of Agreement**

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

- (a) Immediately discontinue the Works on the date and to the extent specified in the notice and place no further purchase orders or subcontracts for materials, services, or facilities other than as may be required for completion of such portion of the Works that is not terminated;
- (b) Promptly cancel upon terms satisfactory to IOM all purchase orders, subcontracts, rentals, or any other agreement existing for the

- performance of the terminated work, or assign those agreements as directed by IOM;
- (c) Assist IOM in the maintenance and protection of work in progress, plant, tools, equipment, property and materials acquired by Contractor or furnished by IOM under this Agreement;
  - (d) Complete performance of such portion of the Works which are not terminated; and
  - (e) Perform other related tasks, which IOM may reasonably instruct, in order to effect the termination of the work.
- 25.2 Upon termination as per the previous clause, as the sole right and remedy of Contractor, IOM shall pay in accordance with the following:
- (a) The Contract Price corresponding to the Works performed in accordance with this Agreement prior to the date of such notice of termination;
  - (b) Costs corresponding to the portion of the Works thereafter performed as specified in such notice of termination, subject to IOM's acceptance of such work;
  - (c) Reasonable and documented administrative costs of settling and paying claims arising out of the termination of work under purchase orders or subcontracts, as agreed by IOM; and
  - (d) Reasonable costs incurred in demobilization and the disposition of residual material and equipment, as agreed by IOM.
- The Contractor shall submit within 7 (seven) calendar days after receipt of notice of termination, a written statement setting forth its proposal for an adjustment to the Contract Price to include only the incurred costs described in this clause. IOM shall review the proposal, and negotiate an equitable adjustment of the Contract Price. Other amounts paid in advance by IOM will be refunded by the Contractor within 7 (seven) days.
- 25.3 IOM may terminate this Agreement or any of the work under this Agreement at any time by immediate written notice to the Contractor, for causes which include but are not limited to:
- (a) The Contractor's violation of the terms and conditions of this Agreement;
  - (b) Contractor's default, failure or refusal to carry out order to remove and replace the unsound, incorrect or defective portion of the Works as per Article 14.5;
  - (c) Non-completion of the Works within the time agreed upon or the expiration of extension agreed upon, or delayed progress of the Works as stated in Article 6 or sub-standard work;
  - (d) Institution of insolvency or receivership proceedings involving the Contractor;
  - (e) If, in the judgment of IOM, the Contractor has engaged in corrupt or fraudulent practices in competing for and/or implementing the Agreement.

The written notice shall specify the Completion Rate as established by Article 6.2 upon termination, the effective date of termination, and any additional tasks that

need to be performed including but not limited to those enumerated in Articles 25.1 and 25.2. Such termination shall be without prejudice to IOM's other rights and remedies in this Agreement, in law and in equity. Amounts paid in advance by IOM will be refunded by the Contractor within 7 (seven) days from the date of IOM's request.

- 25.4 Where IOM terminates this Agreement as per Article 25.3 above, all materials, plant, equipment and works financed under this Agreement shall be deemed to be the property of IOM, and the Contractor shall be liable for all the direct replacement cost incurred to IOM for the completion of the Works. The Contractor shall pay IOM the required amount within 30 (thirty) days from receipt of an invoice from IOM. The direct replacement cost shall be the difference between the remaining amount in Contract Price not paid to the Contractor upon termination including the retention amount (after the settlement of all remaining debts and obligations) and the actual cost spent by IOM for completion of the remainder of the Works plus overhead of 10% (ten per cent) for additional administrative efforts of IOM.
- 25.5 Upon any termination, the Contractor shall waive any claims for damages including loss of anticipated profits on account thereof.

**26. Severability**

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

**27. Entirety**

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

**28. Special Provisions (Optional)**

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

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

**29. Final clauses**

- 29.1 This Agreement will enter into force upon signature by both Parties. It will remain in force until completion of all obligations of the Parties under this Agreement unless terminated earlier in accordance with Article 25.
- 29.2 Amendments may be made by mutual agreement in writing between the Parties.

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

*For and on behalf of*  
The International Organization  
for Migration

Signature

---

*Name*  
*Position*  
*Date*  
*Place*

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

Signature

---

*Name*  
*Position*  
*Date*  
*Place*

## **Section IV. Sample Forms**

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**BID FORM**

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

To: **The Chairperson**

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

We, the undersigned, declare that;

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

Lot No	Description	Offered cost of works execution, NGN excl. VAT	Period of work execution, calendar days
1	Construction of perimeter fence around proposed recreational area		
2	Construction of spectator stand		
3	Construction of multipurpose court		
4	Construction of barbecue shed		
5	Construction of five a-side football pitch		
6	Construction of walkway and fence around utilities		

Terms of payment (indicate exact detailed terms of payment offered):

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I undertake, if my Bid is accepted, to deliver and supply the Goods in accordance with the Price Schedule and Goods specifications set out in the Bidding Document.

If my Bid is accepted I undertake to recruit qualified community members, residing in the communities where the social infrastructure objects are located, in the amount of at least

- **%** of the total quantity of workers involved for the works execution. (*please, delete this abstract if it is not a part of your offer*)

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

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

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

---

[signature over printed name] [in the capacity of]  
Duly authorized to sign Bid for and on behalf of [name of company]

### PRICE SCHEDULE

**Note: All unit prices need to be mentioned in the attached excel sheets.**

**Drawings are attached.**

Lot No	Description	Offered cost of works execution, NGN excl. VAT	Period of work execution, calendar days
1	Construction of perimeter fence around proposed recreational area according to specification given in the BOQ and the drawings		
2	Construction of spectator stand according to specification given in the BOQ and the drawings		
3	Construction of multipurpose court according to specification given in the BOQ and the drawings		
4	Construction of barbecue shed according to specification given in the BOQ and the drawings		
5	Construction of five a-side football pitch according to specification given in the BOQ and the drawings		
6	Construction of walkway and fence around utilities according to specification given in the BOQ and the drawings		

Project name: Construction of Recreation facilities

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_ .

---

[signature over printed name]

---

[in the capacity of]

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

**BID SECURITY (Bank Guarantee)**

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

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

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

THE CONDITIONS of this obligation are:

- (1) If, after Bid opening, the Bidder withdraws his Bid during the period of Bid validity specified in the Form of Bid; or
- (2) If the Bidder having been notified of the acceptance of his Bid by the Employer during the period of Bid validity:
  - (a) fails or refuses to execute the Form of Agreement in accordance with the Instructions to Bidders, if required; or
  - (b) fails or refuses to furnish the Performance Security, in accordance with the Instruction to Bidders; or
  - (c) does not accept the correction of the Bid Price pursuant to ITB Clause 25,

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

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

DATE \_\_\_\_\_ SIGNATURE OF THE BANK  
\_\_\_\_\_  
\_\_\_\_\_

WITNESS \_\_\_\_\_ SEAL  
\_\_\_\_\_

*[signature, name, and address]*

**DECLARATION OF BID SECURITY**

Invitation to Bid/Request No. [Insert reference number]

To: International Organization for Migration (IOM), Mission in Ukraine

I, the undersigned, declare that:

1. I understand that, according to your conditions, bids must be supported by a Bid Security, which may be in the form of a Bid-Securing Declaration.
2. I accept that: (a) My company will be automatically disqualified from bidding for any contract with any procuring entity for a period of two (2) years upon receipt of your Blacklisting Order; if I have committed any of the following actions:
  - (i) Withdrawn my Bid during the period of bid validity required in the Bidding Documents;

or

  - (ii) Fail or refuse to accept the award and enter into contract or perform any and all acts necessary to the execution of the Contract, in accordance with the Bidding Documents after having been notified of your acceptance of our Bid during the period of bid validity.
3. I understand that this Bid-Securing Declaration shall cease to be valid on the following circumstances:
  - (a) Upon expiration of the bid validity period, or any extension thereof pursuant to your request;
  - (b) I am declared ineligible or post-disqualified upon receipt of your notice to such effect, and (i) I failed to timely file a request for reconsideration or (ii) I filed a waiver to avail of said right;
  - (c) I am declared as the bidder with the Lowest Calculated and Responsive Bid / Highest Rated and Responsive Bid, and I have furnished the performance security and signed the Contract.

\_\_\_\_ day of [month] [year] at [place of execution].

[Insert NAME OF BIDDER'S AUTHORIZED REPRESENTATIVE]

[Insert signatory's legal capacity]

**PERFORMANCE SECURITY (Bank Guarantee)**

To: *[name and address of Employer]*

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

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

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

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

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

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

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

Signature and seal of the Guarantor

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Name of Bank

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Address

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Date \_\_\_\_\_

**ADVANCE PAYMENT SECURITY (Bank Guarantee)**

To: [name and address of IOM Mission]

Contract : [name of Contract]

**Gentlemen:**

We have been informed that [name of Supplier] (hereinafter called "the Supplier") has entered into Contract No. [reference number of the contract] dated [insert date] with you, for the supply of [brief description of goods & related services] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of [amount in figures & in words] is to be made against an advance payment guarantee

At the request of the Supplier, we [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [amount in figures and in words]<sup>1</sup> upon receipt by us of your first demand in writing accompanied by a written statement stating that the Supplier are in breach of their obligation under the Contract because the Supplier have used the advance payment for purposes other than toward providing the required Goods and Services under the Contract.

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

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

Yours truly,

Signature and seal: \_\_\_\_\_

Name of Bank/Financial Institution: \_\_\_\_\_

Address: \_\_\_\_\_

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

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<sup>1</sup> The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to IOM.