

# 2008

## The Bidding Documents For ICB Procurement of Mechanic & Electronic Products

(Volume One)

Department of Mechanic, Electronic  
and Hi-Tech Industry  
Ministry of Commerce, P.R.C  
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- Section 8. Schedule of Requirements and Technical Specifications

# Section 1

## Instructions to Bidders

# Instructions to Bidders

## **A. Introduction**

### **1. Source of Funds**

- 1.1 The Tenderee named in the Volume II Section 6 "Bid Data Sheet" of the bidding documents has obtained a fund/loan. The Tenderee intends to apply a portion of the proceeds of this fund/loan to the payments under the contract for which this Invitation for Bids is issued.

### **2. Tendering Agent and Eligible Bidders**

#### **2.1 Tendering Agent**

The Tendering Agent for ICB Procurement of Mechanic and Electronic Products (hereinafter referred to as "Tendering Agent") means the Legal Person approved and authorized by the Ministry of Commerce to handle the procurement of mechanic and electronic products by way of International Competitive Bidding (ICB) in accordance with the Measures for Examining and Approving the Qualification of International Tendering Institutions for Electromechanical Products, Decree No. 6, 2005 of the Ministry of Commerce of the People's Republic of China. Details such as name, address, telephone and facsimile of the Tendering Agent for this bidding are listed in the Bid Data Sheet.

#### **2.2 Eligible Bidders**

- 1) Bidders are legal persons or other organizations who participate in bidding. This Invitation for Bids is open to all suppliers from within the People's Republic of China (hereinafter abb. as "PRC") and all countries/areas which have regular trade relations with PRC (hereinafter called "the eligible source countries/areas"), except as provided hereinafter.
- 2) Bidders should not be associated, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Tenderee to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods to be purchased under this Invitation for Bids.
- 3) The Suppliers may participate in the bids only if they are legally and financially autonomous, if they operate under relevant law, and if they are not a dependent agency of the Tendering Agent and the Tenderee.

### **3. Eligible Goods and Services**

- 3.1 All goods and related services to be supplied under the contract shall have their origin in eligible source countries/areas, as defined in clause 2.2 above, and all expenditures made under the contract will be limited to such goods and services.
- 3.2 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.

3.3 The origin of goods and services is distinct from the nationality of the Bidder.

#### **4. Cost of Bid**

4.1 The Bidder shall bear all costs associated with the preparation and submission of its bid, and the Tendering Agent and the Tenderee, named in the Bid Data Sheet, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bid process.

### **B. The Bidding Documents**

#### **5. Compilation Principle and Content of Bidding Documents**

5.1 The bidding document is compiled based on “ The Bidding Law of the People's Republic of China” and Order No.13 [2004] of the Ministry of Commerce “ The Measures for the Implementation of International Competitive Bidding of Mechanical and Electrical Products”.

5.2 The goods required, bidding procedures and contract terms are prescribed in the bidding documents. The bidding document is written either by Chinese or by Chinese and English. In the case of Chinese and English, two languages have the same effectiveness. In the event of any discrepancies between them, the Chinese version shall govern.

The content of the bidding documents will be separated into two volumes as follows:

##### **Volume One:**

- Section I Instructions to Bidders
- Section II General Conditions of Contract
- Section III Contract Form
- Section IV Formats of Bids

##### **Volume Two:**

- Section V Invitation for Bids
- Section VI Bid Data Sheet
- Section VII Special Conditions of Contract
- Section VIII Schedule of Requirements and Technical Specifications

5.3 The Bidder is expected to examine all instructions, forms, terms and specifications in the bidding documents. Failure to furnish all information required by 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 Bidding Documents**

6.1 A prospective Bidder requiring any clarification of the bidding documents may notify the Tendering Agent and the Tenderee in writing. The Tendering Agent will respond in writing to

any request for clarification of the bidding documents which it receives no later than five (5) days prior to the deadline for the submission of bids prescribed in the Bid Data Sheet. Written copies of the Tendering Agent's response (without identifying the source of inquiry) will be sent to all prospective bidders who have purchased the bidding documents.

6.2 If the Bidder regards any discrimination clause or unreasonable requirement in the bidding document, he shall submit once and for all in the stipulated time.

#### **7. Amendment of Bidding Documents**

7.1 Prior to the deadline for submission of bids, the Tendering Agent, 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 who have purchased the bidding documents will be notified of the amendment in writing, and will be binding on them. The amendment is a part of the bidding document. Prospective Bidders shall promptly acknowledge the receipt thereof in writing to the Tendering Agent/ the Tenderee.

7.3 In order to afford prospective bidders reasonable time in which to take the amendment into account in preparing their bids, the Tendering Agent, at its discretion, will extend the deadline for the submission of bids.

### **C. Preparation of Bids**

#### **8. Language of Bid**

8.1 The bid prepared by the Bidder, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Tendering Agent/ the Tenderee, shall be written in the language specified in the Bid Data Sheet. Supporting information 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 the language specified in the Bid Data Sheet, in which case, for purposes of interpretation of the Bid, the translation shall govern.

#### **9. Documents Comprising the Bid**

- 9.1 The bid prepared by the Bidder shall comprise the following components:
- 1) A Bid Form, Bid Schedule of Prices and a Summary Sheet for Bid Opening which shall be submitted in a separate envelope completed in accordance with ITB Clauses 10, 11 and 12;
  - 2) Documentary evidence established in accordance with ITB Clause 13 that the Bidder is eligible to bid and is qualified to perform the contract if its bid is accepted;
  - 3) Documentary evidence established in accordance with ITB Clause 14 that the goods and ancillary services to be supplied by the Bidder are eligible and conform to the bidding documents;
  - 4) Bid security furnished in accordance with ITB Clause 15.

#### **10. Compilation of Bid**

10.1 The Bidder shall complete the Bid Form, Summary Sheet for Bid Opening and Price Schedule and other stipulated contents furnished in Section IV "Formats of Bids" of the bidding documents.

## **11. Bid Prices**

11.1 The Bidder shall indicate on the appropriate Bid Schedule of Prices the unit prices (where applicable) and total bid price of the goods it proposes to supply under the contract. The total bid price shall not include any items beyond the requirement of the bidding document; otherwise, the offer on such items will not be deducted when evaluation. Also, the total bid price shall not omit any items required in the bidding document; otherwise, the highest offer of the same item among the effective bids will be added to the total bid price.

11.2 Prices indicated on the Bid Schedule of Prices shall be entered separately in the following manner:

11.2.1 For goods offered from within PRC:

1) The price of the goods quoted EXW (ex-works, ex-factory, ex-warehouse, ex-showroom, or off-the-shelf, as applicable), including Value Added Taxes (VAT) and other taxes already paid or payable to the government of PRC, as well as all customs duties, VAT and other taxes paid or payable:

- a) on the components and raw material used in the manufacture or assembly of goods of foreign origin quoted ex-works or ex-factory; or
- b) on the previously imported goods of foreign origin quoted ex-warehouse, ex- showroom, or off-the-shelf.

2) The price for inland transportation, insurance, and other local costs incidental to delivery of the goods to their final destination, if specified in the Bid Data Sheet.

3) The price of other (incidental) services, if any, listed in the Bid Data Sheet.

11.2.2 For goods offered from abroad:

1) The price of the goods shall be quoted CIF named port of destination, or CIP named place of destination in PRC, as specified in the Bid Data Sheet.

2) The price of goods quoted FOB port of shipment (or FCA, as the case may be), if specified in the Bid Data Sheet.

3) The price for inland transportation, insurance, and other local costs incidental to delivery of the goods from the port of entry to their final destination, if specified in the Bid Data Sheet.

4) The price of (incidental) services, if any, listed in the Bid Data Sheet.

11.3 The terms EXW, CIF, CIP, etc., shall be governed by the rules prescribed in the current latest edition of Incoterms published by the International Chamber of Commerce, Paris.

11.4 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 the Tendering Agent and the Tenderee and will not in any way limit the Tenderee's right to contract on any of the terms offered.

11.5 Except as otherwise specified in Bid Data Sheet, prices quoted by the Bidder shall be fixed during the Bidder's performance of the contract and not subject to variation on any account. A

bid submitted with an adjustable price quotation will be treated as substantially non-responsive and will be rejected.

11.6 Except as otherwise permitted in Bid Data Sheet, alternative bid is not permitted. Except as otherwise stipulated in Instructions to Bidders, bid price with additional condition will not be accepted.

## **12. Bid Currencies**

12.1 The prices shall be quoted in RMB for goods and services that the Bidder will supply from within PRC, unless specified or permitted otherwise.

12.2 The prices shall be quoted in any of the currencies defined in the Bid Data Sheet for goods and services that the Bidder will supply from outside PRC.

## **13. Documents Establishing Bidder's Eligibility and Qualifications**

13.1 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. If the Bidder is a Joint Venture, each member of the Joint Venture shall submit respectively the Qualification Documents, together with the Joint Venture Agreement in which the leading member of the Joint Venture and respective work scope and responsibility shall be clearly indicated. Otherwise, its bid will be rejected.

13.2 The documentary evidence of the Bidder's eligibility to bid shall establish that the Bidder, at the time of submission of its bid, is from an eligible country as defined under ITB Clause 2.2.

13.3 The documentary evidence of the Bidder's qualifications to perform the contract if its bid is accepted shall establish:

- 1) that, in the case of a Bidder offering to supply goods under the contract which the Bidder does not manufacture or otherwise produce, the Bidder has been duly authorized by the goods' Manufacturer or Producer to supply the goods in this bidding project, format as per Section 4 Form IV-9-4;
- 2) that, the Bidder has the financial, technical and production capability necessary to perform the contract;
- 3) that, the Bidder meets the qualification criteria listed in the Bid Data Sheet;
- 4) that, the Bidder shall provide the bank reference letter issued within three months prior to the time of bid opening in original or its copy;
- 5) other documentary evidence of the Bidder's qualifications required in the bidding document.

## **14. Documents Establishing Goods' Eligibility and Conformity to Bidding Documents**

14.1 The Bidder shall furnish, as part of its bid, documents establishing the eligibility and conformity to the bidding documents of all goods and services which the Bidder proposes to supply under the contract.

14.2 The documentary evidence of the eligibility of the goods and services shall consist of a statement in the Bid Schedule of Prices of the country of origin of the goods and services offered which

shall be confirmed by a certificate of origin issued at the time of shipment.

14.3 The documentary evidence of conformity of the goods and services to the bidding documents may be in the form of literature, drawings and data, and shall consist of:

- 1) a detailed description of the essential technical and performance characteristics of the goods; and
- 2) a list, giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period to be specified in the Bid Data Sheet, following commencement of the use of the goods by the Tenderee; and
- 3) an item-by-item commentary on the Technical Specifications of the bidding document demonstrating substantial responsiveness of the goods and services to those specifications, and a statement of deviations and exceptions to the provisions of the Technical Specifications. Particularly, to those specifications with specific parameters, the bidder shall furnish specific parameter value of offered goods.

14.4 For purposes of the commentary to be furnished pursuant to ITB Clause 14.3 3) above, the Bidder shall note that standards for workmanship, material and equipment, as well as references to brand names or catalogue numbers designated in the Technical Specifications of the bidding document, are intended to be descriptive only and not restrictive. The Bidder may substitute alternative standards, brand names, and/or catalogue numbers in its bid, provided that the substitutions ensure substantial equivalence to those designated in the bidding document.

## **15. Bid Security**

15.1 The Bidder shall furnish, as part of its bid, a bid security in the amount specified in the Bid Data Sheet.

15.2 The bid security is required to protect the Tendering Agent and the Tenderee against the risk of Bidder's conduct which would warrant the security's forfeiture, pursuant to ITB Clause 15.7.

15.3 The bid security shall be denominated in the currency of the bid or in another currency acceptable to the Tendering Agent, and shall be in one of the following forms:

- 1) A bank guarantee or an irrevocable letter of credit issued by a reputable bank located in PRC or abroad, in the form provided in the bidding documents or another form acceptable to the Tenderee and valid for thirty (30) days beyond the validity of the bid; or
- 2) A cashier's order, demand draft, certified check, cash, or other forms stipulated in the Bid Data Sheet.

15.4 Any bid not secured in accordance with ITB Clauses 15.1 and 15.3 will be rejected as substantially non-responsive, pursuant to ITB Clause 24.

15.5 Unsuccessful bidders' bid security will be discharged or returned in its original amount as promptly as possible but not later than thirty (30) days after the expiration of the period of bid validity pursuant to ITB Clause 16.

15.6 The successful Bidder's bid security will be discharged upon the Bidder signing the contract, pursuant to ITB Clause 34, and furnishing the performance security, pursuant to ITB Clause 35,

and paying the service charge for bidding, pursuant to ITB Clause 36.

15.7 The bid security may be forfeited:

- 1) if a Bidder withdraws its bid during the period of bid validity specified in the bidding documents; or
- 2) if the successful Bidder fails to sign the contract in accordance with ITB Clause 34; or
- 3) if the successful Bidder fails to furnish performance security in accordance with ITB Clause 35; or
- 4) if the successful Bidder fails to pay the service charge for bidding in accordance with ITB Clause 36.

## **16. Period of Validity of Bids**

16.1 Bids shall remain valid for the period specified in the Bid Data Sheet from the date of bid opening specified in the Bid Data Sheet. A bid valid for a shorter period shall be rejected as substantially non-responsive.

16.2 In exceptional circumstances, prior to the expiry of the original bid validity period, the Tendering Agent may request the Bidder to extend the period of validity. The request and the responses thereto shall be made in writing. A Bidder may refuse the request without forfeiting its bid security, however, its bid will no longer be valid after the expiration of bid validity period. A Bidder agreeing to the request will not be required nor permitted to modify its bid, but will be required to extend the validity of its Bid Security correspondingly. The provisions of Clause 15 regarding discharge and forfeiture of Bid Security shall continue to apply during the extended period of bid validity.

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

17.1 The Bidder shall prepare an original and the number of copies of the bid indicated in the Bid Data Sheet, clearly marking each "ORIGINAL" or "COPY" of bid, as appropriate. In the event of any discrepancy between them, the original shall govern.

17.2 The original bid shall be typed or written in indelible ink and shall be signed by the legal representative of the Bidder or a person or persons duly authorized to bind the Bidder to the contract. The authorization shall be indicated by written power of attorney accompanying the bid. Except as otherwise stipulated in the Bid Data Sheet, all pages of the bid, shall be initialed by the person or persons signing the bid.

17.3 Any interlineation, 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 Summary Sheet for Bid Opening shall be included in the bid. For the convenience of Bid Opening, the Bidder is also required to submit the Summary Sheet for Bid Opening, together with the Bid

Security, in a separate envelope and duly marking the envelope as "Summary Sheet for Bid Opening". The Bidder shall seal the original and each copy of the bid in separate envelopes, duly marking the envelopes as "ORIGINAL" and "COPY". All these envelopes shall then be sealed in an outer envelope.

18.2 The inner and outer envelope shall be:

1) addressed to the address given in the Bid Data Sheet; and  
2) bear the Project name indicated in the Bid Data Sheet, the Invitation for Bids (IFB) title and number indicated in the Bid Data Sheet, and the word "DO NOT OPEN BEFORE \_\_\_\_ (*Bid opening time and date*)", followed by the time and date for bid opening specified in the Bid Data Sheet.

18.3 The inner envelopes shall also indicate the name and address of the Bidder to enable the bid to be returned unopened in case it is declared "late".

18.4 If the outer envelope is not sealed and marked as required by ITB Clause 18.2, the Tendering Agent will assume no responsibility for the bid's misplacement or premature opening.

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

19.1 Bids must be received by the Tendering Agent at the address specified under ITB Clause 18.2 no later than the time and date specified in the Bid Data Sheet.

19.2 The Tendering Agent 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 the Tendering Agent/ the Tenderee and Bidders previously subject to the deadline will thereafter be subject to the deadline as extended.

#### **20. Late Bids**

20.1 Any bid received by the Tendering Agent after the deadline for submission of bids, pursuant to ITB Clause 19, will be rejected and returned unopened to the Bidder.

#### **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 from the Bidder, including substitution or withdrawal of the bids, is received by the Tendering Agent prior to the deadline 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.

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 ITB Clause 15.7.

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

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

22.1 The Tendering Agent will open all bids in the presence of bidders' representatives who choose to attend, in the place and at the date and time specified in the Bid Data Sheet. The bidders' representatives who are present shall sign a register evidencing their attendance.

22.2 The bidders' names, bid modifications or withdrawals, bid price, price modification statement, and the presence or absence of the requisite bid security and such other details as the Tendering Agent, at its discretion, may consider appropriate, will be announced at the bid opening. No bid submitted by bidders who have purchased the bidding document, shall be rejected at bid opening, except for late bids, which shall be returned unopened to the Bidder pursuant to ITB Clause 20.

22.3 Bids that are not opened and the contents of ITB Clause 22.2 that are not read out at the bid opening shall not be considered further for evaluation. Such bids will be returned unopened to the bidders.

22.4 The Tendering Agent will prepare minutes of the bid opening.

#### **23. Bid Evaluation Committee and Evaluation Method**

23.1 The bid evaluation will be taken charge by the Bid Evaluation Committee, established in accordance with relevant laws and regulations. The Bid Evaluation Committee will adopt the "Lowest Evaluated Price Method" or the "Comprehensive Evaluation Method" stipulated in the Bid Data Sheet. In the case of the "Lowest Evaluated Price Method", ITB 26 and 27 will be applicable; while the evaluating method and criteria of the "Comprehensive Evaluation Method" will be stipulated in Volume Two of this bidding document. The evaluation on bids by the Bid Evaluation Committee includes preliminary examination, commercial evaluation, technical evaluation and price comparison/comprehensive evaluation.

23.2 During evaluation of the bids, the Bid Evaluation Committee 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 The Bid Evaluation Committee will examine the bids to determine whether they are complete, whether the bids are generally in order, whether required securities have been furnished, whether the documents have been properly signed, and whether any computational errors have been made.

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 there is a discrepancy between words and figures, the amount in words will prevail. If the bidder does not accept the correction of the errors, its bid will be rejected.

24.3 The Bid Evaluation Committee may waive any minor informality, nonconformity, or irregularity 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, the Bid Evaluation Committee 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 the terms and conditions of the bidding documents without material deviations. Deviation from, or objections or reservations to critical provisions, such as those concerning Bid Security, Applicable Law, and Taxes and Duties, will be deemed to be a material deviation. The Bid Evaluation Committee's determination of a bid's responsiveness is to be based on the true and correct contents of the bid itself without recourse to extrinsic evidence, unless the bid contains untrue and incorrect contents.

24.5 If a bid is not substantially responsive, it will be rejected and may not subsequently be made responsive by the Bidder having corrected or withdrawn the non-conforming deviation or reservation.

The bid will be rejected as non-responsive, if it is found having any of the following when commercial evaluation:

- 1) The bid is not accompanied with a bid security, or, in the case the submitted bid security is of fewer amount than required, or of shorter validity than required, or not conforming to the requirements of Bidding Documents in its form and issuing bank.
- 2) The bid is not signed page by page.
- 3) The Bidder and the Manufacturer have interest with the Tenderee and the Tendering Agent.
- 4) The Bid Form or Qualification Documents are not submitted or not in compliance with the requirements of the bidding document.
- 5) The bid has not been signed by the Bidder's Legal Person, or by the person or persons with a Power of Attorney issued by the said Legal Person.
- 6) The experience of the Bidder does not meet the requirements of the Bidding Documents.
- 7) The bid validity offered by the Bidder is shorter than that stipulated in the Bidding Documents; and
- 8) The bid does not meet, in commercial aspects, other clauses stipulated in the bidding document.

The bid will be rejected as non-responsive, if it is found having any of the following when technical evaluation:

- 1) The bid does not meet the main specifications with the mark of asterisk (\*) in the Technical Specifications of the bidding document, or the main specifications with the mark of asterisk (\*) are accompanied by the supporting technical information. The supporting technical information shall be printed literature published by the manufacturer or inspection report issued by the inspecting institution. In the event of any discrepancy between them, the inspection report issued by the inspecting institution shall govern.
- 2) The specifications without the mark of asterisk (\*) which are not key in the Technical Specifications of the bid, have exceeded the acceptable range or the maximum deviation items.

3) The content in the Technical Specifications of the bid does not conform to the fact or it is a false bid.

4) The Bidder has copied relevant part of Technical Specifications in the bidding document as a part of its bid.

5) The bid does not meet, in technical aspects, other clauses stipulated in the bidding document.

## **25. Conversion to Single Currency**

25.1 To facilitate evaluation and comparison, the Tendering Agent will convert all bid prices expressed in the amounts in different currencies in which the bid prices are payable to evaluation currency stipulated in the Bid Data Sheet at the central parity rate published by the People's Bank of China on the date of bid opening, except as otherwise stipulated.

## **26. Evaluation and Comparison of Bids**

26.1 The Bid Evaluation Committee will evaluate and compare the bids which have been determined to be substantially responsive, pursuant to ITB Clause 24.

26.2 The total Evaluated Bid Price (EBP) will be calculated on the basis that the goods are delivered to the designated installation site.

For goods offered outside PRC, the total EBP shall be: CIF Price, plus Customs Duties, Import Taxes, and the cost of Inland Transportation and Insurance.

For goods offered from within PRC, the total EBP shall be: EXW Price (including Value Added Tax and other taxes), plus the cost of Inland Transportation and Insurance.

26.3 The Bid Evaluation Committee's evaluation of a bid will take into account, in addition to the bid price quoted in accordance with ITB Clause 11.2, one or more of the following factors in accordance with the bidding document:

- 1) Cost of inland transportation, insurance and other costs within PRC incidental to delivery of the goods to their final destination;
- 2) Delivery schedule offered in the bid;
- 3) Deviations in payment schedule from that specified in the Terms and Conditions of Contract;
- 4) The cost of components, spare parts and incidental services;
- 5) The availability in PRC of spare parts and after-sales services for the equipment offered in the bid;
- 6) The projected operating and maintenance costs during the life of the equipment;
- 7) The performance and productivity of the equipment offered;
- 8) Alternative bid and other additional factors and criteria indicated in the Bid Data Sheet and/or in the Technical Specifications.

26.4 For factors retained in the Bid Data Sheet pursuant to ITB 26.3, one or more of the following quantification methods will be applied, as detailed in the Bid Data Sheet:

26.4.1 Cost of inland transportation, insurance, and incidentals occurred within PRC.

Inland transportation, insurance and other incidental costs for delivery of the goods from EXW/ port of entry/border point to Project Site named in the Bid Data Sheet will be computed for each

bid by the Bid Evaluation Committee on the basis of published tariffs by the rail or road transport agencies, insurance companies, and/or other appropriate sources. To facilitate such computation, bidder shall furnish in its bid the estimated dimensions and shipping weight and the approximate EXW/CIF/CIP value of each package. The above costs will be added by the Bid Evaluation Committee to EXW/CIF/CIP price.

#### 26.4.2 Delivery schedule.

- 1) The goods covered under the Invitation for Bids are required to be delivered (or shipped) at the time specified in the Schedule of Requirements. Taking this delivery requirement as the base, a delivery "adjustment" will be calculated for each bid by applying a percentage, specified in the Bid Data Sheet, of the EXW/CIF/CIP price for each week of delay beyond the base, and this will be added to the bid price for evaluation. No credit shall be given to early delivery. or
- 2) The goods covered under this invitation are required to be delivered (shipped) within an acceptable range of weeks specified in the Schedule of Requirement. No credit will be given to earlier deliveries, and bids offering delivery beyond this range will be treated as non-responsive. Within this acceptable range, an adjustment per week, as specified in the Bid Data Sheet, will be added for evaluation to the bid price of bids offering deliveries later than the earliest delivery period specified in the Schedule of Requirements. or
- 3) The goods covered under this invitation are required to be delivered (shipped) in partial shipments, as specified in the Schedule of Requirements. Bids offering deliveries earlier or later than the specified deliveries will be adjusted in the evaluation by decreasing from or adding to the bid price a factor equal to a percentage, specified in the Bid Data Sheet, of EXW/CIF/CIP price per week of variation from the specified delivery schedule.

#### 26.4.3 Deviation in payment schedule.

- 1) Bidders shall state their bid price for the payment schedule outlined in the Terms and Conditions of Contract. Bids will be evaluated on the basis of this base price. Bidders are, however, permitted to state an alternative payment schedule and indicate the reduction in bid price they wish to offer for such alternative payment schedule. The Bid Evaluation Committee may consider the alternative payment schedule offered by the selected Bidder. or
- 2) The Terms and Conditions of Contract stipulate the payment schedule offered by the Tenderee. If a bid deviates from the schedule and if such deviation is considered acceptable to the Bid Evaluation Committee, the bid will be evaluated by calculating interest earned for any earlier payments involved in the terms outlined in the bid as compared with those stipulated in this invitation, at a rate per annum as specified in the Bid Data Sheet.

#### 26.4.4 Cost of components and spare parts.

- 1) The list of items and quantities of components and selected spare parts, likely to be required during the initial period of operation specified in the Bid Data Sheet, is annexed to the Technical Specifications. The total cost of these items, at the unit prices quoted in each bid, will be added to the bid price. or

- 2) The Tendering Agent and the Tenderee will draw up a list of high-usage and high-value items of components and spare parts, along with estimated quantities of usage in the initial period of operation specified in the Bid Data Sheet. The total cost of these items and quantities will be computed from spare parts unit prices submitted by the Bidder and added to the bid price. or
- 3) The Tendering Agent and the Tenderee will estimate the cost of spare parts usage in the initial period of operation specified in the Bid Data Sheet, based on information furnished by each Bidder, as well as on past experience of the Tendering Agent and the Tenderee or other purchasers in similar situations. Such costs shall be added to the bid price for evaluation.

#### 26.4.5 Spare parts and after sales service facilities in the PRC.

The cost to the Tenderee of establishing the minimum service facilities and parts inventories, as outlined in the Bid Data Sheet or elsewhere in the bidding documents, shall be added to the bid price.

#### 26.4.6 Operating and maintenance costs.

Since the operating and maintenance costs of the goods under procurement form a major part of the life cycle cost of the equipment, these costs will be evaluated in accordance with the criteria specified in the Bid Data Sheet or in the Technical Specifications.

#### 26.4.7 Performance and productivity of the equipment.

- 1) Bidders shall state the guaranteed performance or efficiency in response to the Technical Specifications. No credit shall be given to better performance and higher productivity. For each drop (of 1%) in the performance or efficiency below the norm of one hundred percent (100%), an adjustment for an amount specified in the Bid Data Sheet will be added to the bid price, representing the capitalized cost of additional operating costs over the life of the plant, using the methodology specified in the Bid Data Sheet or in the Technical Specifications. or
- 2) Goods offered shall have a minimum productivity specified under the relevant provision in the Technical Specifications to be considered responsive. Evaluation shall be based on the cost per unit of the actual productivity of goods offered in the bid, and adjustment will be added to the bid price using the methodology specified in the Bid Data Sheet or in the Technical Specifications.

#### 26.4.8 Alternative Bid and Other Additional Factors and Criteria

Unless stipulated in the Bid Data Sheet and/or Technical Specifications, the Bidder is only permitted to offer one proposal. Otherwise, the bid will be rejected. In the case that alternative bid is allowed in the Bid Data Sheet or Technical Specifications, the Bidder must only offer one alternative proposal and specify the main proposal. Also the bid price and evaluation price for alternative proposal should not be higher than that of the main proposal. Only the main proposal will enter into evaluation. If the Bidder offers more than two alternative proposals or fails to specify the main proposal, his bid will be rejected.

Other additional factors and criteria shall be detailed in the Bid Data Sheet and/or in the Technical Specifications.

## **27. Determination of Final Evaluated Bid Price**

27.1 The Evaluated Bid Price calculated out in accordance with ITB Clause 24, 25 and 26 shall be treated as the final Evaluated Bid Price.

## **28. Contacting the Tendering Agent and the Tenderee**

28.1 With exception for Clause 23.2, no Bidder shall contact the Tendering Agent, the Tenderee and the Bid Evaluation Committee on any matter relating to its bid, from the time of the bid opening to the time the contract is awarded.

28.2 Any effort by a Bidder to influence the Tendering Agent, the Tenderee and the Bid Evaluation Committee in their decisions on bid evaluation or contract award may result in the rejection of the Bidder's bid.

## **F. Award of Contract**

### **29. Check before Contract Award**

29.1 The Bid Evaluation Committee will determine to their satisfaction whether the Bidder that is selected as having submitted the lowest evaluated responsive bid or the best evaluated responsive bid through comprehensive evaluation method is qualified to satisfactorily perform the contract.

29.2 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 13.3, as well as such other information as the Tendering Agent deems necessary and appropriate.

29.3 An affirmative determination will be a prerequisite for award of the contract to the Bidder. A negative determination will result in rejection of the Bidder's bid, in which event the Bid Evaluation Committee will proceed to the next lowest evaluated bid or the next best evaluated responsive bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.

### **30. Award Criteria**

30.1 Subject to ITB Clause 32, the Bid Evaluation Committee will award the contract to the successful Bidder whose bid has been determined to be substantially responsive and has been determined to be the lowest evaluated bid or to be the best evaluated responsive bid through comprehensive evaluation, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

### **31. Registration on Website and Publication , Query of Evaluation Result**

31.1 International bidding procedures for mechanic and electronic products shall be carried out on [www.chinabidding.com](http://www.chinabidding.com) (hereinafter abbreviated as "the website"). The Bidders shall register on "the website" before deadline for submission of bids. Otherwise, the bidders cannot enter into effective bidding procedures and shall be responsible for the outcome themselves.

31.2 After evaluation of bids, the result of evaluation of bids shall be publicized on the website. The duration for the publication will be seven (7) days.

31.3 The Bidders who have successfully registered on the website may inspect the result of evaluation of bids and the outcome of publication, being notified the name of the proposed successful bidder, and/or reasons why he is unsuccessful bidder. If the Bidder who holds different opinion on evaluation result, he may put forward query in written form to the Tendering Agent. If the Bidder does not obtain the reply from the Tendering Agent or still holds different opinion on the reply, he may put forward query to corresponding department in charge on the website.

31.4 The Bidder who put forward query should bear legal responsibility for authenticity and legitimacy of sources of query content together with certificate material. In the bidding document, the Tenderee and the Tendering Agent may include query information issued by department in charge as the Bidder's qualification requirement.

### **32. Right to Reject any or All Bids**

32.1 The Tendering Agent and the Tenderee reserves the right to reject any bid, and to annul the bidding process and reject all bids under special circumstance prior to contract award.

### **33. Notification of Award**

33.1 Once the successful Bidder has determined, the Tendering Agent will issue a Notification of Award to the Successful Bidder.

33.2 The Notification of Award will constitute the formation of the Contract.

33.3 Upon the successful Bidder's furnishing of performance security pursuant to ITB Clause 35, the Tendering Agent will promptly notify each unsuccessful Bidder and will discharge its bid security, pursuant to ITB Clause 15.

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

34.1 Within thirty (30) days after the issuance of Notification of Award, written Contract shall be signed in accordance with the bidding document and the bid of the successful bidder. The successful bidder shall not sign any agreements against the substantial content of the contract.

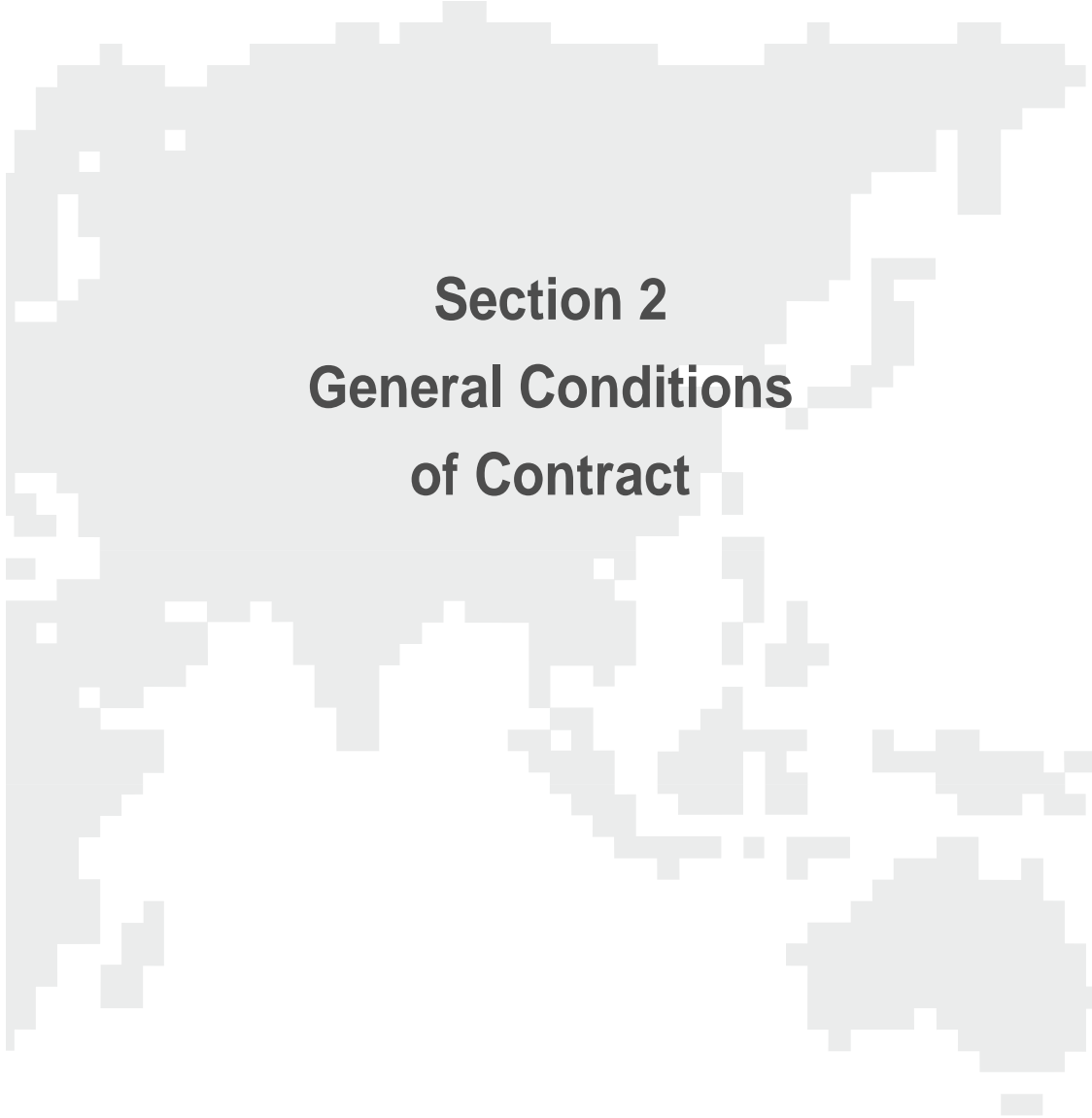
### **35. Performance Security**

35.1 Within thirty (30) days of the receipt of notification of award from the Tendering Agent, the successful Bidder shall furnish the performance security in accordance with the Special Conditions of Contract in the bidding document, in the Performance Security Form provided in the bidding documents, or in another form acceptable to the Tenderee.

35.2 Failure of the successful Bidder to comply with the requirement of ITB Clause 34 or Clause 35.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security.

### **36. Service Charge for Bidding**

36.1 The successful bidder shall pay the service charge for bidding as stipulated in the Bid Data Sheet. Failure of the successful bidder to pay the service charge for bidding as required shall result in forfeiture of the bid security.



## **Section 2 General Conditions of Contract**

# General Conditions of Contract

## 1. Definitions

1.1 In this Contract, the following terms shall be interpreted as indicated:

- 1) "The Contract" means the agreement entered into between the Purchaser and Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 2) "The Contract Price" means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations.
- 3) "The Goods" means all of the equipment, machinery, and/or other materials which the Supplier is required to supply to the Purchaser under the Contract.
- 4) "The Incidental Services" means those services ancillary to the supply of the Goods, such as transportation and insurance, installation, commissioning, provision of technical assistance, training, and other such obligations of the Supplier covered under the Contract.
- 5) "GCC" means the General Conditions of Contract contained in this section.
- 6) "SCC" means the Special Conditions of Contract contained in Section 7.
- 7) "The Purchaser" means the organization purchasing the Goods and Services, as named in SCC.
- 8) "The Supplier" means the individual or firm supplying the Goods and Services under this Contract, as named in SCC.
- 9) "The Project Site" means the location where the Goods are to be installed and operated as named in SCC.
- 10) "Day" means calendar day.

## 2. Application

2.1 These Terms and Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract.

## 3. Country of Origin

3.1 All Goods and Services supplied under the Contract shall have their origin in the People's Republic of China (hereinafter referred to as "the PRC") or in the countries/areas which have regular trade relations with the PRC (hereinafter called "eligible source countries/areas").

3.2 For purposes of this Clause, "origin" means the place where the Goods were mined, grown, or produced, or from which the Services are supplied. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.

3.3 The origin of Goods and Services is distinct from the nationality of the Supplier.

#### **4. Standards**

4.1 The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications, and, when no applicable standard is mentioned, to the authoritative standards appropriate to the Goods' country of origin. Such standards shall be the latest issued by the concerned institution.

4.2 All measurements shall be the measuring unit officially published by the government of the PRC, unless otherwise specified in the Technical Specifications.

#### **5. Use of Contract Documents and Information**

5.1 The Supplier shall not, without the Purchaser's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Purchaser in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

5.2 The Supplier shall not, without the Purchaser's prior written consent, make use of any document or information enumerated in GCC Clause 5.1 except for purposes of performing the Contract.

5.3 Any document, other than the Contract itself, enumerated in GCC Clause 5.1 shall remain the property of the Purchaser and shall be returned (in all copies) to the Purchaser on completion of the Supplier's performance under the Contract if so required by the Purchaser.

#### **6. Intellectual Property Rights**

6.1 The Supplier shall indemnify the Purchaser against all third-party claims of infringement of patent, trademark, copyright or other intellectual property rights arising from use of the Goods or any part thereof in the PRC.

#### **7. Performance Security**

7.1 Within thirty (30) days of receipt of the notification of Contract award, the Supplier shall furnish to the Purchaser the performance security in the amount specified in SCC.

7.2 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.

7.3 The performance security shall be denominated in the currency of the Contract, or in a currency acceptable to the Purchaser and shall be in one of the following forms:

- 1) a bank guarantee or an irrevocable letter of credit issued by: (i) a reputable bank located in the PRC or, (ii) a reputable bank abroad acceptable to the Purchaser through a reputable Bank located in the PRC, in the form provided in the bidding documents or another form acceptable to the Purchaser; or

- 2) a cashier's check, certified check or cash.

7.4 The performance security will be discharged by the Purchaser and returned to the Supplier not later than thirty (30) days following the date of completion of the Supplier's performance obligations under the Contract, including any warrant obligations.

#### **8. Inspections and Tests**

8.1 The Purchaser or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to the Purchaser. GCC and the Technical Specifications shall specify what inspections and tests the Purchaser requires and where they are to be conducted. The Purchaser shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.

8.2 The inspections and tests may be conducted on the premises of the Supplier or its subcontract (s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the Supplier or its subcontractor(s), all reasonable facilities and assistance, shall be furnished to the inspectors at no charge to the Purchaser.

8.3 Should any inspected or tested Goods fail to conform to the Specifications, the Purchaser may reject the Goods, and the Supplier shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to the Purchaser.

8.4 The Purchaser's right to inspect, test and, where necessary, reject the Goods after the Goods' arrival at the port of destination and/or the site shall in no way be limited or waived by reason of the Goods having previously been inspected, tested, and passed by the Purchaser or its representative prior to the Goods' shipment from the country/area of origin.

8.5 The Supplier shall have the manufacturer, before making delivery, carry out a precise and comprehensive inspection of the Goods regarding quality, specification, performance, quantity and weight and issue a quality certificate certifying that the Goods are in conformity with the stipulations in the Contract. The quality certificate shall form an integral part of the documents to be presented to the negotiating bank for payment, but shall not be regarded as final with respect to quality, specification, performance, quantity and weight. Particulars and results of the tests made by the manufacturer shall be shown in a statement to be attached to the quality certificate.

8.6 After arrival of the Goods at the port of destination and/or the site, the Purchaser shall apply for State Administration for Entry-Exit Inspection & Quarantine of the People's Republic of China (SAIQ) (hereinafter called the "Administration") for inspection of the Goods with respect to quality, specification, quantity etc. and a post-delivery inspection certificate shall be issued thereof. If discrepancies are found by the Administration regarding quality, specification or quantity etc., the Purchaser shall have the right to claim against the Supplier within ninety (90) calendar days after arrival of the Goods at the site.

8.7 If, during the warranty period specified in GCC Clause 18 and as a result of inspection by the Administration or other organization, otherwise, it is found that the quality or specifications of the Goods are not in conformity with the Contract or if the Goods are proven to be defective for any reason, including latent defects or the use of unsuitable materials, the Purchaser shall promptly notify the Supplier of the existence of a claim.

8.8 Nothing in GCC Clause 8 shall in any way release the Supplier from any warranty or other obligations under this Contract.

## 9. Packing

9.1 The Supplier shall have the Contract Goods packed strongly and shall take measure to protect the Contract Goods from moisture, rain, rust, corrosion and shock, etc. According to their different shape and special features as to withstand numerous handling, loading and unloading as well as long-distance sea and inland transportation and to ensure the safe arrival of the Goods at the Contract site without any damage or corrosion. The Supplier shall be liable for any rust, damage and loss caused by inadequate or improper packing provided by the Supplier. For those wooden packages, fumigation treatment shall be conducted in compliance with the requirement of AQSIQ, and a special mark of IPPC shall be affixed. Otherwise a statement shall be furnished to confirm that non-wooden materials have been used.

## 10. Marking for Shipment

10.1 The Supplier shall mark the following on the four adjacent sides of each package with indelible paint in conspicuous English printed words:

- 1) CONSIGNEE
- 2) CONTRACT NUMBER
- 3) SHIPPING MARK
- 4) CONSIGNEE CODE
- 5) PORT OF DESTINATION
- 6) NAME OF GOODS AND ITEM NO., CASE NO.
- 7) GROSS/NET WEIGHT (KG)
- 8) MEASUREMENT ( LENGTH × WIDTH × HEIGHT IN CM )

10.2 If any package weighs two (2) tons or more, the Supplier shall mark on two sides of each package in English and with appropriate transportation marks common in international trade, the "center of gravity" and "points of slinging" in order to facilitate loading, discharging and handling. According to the characteristics of the Goods and the different requirements in transportation, packages shall be marked legibly by the Supplier with words "handle with Care", "Right side Up", "Deep Dry", etc. and with other terms appropriate in international trade.

## 11. Terms of Shipment

11.1 In the case of CIF/CIP Contract:

- 1) The Supplier shall be responsible for booking shipping space and arranging the shipment and

shall pay for the freight, so as to ensure that the Goods will be delivered according to the time schedule stipulated in the Contract.

- 2) The date of the Bill of Lading/Airway Bill shall be considered as the actual date of delivery of the Goods.
- 3) Unless otherwise agreed, shipment of the Goods on desk and transshipment of the Goods from the country of origin of the Goods shall not be acceptable.
- 4) The shipment shall be carried by conveyance belonging to eligible source countries/areas.
- 5) The port of destination/project site shall be that specified in the SCC.

11.2 In the Case of EX-Works Contract:

- 1) The Supplier shall arrange the inland transportation at the Purchaser's expense.
- 2) The date of the receipt issued by the transportation department concerned shall be regarded as the date of delivery of the Goods.

11.3 In the case of FOB/FCA Contract:

- 1) The Supplier may book shipping space and arrange the shipment at the Purchaser's expense.
- 2) The date of the Bill of Lading/Airway Bill shall be considered as the actual date of delivery of the Goods.
- 3) Unless otherwise agreed, shipment of the Goods on desk and transshipment of the Goods from the country of origin of the Goods shall not be acceptable.
- 4) The shipment shall be carried by conveyance belonging to eligible source countries/areas.
- 5) The port of destination/project site shall be that specified in the SCC.

11.4 The Supplier shall not ship more than the contracted quantity or weight. If so, the Purchaser shall not be responsible for any cost or other consequences arising from shipment of excess quantities or weight.

## 12. Shipping Advice

12.1 In the Case of CIF/CIP Contract:

- 1) The Supplier shall, thirty (30) calendar days in the case of sea shipment or seven (7) days in the case of air shipment, before the date of shipment stipulated in the Contract, notify the Purchaser by cable or telex or fax of Contract No., name of Goods, quantity, number of packages, total gross weight, total volume (m<sup>3</sup>) in cubic meters and the date of readiness for shipment at the port of loading. At the same time, the Supplier shall send to the Purchaser by airmail a detailed list of the Goods to be delivered in five (5) copies including Contract No., name of Goods, specification, quantity, total volume (m<sup>3</sup>) and dimension of each package (length × width × height), unit and total price, port of shipment and date of readiness for shipment, and any special requirements or attention needed for the Goods during transportation and storage.
- 2) The Supplier shall, not later than twenty four (24) hours after completing of loading of the Goods, notify the Purchaser by fax of Contract No., name of Goods, quantity, gross weight,

volume (m<sup>3</sup>) in cubic meters, invoiced value, name of carrying vessel/aircraft, date of its sailing/flight, and estimated arrival date. If an package weighs more than twenty (20) metric tons, and dimensions reach or exceed twelve (12) meters in length, two point seven (2.7) meters in width and three (3) meters in height, the Supplier shall advise the Purchaser of the weight and measurement of each package. The details of flammable and dangerous Goods, if any, shall also be indicated.

#### 12.2 In the Case of EX-Works Contract:

- 1) The Supplier shall, thirty (30) days in the case of railway/road/water shipment or seven (7) days in the case of air shipment before the date of delivery stipulated in the Contract, notify the Purchaser by cable or telex or fax of the Contract No., name of Goods, quantity, number of packages, total gross weight, total volume (m<sup>3</sup>) in cubic meters and the date of readiness for delivery. At the same time, the Supplier shall send to the Purchaser by registered letter a detailed list of the Goods to be delivered in five (5) copies including Contract No., name of Goods, specification, quantity, total gross weight, total volume (m<sup>3</sup>) in cubic meters and dimensions of each package (length × width × height), unit and total prices and the date of readiness for delivery and any special requirements or attention needed for the Goods during transportation and storage.
- 2) The Supplier shall, no later than twenty four (24) hours after completion of loading of the Goods, notify the Purchaser by cable or telex or fax of Contract No., name of Goods, quantity, gross weight, volume (m<sup>3</sup>) in cubic meters, invoiced value, means of transports (railway/road/water/air), details of carrying train/vehicle/vessel/aircraft, date of departure, and estimated arrival date. If a package weighs more than twenty (20) metric tons, and dimensions reach or exceed twelve (12) meters in length, two point seven (2.7) meters in width and three (3) meters in height, the Supplier shall advise the Purchaser of the weight and measurement of each package. The details of flammable and dangerous Goods, if any, shall also be indicated.
- 3) If the Purchaser fails to arrange for insurance coverage in the time under the terms of an Exworks contract, due to the Supplier's delay in notifying the above to the Purchaser by telex or cable or fax, all losses thus incurred shall be born by the Supplier.

#### 12.3 In the Case of FOB/FCA Contract:

- 1) The Supplier shall, thirty (30) calendar days in the case of sea shipment or seven (7) days in the case of air shipment, before the date of shipment stipulated in the Contract, notify the Purchaser by cable or telex or fax of Contract No., name of Goods, quantity, number of packages, total gross weight, total volume (m<sup>3</sup>) in cubic meters and the date of readiness for shipment at the port of loading. At the same time, the Supplier shall send to the Purchaser by airmail a detailed list of the Goods to be delivered in five (5) copies including Contract No., name of Goods, specification, quantity, total volume (m<sup>3</sup>) and dimension of each package (length; width; height), unit and total price, port of shipment and date of readiness for shipment, and any special requirements or attention needed for the Goods during transportation and storage.

- 2) The Supplier shall, not later than twenty four (24) hours after completing of loading of the Goods, notify the Purchaser by fax of Contract No., name of Goods, quantity, gross weight, volume (m<sup>3</sup>) in cubic meters, invoiced value, name of carrying vessel/aircraft and date of its sailing/flight, date of its sailing/flight, and estimated arrival date. If an package weighs more than twenty (20) metric tons, and dimensions reach or exceed twelve (12) meters in length, two point seven (2.7) meters in width and three (3) meters in height, the Supplier shall advise the Purchaser of the weight and measurement of each package. The details of flammable and dangerous Goods, if any, shall also be indicated.
- 3) If the Purchaser fails to arrange for insurance coverage in the time under the terms of FOB/FCA, due to the Supplier's delay in notifying the above to the Purchaser by telex or cable or fax, all losses thus incurred shall be born by the Supplier.

### 13. Delivery and Documents

- 13.1 Delivery of the Goods shall be made by the Supplier in accordance with the terms specified in the Schedule of Requirements. The details of shipping and/or other documents to be furnished by the Supplier are specified in GCC Clauses 9, 10, 11 and 12.
- 13.2 For purposes of the Contract, "EXW", "FOB", "FCA", "CIF", "CIP", and other trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current latest edition of Incoterms published by the International Chamber of Commerce, Paris.
- 13.3 Upon shipment, the Supplier shall notify the Purchaser and the Insurance Company by fax of the full details of shipment, including Contract number, date and No. of Bill of Lading, description of Goods, quantity, name of the carrying vessel, date of shipment, name of shipping port, name of unloading port, estimated date of arrival of the vessel at port of destination, etc. For the purpose of contract payment, the Supplier shall present through Supplier's bank (when applicable) the relevant "Payment-Documents" to the Purchaser in accordance with the requirements stipulated in Clause 20 hereunder.

### 14. Insurance

- 14.1 The Goods supplied under the Contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery in the manner specified in GCC.
- 14.2 Where delivery of the Goods is required by the Purchaser on a CIF or CIP basis, the Supplier shall arrange and pay for cargo insurance, naming the Purchaser as the beneficiary. Insurance is to be effected by the Supplier in a freely convertible currency for one hundred and ten percent (110%) invoiced value on an "all risks" and "war risk" basis. Where delivery is on an FOB or FCA basis, insurance shall be the responsibility of the Purchaser.
- 14.3 In the case of an Ex-works Contract, insurance is to be effected by the Purchaser after loading.

## 15. Transportation

- 15.1 Where the Supplier is required under the Contract to deliver the Goods FOB, transport of the Goods, up to and including the point of putting the Goods on board the vessel at the specified port of loading, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price. Where the Supplier is required under the Contract to deliver the Goods FCA, transport of the Goods and delivery into the custody of the carrier at the place named by the Purchaser or other agreed point shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.
- 15.2 Where the Supplier is required under the Contract to deliver the Goods CIF or CIP, transport of the Goods to the port of destination or such other named place of destination, as shall be specified in the Contract, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.
- 15.3 Where the Supplier is required under the Contract to deliver the Goods CIF or CIP, the selected carrier shall have the prior approval of the Purchaser. Where the Supplier is required under the Contract (a) to deliver the Goods FOB or FCA, and (b) to arrange on behalf and at the expense of the Purchaser for international transportation on specified carriers or on national flag carriers of the PRC, the Supplier may arrange for such transportation on alternative carriers if the specified carriers or with the PRC national flag carriers are not available to transport the Goods within the period(s) specified in the Contract.

## 16. Incidental Services

- 16.1 The Supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC and/or Technical Specifications:
- 1) performance or supervision of on-site assembly and/or start-up of the supplied Goods;
  - 2) furnishing of tools required for assembly and/or maintenance of the supplied Goods;
  - 3) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;
  - 4) performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and
  - 5) training of the Purchaser's personnel, at the Supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.
- 16.2 Prices charged by the Supplier for incidental services, if not included in the Contract Price for the Goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged for other parties by the Supplier for similar services.
- 16.3 The Supplier shall provide all the services as specified in SCC/Technical Specifications. The price quoted in the bid or agreed upon by the Parties for performing the required incidental services shall be included in the Contract Price.

## 17. Spare Parts

- 17.1 As specified in GCC, the Supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts:
- 1) such spare parts as the Purchaser may elect to purchase from the Supplier, provided that this election shall not relieve the Supplier of any warranty obligations under the Contract; and
  - 2) advance notification to the Purchaser of the pending termination, in sufficient time to permit the Purchaser to procure needed requirements, in the event of termination of production of the spare parts; and
  - 3) furnishing at no cost to the Purchaser, the blueprints, drawings, and specifications of the spare parts, if requested, following the termination of the spare parts.
- 17.2 The Supplier shall provide necessary spare parts as specified in SCC and Technical Specifications.

## 18. Warranty

- 18.1 The Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The Supplier further warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship (except when the design and /or material is required by the Purchaser's specifications) or from any act or omission of the Supplier, that may develop under normal use of the supplied Goods in the conditions prevailing in the country of final destination.
- 18.2 This warranty shall remain valid for number of months as specified in SCC after the date of final acceptance of the goods for this Contract, or number of months as specified in SCC after the date of arrival of the last shipment of the goods at the port of destination, whichever occurs earlier.
- 18.3 The Purchaser shall promptly notify the Supplier in writing of any claims arising under this warranty.
- 18.4 Upon receipt of such notice, the Supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective Goods or parts thereof, without costs to the Purchaser.
- 18.5 If the Supplier, having been notified, fails to remedy the defect(s) within the period specified, the Purchaser may proceed to take 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.

## 19. Claims

- 19.1 In case the Supplier is liable for the discrepancies and a claim is lodged by the Purchaser within the time limit of inspection, erection, commissioning, acceptance test and the warranty period as stipulated in GCC Clause 18 or elsewhere in the Contract, the Supplier shall settle the claim with the agreement of the Purchaser in one or a combination of the following ways:

- 1) Agree to the rejection of the Goods and refund to the Purchaser the value of the Goods so rejected in the same currency as specified in the Contract and to bear the losses and expenses incurred including interest, accrued banking charges, freight and insurance premiums, inspection charges, storage, stevedore charges and other necessary expenses required for the custody and protection of the rejected Goods.
  - 2) Devalue the Goods according to the degree of inferiority, extent of damage and amount of losses suffered by the Purchaser, as agreed between the Purchaser and the Supplier.
  - 3) Replace the defective Goods with new parts, components and/or equipment which conform to the specifications, quality and performance as specified in the Contract, and/or repair the defective Goods at the Supplier's expenses and risks and bear all directly related expenses sustained by the Purchaser. The Supplier shall at the same time guarantee the quality of there placed Goods for a further corresponding period according to GCC Clause 18.
- 19.2 In case the Supplier fails to reply within thirty (30) calendar days after notification of the Purchaser's claim, the above mentioned claims shall be regarded as being accepted by the Supplier. If the Supplier fails to resolve the claim in any of the ways described above as agreed with the Purchaser within thirty (30) days after notification of the claim(s) by the Purchaser or longer period of time agreed upon by the Purchaser, the Purchaser will proceed to recover the claim amount from the payment under negotiation or from the performance security established by the Supplier.

## **20. Payment**

- 20.1 The method and conditions of payment to be made to the Supplier under this Contract shall be specified in SCC.

## **21. Prices**

- 21.1 Prices charged by the Supplier for Goods delivered and incidental Services performed under the Contract are shown in Contract Form.

## **22. Change Orders**

- 22.1 The Purchaser may at any time, by a written order given to the Supplier pursuant to GCC Clause 35, make changes within the general scope of the Contract in any one or more of the following:
- 1) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
  - 2) the method of shipment or packing;
  - 3) the place of delivery; and/or
  - 4) the incidental services to be provided by the Supplier.
- 22.2 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 delivery schedule, or both, and the Contract shall accordingly be

amended. Any claims by the Supplier for adjustment under this clause must be asserted within thirty (30) days from the date of the Supplier's receipt of the Purchaser's change order.

## **23. Contract Amendments**

- 23.1 Subject to GCC Clause 22, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

## **24. Assignment**

- 24.1 The Supplier shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Purchaser's prior written consent.

## **25. Subcontracts**

- 25.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under this Contract. Such notification shall not relieve the Supplier from any liability or obligation under the Contract.
- 25.2 Subcontracts must comply with the provisions of GCC Clause 3.

## **26. Delays in the Supplier's Performance**

- 26.1 Delivery of the Goods and performance of Services shall be made by the Supplier in accordance with the time schedule prescribed by the Purchaser in the Schedule of Requirements.
- 26.2 If at any time during performance of the Contract, the Supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods and performance of Services, the Supplier shall promptly notify the Purchaser in writing of the fact of the delay, its likely duration and its cause(s). 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, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of the Contract.
- 26.3 Except as provided under GCC Clause 29, a delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 27, unless the extension of time is agreed upon pursuant to GCC Clause 26.2 without the application of liquidated damages.

## **27. Liquidated Damages**

- 27.1 Subject to GCC Clause 29, if the Supplier fails to deliver any or all of the Goods or to perform the Services within the period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to zero point five percent (0.5%) of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of five percent (5%) of Contract Price. Once the maximum is reached, the Purchaser may consider termination of the Contract pursuant to GCC Clause 28.

## **28. Termination for Default**

28.1 The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate this Contract in whole or in part:

- 1) if the Supplier fails to deliver any or all of the Goods, within the period(s) specified in the Contract or within any extension thereof granted by the Purchaser pursuant to GCC Clause 26; or
- 2) if the Supplier fails to perform any other obligation(s) under the Contract.
- 3) if the Supplier, in the judgment of the Purchaser has engaged in corrupt or fraudulent practices in competing for or in executing the contract. For the purpose of this clause:
  - a) "corrupt practices" means the offering, giving, receiving or soliciting of any thing of value to influence the action of the Purchaser in the procurement process or in contract execution.
  - b) "fraudulent practices" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the purchaser.

28.2 In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 28.1, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Purchaser for any excess costs for such similar Goods or Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

## **29. Force Majeure**

29.1 If either of the parties to the Contract be prevented from executing the Contract by such cases of Force Majeure as war, serious fire, flood, typhoon and earthquake and other cases agreed upon by both parties as cases of Force Majeure, the time for execution of the contract shall be extended by a period equal to the effect of those causes. An event of Force Majeure means the event that the parties could not foresee at the time of conclusion of the Contract and its occurrence and consequences can not be avoided and cannot be overcome.

29.2 The prevented party shall notify the other party by cable/fax/telex within the shortest possible time of the occurrence of the Force Majeure event and within fourteen (14) days thereafter send by special courier or registered airmail to the other party, a certificate for evidence issued by the relevant authorities for confirmation. Should the effect of Force Majeure continue for more than one hundred and twenty (120) consecutive days, both parties shall settle the further execution of the Contract through friendly negotiation and reach an agreement with a reasonable time.

## **30. Termination for Insolvency**

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

## **31. Termination for Convenience**

31.1 The Purchaser, by written 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.

31.2 The Goods that are complete and ready for shipment within thirty (30) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may select:

- 1) to have any portion completed and delivered at the Contract terms and prices; and/or
- 2) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Services and for materials and parts previously procured by the Supplier.

## **32. Resolution of Disputes**

32.1 All disputes arising from the execution of or in connection with the Contract shall be settled through amicable consultation by both parties. In case no settlement can be reached within sixty (60) days after commencement of such consultation, the disputes shall be submitted for arbitration.

32.2 Any dispute which is referred to formal arbitration under sub-clause 32.1 shall finally be settled by arbitration in Beijing or other location in China, under the China International Economic and Trade Arbitration Commission (CIETAC) in accordance with its arbitration rules/procedures. Unless otherwise agreed, the official language of Arbitration shall be Chinese.

32.3 The arbitration award shall be final and binding on both parties.

32.4 The arbitration fee shall be borne by the losing party except as otherwise awarded by the Arbitration Commission.

32.5 In the course of arbitration, the Contract shall be continuously executed except the part which is under arbitration.

## **33. Governing Language**

33.1 Unless otherwise agreed, the Contract shall be written in Chinese language. If the contract is written in both Chinese and English, two languages have the same effectiveness legally. Unless otherwise agreed, in the event of any discrepancies between them, the Chinese version shall govern. All correspondence and other documents pertaining to the Contract which are exchanged by the parties shall be written in the same language.

## **34. Applicable Law**

34.1 The Contract shall be interpreted in accordance with the current laws of the People's Republic of China.

## **35. Notices**

35.1 Any notice given by one party to the other pursuant to this Contract shall be sent to the other

party in writing to the other party's address specified in SCC.

35.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

### **36. Taxes and Duties**

36.1 All taxes in connection with the execution of this Contract levied by the Chinese Government on the Purchaser in accordance with the tax laws in effect shall be borne by the Purchaser.

36.2 In case a Chinese Supplier is awarded the Contract, all taxes in connection with the execution of this Contract levied by the Chinese Government on the Chinese Supplier in accordance with the tax laws in effect shall be borne by the Chinese Supplier.

In case a foreign Supplier is awarded the Contract, and if some incidental services named in SCC are required to be performed by the foreign Supplier in the People's Republic of China, all taxes in connection with the execution of those incidental services levied by the Chinese Government on the foreign Supplier in accordance with the tax laws in effect and the agreement (if such an agreement may exist), named in SCC, shall be borne by the foreign Supplier.

36.3 All taxes arising outside of the People's Republic of China in connection with the execution of this Contract shall be borne by the Supplier.

### **37. Effectiveness of the Contract and Miscellaneous**

37.1 The Contract shall become effective after its signing by both parties and upon the Purchaser's receipt of performance security from the Supplier.

37.2 It is the responsibility of the Supplier to arrange export license(s), if required for the Goods covered by this Contract from his own country at his own expense.

37.3 Following Annexes under this Contract shall form an integral part of this Contract and shall have the same force as the Contract itself:

Annex 1 - The Scope of Supply and Itemized Price

Annex 2 - Technical Specifications

Annex 3 - Shipping Lots and Delivery Time

Annex 4 - Performance Security (Format as per Form III-2)

Annex 5 - Letter of Guarantee for Advance Payment (Format as per Form III-3)

Annex 6 - Letter of Credit (Format as per Form III-4)

## **Section 3 Contract Form**

**Form III-1 Form of Contract Agreement**

**CONTRACT AGREEMENT**

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ between (name of the Purchaser) of (country of the Purchaser)(hereinafter called "the Purchaser") of the one part and (name of the Supplier) of (city and country/area of the Supplier) (hereinafter called "the Supplier") of the other part:

WHEREAS the Purchaser invited bids for certain goods and ancillary services, viz., (brief description of goods and services) and has accepted a bid by the Supplier for the supply of those goods and services in the sum of (contract price in words and figures) (hereinafter called "the Contract Price").

NOW THIS AGREEMENT WITNESSED AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:
  - 1) The General Conditions of Contract;
  - 2) The Special Conditions of Contract;
  - 3) Annexes to the Contract:
    - Annex 1 - The Scope of Supply and Itemized Price
    - Annex 2 - Technical Specifications
    - Annex 3 - Shipping Lots and Delivery Time
    - Annex 4 - Performance Security (Format as per Form III-2)
    - Annex 5 - Letter of Guarantee for Advance Payment (Format as per Form III-3)
    - Annex 6 - Letter of Credit (Format as per Form III-4)
  - 4) The Purchaser's Notification of Award.
3. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Purchaser to provide the goods and 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 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 the day and year first above written.

SIGNED BY

Name of representative of  
the Purchaser

Name of representative of  
the Supplier

\_\_\_\_\_  
Signature of representative of  
the Purchaser

\_\_\_\_\_  
Signature of representative of  
the Supplier

\_\_\_\_\_  
The Purchaser

\_\_\_\_\_  
The Supplier

**Form III-2 Form for Performance Security**

**Performance Security**

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

To: (name of the Purchaser)

**Performance Security of Contract No.**

This Guarantee is hereby issued to serve as the performance security of (name of the Supplier) (hereinafter called the "Supplier"), for Contract No. \_\_\_\_\_ dated \_\_\_\_\_ between you and the Supplier for supply of \_\_\_\_\_ for \_\_\_\_\_ Project (hereinafter call the "Project"). The (name of bank) (hereinafter called the "Bank") hereby unconditionally and irrevocably guarantees and binds itself, its successors and assigns to pay you, without recourse, up to the total amount of (currency used in the Contract) representing ten percent (10%) of the Contract Price in (name of currency) and accordingly covenants and agrees as follows:

- (1) On the Supplier's failure of the faithful performance of all the Contract Documents, agreed modifications, amendments, additions and alternations thereto that may hereinafter be made including replacement and/or making good of defective Goods (hereinafter called the "failure of performance") and determined by you and notwithstanding any objection by the Supplier, the Bank shall immediately, on your demand in a written notification stating the failure of performance by the Supplier, pay you such amount or amounts as required by you not exceeding the aggregate total as stated above in the manner specified in the said notification.
- (2) Any payment hereunder shall be made free and clear of and without deduction for or on account of any present or future taxes, duties, charges, fees, deductions or withholding of any nature whatsoever and by whoever imposed.
- (3) The covenants herein contained constitute an unconditional and irrevocable direct obligation of the Bank. No alteration in the terms of the Contract to be performed thereunder and no allowance of time by you or any other act or omission by you which but for this provision might exonerate or discharge the Bank shall in any way release the Bank from any liability hereunder.
- (4) This guarantee shall remain valid and in full force and effect until the expiration of the warranty period specified in the Terms and Conditions of Contract.

Very truly yours,

Issuing Bank: \_\_\_\_\_

Signed by: \_\_\_\_\_

(Printed name and designation of officials authorized to sign on behalf of issuing bank)

Signature: \_\_\_\_\_

Official Seal: \_\_\_\_\_

**Form III-3 Bank Guarantee Form for Advance Payment**

**Bank Guarantee for Advance Payment**

To: (name of the Purchaser)  
(name of the Contract)

Gentlemen and/or Ladies:

In accordance with the provision of Clause 20 of the Terms and Conditions of Contract, (name and address of the Supplier) (hereinafter called "the Supplier") shall deposit with the Purchaser a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of (amount of guarantee in figures and words).

We, (name of bank), as instructed by the Supplier, agree unconditionally and irrevocably to guarantee as primary obligator 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 (amount of guarantee in figures and words).

We further agree that no change or addition to or other modification of the terms of the Contract to be performed thereunder or of any of the Contract Documents which may be made between the Purchaser 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 expires 30 days after the last contractual delivery date.

Yours truly,

Name and Position of Guarantors: \_\_\_\_\_

Signature and seal of Guarantors: \_\_\_\_\_

Name of Bank: \_\_\_\_\_

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

**Form III-4-1 Specimen of Letter of Credit (in case 100% payment is made at one time)**

**Letter of Credit**

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

To: (The Supplier)

This Letter of Credit is forward through (name of bank)

We open an irrevocable Letter of Credit No. \_\_\_\_\_ in your favor by Order of (name of the Purchaser) for account of \_\_\_\_\_, to the extent of \_\_\_\_\_ available against your draft(s) drawn at sight on (name of the Purchaser) for 100% of the invoice value, accompanied by the following documents:

1. Four (4) copies of commercial invoice (indicating Contract No.).
2. Clean on board Ocean Bills of Lading marked "freight prepaid" and made out to order, blank endorsed and notifying \_\_\_\_\_.
3. Four (4) copies of Packing List and/or weight Memo showing quantity and gross and net weight of each package.
4. Four (4) copies of Certificate of quality issued by the manufacturer.
5. Your letter stating that extra bills have been dispatched according to contract terms.
6. Your certified copy of fax dispatched to the account within forty-eight (48) hours after shipment advising name of vessel, quantity, weight, value and date of shipment.
7. Your letter stating prior approval of the nationality of the vessel by the Purchaser.
8. Insurance policy or certificate covering one hundred and ten percent(110%) of invoice value against all risks and war risks.
9. Five (5) copies of certificate of country of origin.
10. Sight drafts to be drawn on the Purchaser to (name of bank).

EVIDENCING SHIPMENT OF:

Goods under the Contract No. \_\_\_\_\_

Price Terms: \_\_\_\_\_

An extra certificate should be issued by you confirming that all the contents in the bills under this letter of credit comply with the above-mentioned contract terms.

Shipment from \_\_\_\_\_ to \_\_\_\_\_

Not later than \_\_\_\_\_

Partial shipment \_\_\_\_\_ allowed Transshipment \_\_\_\_\_ allowed

This Credit remains valid in \_\_\_\_\_ until \_\_\_\_\_ (inclusive) and all draft(s) must be marked that they are drawn under this Letter of Credit.

We hereby undertake that against presentation of the drafts and shipping documents drawn under and in compliance with the terms of this Credit, the same shall be negotiated subject to special instructions item 1 and 2 stated hereunder.

**SPECIAL INSTRUCTIONS:**

1. Negotiations of drafts under this Credit are restricted to the above-mentioned advising bank \_\_\_\_\_.  
On negotiation, the negotiating bank should claim reimbursement from \_\_\_\_\_ by cable provided all terms and conditions stipulated herein have been complied with and simultaneously the negotiation bank should dispatch all documents to us in One Lot by first available airmail.
2. All banking charges outside of the PRC and interest charges for negotiation are to be borne by the beneficiary.

**Form III-4-2 Specimen of Letter of Credit (in case installment payment is made)**

**Letter of Credit**

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

To: *(the Supplier)*

This Letter of Credit is forwarded through *(name of bank)*.

We open an irrevocable Letter of Credit No. \_\_\_\_\_ in your favor by order of *(name of the Purchaser)* for account of \_\_\_\_\_ to the extent of \_\_\_\_\_ available against your drafts drawn at sight on *(name of the Purchaser)* and permit the payments as follows:

- A. Payment of \_\_\_\_\_% of the total Contract Price on presentation of the following documents:
  1. One photostated copy of valid export license issued by the relevant authorities of the Supplier's country authorizing the Supplier to export the Goods of the Contract or a certificate issued by the Supplier stating that an export license is not necessary;
  2. An irrevocable Bank Guarantee for Advance Payment issued by the Supplier's Bank in favor of the Purchaser, covering \_\_\_\_\_% of the total price of the Contract;
  3. Five (5) copies of proforma invoice covering the total price of the Contract;
  4. Sight draft to be drawn on the Purchaser to *(name of bank)*.
  5. Five (5) copies of commercial invoice.
- B. Payment of \_\_\_\_\_% of the total Contract Price prorated \_\_\_\_\_% of the value of each shipment on presentation of the following documents:
  1. Three (3) original and two (2) copies of clean on board Ocean Bills of Lading marked "freight prepaid" in CIF Contract and made out to order, blank endorsed and notifying \_\_\_\_\_.
  2. Five (5) copies of commercial invoice covering \_\_\_\_\_% of the relevant amounts for the delivered Goods for the Contract.
  3. Five (5) copies of Packing List showing contents of the Goods.
  4. Five (5) copies of Certificate of quality issued by the manufacturer.
  5. Sight drafts to be drawn on the Purchaser to *(name of bank)*.
  6. A copy of telex advising shipment according to SCC Clause 7 of this Contract.
  7. A Supplier's letter attesting that the name and nationality of the carrying vessel have been approved by the Purchaser.
  8. Insurance policy or certificate covering one hundred and ten percent (110%) of invoiced value against all risks and war risks in one (1) original and four (4) copies.
  9. Five (5) copies of certificate of country of origin.
- C. Payment of \_\_\_\_\_% of the total Contract Price after the acceptance of all Contract Goods on presentation of the following documents:
  1. Five (5) copies of commercial invoice;
  2. Five (5) copies of acceptance certificate of the Contract Goods signed by the Purchaser and

Supplier;

3. Sight draft to be drawn on the Purchaser to (name of bank)

EVIDENCING SHIPMENT OF: Goods under the Contract No.: \_\_\_\_\_

Price Terms:

An extra certificate should be issued by you confirming that all the contents in the bills under this letter of credit comply with the above-mentioned contract terms.

Shipment from \_\_\_\_\_ to \_\_\_\_\_

Not later than \_\_\_\_\_

Partial shipment \_\_\_\_\_ allowed. Transshipment \_\_\_\_\_ allowed

This Credit remains valid in \_\_\_\_\_ until \_\_\_\_\_ and all drafts must be marked that they are drawn under this Letter of Credit.

We hereby undertake that against presentation of the drafts and shipping documents drawn under and in compliance with the terms of this Credit, the same shall be negotiated subject to special instructions item 1 and 2 stated hereunder.

SPECIAL INSTRUCTIONS:

1. Negotiations of drafts under this Credit are restricted to the above-mentioned advising bank \_\_\_\_\_.  
On negotiation, the negotiating bank should claim reimbursement from \_\_\_\_\_ by cable provided all terms and conditions stipulated herein have been complied with and simultaneously the negotiation bank should dispatch all documents to us in One Lot by first available airmail.
2. All banking charges outside of the PRC and interest charges for negotiation are to be borne by the beneficiary.

## Section 4

# Formats of Bids

**Form IV-1 Bid Form**

**Bid Form**

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

To: (name of Tendering Agent)

In compliance with your IFB No. \_\_\_\_\_ for (Goods to be supplied) for the Project, the undersigned representative (full name and title) duly authorized to act in the name and for the account of the Bidder (name and address of the Bidder) hereby submit the following in one original and \_\_\_\_\_ copies:

1. Summary Sheet for Bid Opening;
2. Bid Schedule of Prices;
3. Brief Descriptions of the Goods;
4. Responsiveness/Deviation Form for Technical Specifications;
5. Responsiveness/Deviation Form for Commercial Terms
6. All other documents required in response to Instructions To Bidders and Technical Specifications;
7. Qualification Documents;
8. Bid Security in the amount of \_\_\_\_\_ issued by (name of issuing bank).

By this letter, the undersigned representative hereby declares and agrees:

1. That the Total Bid Price for the supply and delivery of the Goods specified in the attached Bid Schedule of Prices is (specify currency or currencies), that is (in words).
2. That the Bidder will take full responsibility for performance of the Contract in accordance with all provisions of the Bidding Documents.
3. That the Bidder has examined in detail all the documents including amendments (if any) and all information furnished for reference as well as relevant attachments and that he is perfectly aware that he must renounce all right of invoking ambiguities or misunderstandings in this respect.
4. That his bid is valid for a period of \_\_\_\_\_ calendar days from the date of bid opening.
5. That, pursuant to ITB Clause 15.7, its Bid Security may be forfeited.
6. That, pursuant to ITB Clause 2, he declares that, he is not associated with a firm or any its affiliates which have been engaged by the Tendering Agent/the Purchaser to provide consulting services for this Project, and we are not a dependent agency of the Purchaser.
7. That he agrees to furnish any other data or information pertinent to its Bid that might be requested by (the Tendering Agent) and that he understands that you are nor bound to accept the lowest or any bid you may receive.

8. That all official correspondence pertinent to this bid shall be addressed to:

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

Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Name of representative: \_\_\_\_\_

Name of the Bidder: \_\_\_\_\_

Official Seal: \_\_\_\_\_

**Form IV-2 Summary Sheet for Bid Opening**

**Summary Sheet for Bid Opening**

Name of Bidder: \_\_\_\_\_ IFB No.: \_\_\_\_\_

Country/Area of Origin of Bidder: \_\_\_\_\_

Serial No.	Item/Package No.	Name of Goods	Model/Specification	Quantity	Name and Country/Area of Origin of Manufacturer	Price Terms	Currency	Bid Price	Bid Security	Time of Delivery	Remarks

Signature of Bidder: \_\_\_\_\_

*Note: This Summary Sheet for Bid Opening shall be not only bound up in the bid, but also submitted separately in a sealed envelope together with the Bid Security according to ITB Clause 18.1.*

**Form IV-3 Bid Schedules of Prices**

**Form IV-3-1 Bid Schedule of Prices**  
*(Goods Offered from within the PRC)*

Name of Bidder: \_\_\_\_\_ IFB No.: \_\_\_\_\_ Package No.: \_\_\_\_\_

Item	Name of Goods	Model/ Specification	Quantity	Country of Origin and Name of Manufacturer	Unit Price (specify loading place)	Total Price	Cost for Insurance and Inland Transportation to the Final Destination
1.	the Basic Machine and Standard Accessories						
2.	Spare Parts						
3.	Special Tools						
4.	Installation, Commissioning, Inspection						
5.	Training						
6.	Technical Services						
7.	Others						
Total							

Signature of Bidder: \_\_\_\_\_

*Note 1: In case of discrepancy between unit price and total, the unit price shall prevail.*

*Note 2: A bid without itemized prices required shall be considered as non-responsive.*

**Form IV-3-2 Bid Schedule of Prices**  
*(Goods Offered From Abroad)*

Name of Bidder: \_\_\_\_\_ IFB No.: \_\_\_\_\_ Package No.: \_\_\_\_\_

Item	Name of Goods	Model/ Specification	Quantity	Country of Origin and Name of Manufacturer	Unit Price FOB/FAC (specify port or place of loading)	Unit Price CIF/CIP (specify port or place of destination)	Total CIF/ CIP Price	Cost for Insurance and Inland Transportation to the Final Destination
1.	the Basic Machine and Standard Accessories							
2.	Spare Parts							
3.	Special Tools							
4.	Installation, Commissioning, Inspection							
5.	Training							
6.	Technical Services							
7.	Others							
Total								

Signature of Bidder: \_\_\_\_\_

*Note 1: In case of discrepancy between unit price and total, the unit price shall prevail.*

*Note 2: A bid without itemized price required shall be considered as non-responsive.*





**Form IV-8 Form of Power of Attorney**

**Power of Attorney**

KNOW ALL MEN by these presents that the undersigned (name) (title) of (firm) lawfully authorized to represent and act on behalf of the said company, whose registered address is \_\_\_\_\_ do hereby appoint (name) (title) of (firm), whose signature appears below to be true and lawful attorney, and authorize the said attorney to execute all the necessary matters related thereto, in the name and on behalf of the said company in connection with the Contract \_\_\_\_\_ of Project.

In witness thereof, we have hereto set out respective hands this \_\_\_\_\_ day (month and year)

Signature of Legal Person: \_\_\_\_\_

Signature of Attorney: \_\_\_\_\_

Witnessed by: \_\_\_\_\_

Name and Title of Witness: \_\_\_\_\_

Name of Firm of Witness: \_\_\_\_\_

Address of Witness: \_\_\_\_\_

**Form IV-9 Qualification Documents**

**Qualification Documents**

Instructions to Applicants

- (1) The applicants who are manufacturers shall fill out and submit Forms IV-9-1, Form IV-9-2 and Form IV-9-5 specified hereafter as well as other information concerned. The applicants who are Trading Companies (or Agent) shall fill out and submit all the Forms specified hereafter and other information concerned.
- (2) Positive answers should be given to all questions and/or information required in the attached Forms.
- (3) The signatory of the qualification information shall guarantee the truth and accuracy of all Statements and all answers to questions made therein.
- (4) The qualification information submitted by the applicants shall be used by the Bid Evaluation Committee in determining, according to the judgment and discretion of the Purchaser, the eligibility and competence of the Bidders to perform the contract.
- (5) Documents submitted by the applicants will be treated as confidential but will not be returned.
- (6) All qualification documents shall be made out in the Language in one original and number of copies as defined in Bid Data Sheet.

**Form-IV-9-1 Statement Concerning Qualification**

To: *(name of Tendering Agent)*

**Statement Concerning Qualification**

Dear Sirs,

In connection with your Invitation for Bid IFB No. \_\_\_\_\_ dated \_\_\_\_\_, the undersigned would like to participate in the bid for supply of *(Item No. and name of Goods)* which are specified in the Schedule of Requirements and submit the following documents and certified that all statements are true and correct.

- (1) Letter of Authority issued by *(name of Manufacturer)* for supply of *(Item No. and name of Goods)* to the effect that we are authorized to represent and bind the said manufacturer in one original and \_\_\_\_\_ copies *(when the Bidder is a trading company acting as an agent)*.
- (2) Ours and the manufacturer's Qualification Statement, each in one original and copies.
- (3) A certificate in which the undersigned certifies that the statements made in the Qualification Documents are true and correct, together with a Letter of Reference from our Bank *(name of bank)*.

Name and Address of Bidder (Manufacturer or Trading Company)	Person Authorized to Sign This Qualification Documents
Name: _____	Printed Name and Designation of Person _____
Address: _____	_____
Fax No.: _____	Signature: _____
Postcode: _____	Telephone No.: _____

**Form-IV-9-2 Manufacturer's Qualification Statement**

**Manufacturer's Qualification Statement**

- (1) Name and Other Information: \_\_\_\_\_
  - (a) Name of Manufacturer \_\_\_\_\_
  - (b) Address of Head Office \_\_\_\_\_  
Telex/Fax/Telephone No. \_\_\_\_\_
  - (c) Date Established and/or Registered \_\_\_\_\_
  - (d) Paid-Up Capital \_\_\_\_\_
  - (e) Latest Balance Sheet (as of) \_\_\_\_\_
    - (i) Fixed Assets \_\_\_\_\_
    - (ii) Current Assets \_\_\_\_\_
    - (iii) Long Term Liabilities \_\_\_\_\_
    - (iv) Current Liabilities \_\_\_\_\_
    - (v) Net Worth \_\_\_\_\_
  - (f) Name of Principal Officer (Optional) \_\_\_\_\_
  - (g) Name and Address of the manufacturer's representatives in the PRC, if any \_\_\_\_\_

(2) Facilities and other information for the manufacturer of the Goods Proposed:

(a) Facilities and other information for the manufacturer of the Goods of the proposal			
Name and Location of Factory	Items being Produced	Annual Production Capacity	Number of Employees
_____	_____	_____	_____
_____	_____	_____	_____

(b) Component parts which shall not be made by the principal manufacturer but shall be secured from other manufacturers

Name and Address of Manufacturer	Items
_____	_____
_____	_____

- (3) Experience (number of years) of the Manufacturer in the Production of the Goods Proposed (including project owner, rated capacity, date of initial commercial operation, etc.)  
\_\_\_\_\_

\_\_\_\_\_  
(4) Name and Address of Domestic and Foreign Firms to Whom the Goods Have Been Mainly Sold in the Last Three Years.

(a) Export Sales

Name and Address	Item Sold
_____	_____
_____	_____

(b) Domestic Sales

Name and Address	Item Sold
_____	_____
_____	_____

(5) Yearly Total Volume of Business for the Last Three Years:

Year	Domestic (currency)	Export (currency)	Total (currency)
_____	_____	_____	_____
_____	_____	_____	_____

(6) Name and Address of Supplier of Easily Worn-out Parts:

Name of Parts	Supplier's Address
_____	_____
_____	_____

(7) The Goods proposed in the Bid previously Supplied to China directly or Through Trading Companies in the Last Three Years, if any:

Contract No.	_____	_____	_____
Signature Date	_____	_____	_____
Item Name	_____	_____	_____
Quantity	_____	_____	_____
Contract Amount	_____	_____	_____

(8) Name and Address of Bank Reference: \_\_\_\_\_

(9) Coporate Group to Which manufacturer Belongs, if any:

\_\_\_\_\_

(10) Other Information:

\_\_\_\_\_

We hereby certify to the best of our knowledge that the foregoing statements are true and correct, that all available information and data have been supplied herein, and that we agree to show you documentary proof thereof upon your request.

Name and Position of Authorized Representative \_\_\_\_\_

Signature of Authorized Representative \_\_\_\_\_

Fax Number \_\_\_\_\_

Telephone Number \_\_\_\_\_

E-mail \_\_\_\_\_

Date \_\_\_\_\_

**Form-IV-9-3 Trading Company's or Agent's Qualification Statement**

**Trading Company's or Agent's Qualification Statement**

- (1) Name and Other Information: \_\_\_\_\_
- (a) Name of Trading Company \_\_\_\_\_
- (b) Address of Head Office \_\_\_\_\_
- Telex/Fax/Telephone No. \_\_\_\_\_
- (c) Date Established and/or Registered \_\_\_\_\_
- (d) Paid-Up Capital \_\_\_\_\_
- (e) Latest Balance Sheet (as of) \_\_\_\_\_
- (i) Fixed Assets \_\_\_\_\_
- (ii) Current Assets \_\_\_\_\_
- (iii) Long Term Liabilities \_\_\_\_\_
- (iv) Current Liabilities \_\_\_\_\_
- (v) Net Worth \_\_\_\_\_
- (f) Name of Principal Officer (Optional) \_\_\_\_\_
- (g) Name and address of the Trading Company's representatives in PRC, if any \_\_\_\_\_

(2) Yearly Total Volume of Business for the Last Three years:

Year	Domestic	Export	Total
_____	_____	_____	_____
_____	_____	_____	_____

(3) Name and Address of Domestic and Foreign Firms to Whom the Goods have Been Mainly Sold in the Last Three Years:

(a) Export Sales		Item Sold
Name and Address		
_____	_____	_____
_____	_____	_____
(b) Domestic Sales		Item Sold
Name and Address		
_____	_____	_____
_____	_____	_____

(4) Manufacturers Who Have Agreed with Trading Company to Manufacture the Goods (attach manufacturer's qualification statements):

Name and Address of Manufacturers

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(5) Component Parts of the Goods Proposed to be Supplied and Manufactured by Other Manufacturers, if any:

Items to be manufactured                      Names and Address of Manufacturers

\_\_\_\_\_  
 \_\_\_\_\_

(6) Goods Previously Sold to Chinese Business Corporations in the Last Three years, if any

Contract No. \_\_\_\_\_

Signature Date \_\_\_\_\_

Item Name \_\_\_\_\_

Quantity \_\_\_\_\_

Contract Amount \_\_\_\_\_

(7) Name and Address of Bank Reference: \_\_\_\_\_

(8) Corporate Group to Which other Manufacturer(s) belongs, if any:

\_\_\_\_\_

(9) Other Information: \_\_\_\_\_

We hereby certify to the best of our knowledge that the foregoing statements are true and correct, that all available information and data have been supplied, and that we agree to show you documentary proof thereof upon your request.

Name and Position of Authorized Representative \_\_\_\_\_

Signature of Authorized Representative \_\_\_\_\_

Fax Number \_\_\_\_\_

Telephone Number \_\_\_\_\_

E-mail \_\_\_\_\_

Date \_\_\_\_\_

**Form-IV-9-4 Letter of Authority from Manufacturer**

**Letter of Authority from Manufacturer**

To: (name of the Tendering Agent)

We (name of the Manufacturer), a manufacturer duly organized under the laws of (name of country) and having its principle place of business at (address of Manufacturer), hereby make, constitute and appoint (name of Trading Company), a company duly organized under the laws of (name of Eligible Source Country) and having its principle place of business at (address of Trading Company), to be our true and lawful attorney in fact to do the following:

- (1) To represent and bind us in the People's Republic of China for the Tendering Agent's Invitation for Bid (IFB) No. \_\_\_\_\_ for supply of the Goods proposed in the bid which we manufacture or produce.
- (2) That, as a manufacturer, we bind ourselves as co-maker of the bid and are jointly and severally responsible for the compliance of the said bid.
- (3) That we hereby give and grant to the said (name of Trading Company) full power and authority to do and perform all and every act and thing whatsoever, requisite, necessary and proper to be done in the premises, as fully, to all intents and purposes as we might or could do, with full power of substitution and revocation, hereby ratifying and confirming all that (name of Trading Company) or its duly authorized representative shall lawfully do, or cause to be done by virtue hereof.

IN TESTIMONY WHEREOF We have hereto signed this document on \_\_\_\_\_.

Accepted on \_\_\_\_\_.

Name of Trading Company _____	Name of Issuing Manufacturer _____
Position of duly authorized representative _____	Position of duly authorized representative _____
Name of duly authorized representative _____	Name of duly authorized representative _____
Signature of duly authorized representative _____	Signature of duly authorized representative _____

**Form-IV-9-5 Certificate**

**Certificate**

The undersigned hereby certifies that the statement made in the Qualification Documents and in the required forms are true and correct.

The undersigned hereby authorizes and requests any bank to furnish any pertinent information requested by the Tendering Agent / Purchaser deemed necessary to verify this statement or regarding my (our) competence and general reputation. In support of this application, attached is a letter of reference from (name of Applicant's Bank).

The undersigned understands that further qualifying information may be requested and agrees to furnish any such information at the request of the Purchaser.

Name and Address of Manufacturer Or Trading Company  Name _____ Address _____ Fax No. _____ Postcode _____	Signature and Designation of Person Authorized to Sign this Qualification Documents Printed Name and Designation _____ Signature _____ Telephone No. _____
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