MILLENNIUM CHALLENGE ACCOUNT NAMIBIA

INVITATION FOR BIDS

DESIGN, MANUFACTURE, SUPPLY AND ERECTION OF 61 MODULAR OR INDUSTRIALIZED BUILDING SOLUTIONS CLASSROOMS AT 21 SCHOOLS IN THE OHANGWENA, OSHANA AND OMUSATI REGIONS OF NAMIBIA

MCAN/COM/IFB/1A01026

3 DECEMBER 2013
Invitation for Bids

Dear Madam/Sir:

1. The Millennium Challenge Corporation (“MCC”) and the Government of the Republic of Namibia (the “Government” or “GRN”) entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in Namibia (the “Compact”) in the amount of approximately US$304.5 million (“MCC Funding”). The Government, acting through the Millennium Challenge Account Namibia (“MCA Namibia” or “Employer”), intends to apply a portion of the MCC Funding to eligible payments under a contract for which this Invitation for Bids (“IFB”) is issued. Any payments made under the proposed contract will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use of MCC funding and conditions to the disbursements of MCC funding. No party other than the Government and the Employer shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding.

2. The objective of the Compact program is to increase the competence of the Namibian workforce (knowledge, skills, and attitude), and increase the productivity of agricultural and non-agricultural enterprises in rural areas. The Compact program includes three main projects that will be implemented over a five year period namely: The Agriculture Project, The Tourism Project and the Educational Project as further described below:

   **Education Project - $144.9 million** – The objective of the Education Project is to alleviate workforce quality constraints to private-sector led growth by enhancing the equity and effectiveness of basic, vocational and tertiary education.

   **Agriculture Project - $46.9 million** – The objective of the Agriculture Project is to increase the total value added from livestock in the northern communal areas of Namibia and to increase income from indigenous natural products accruing to the poor nationwide.

   **Tourism Project - $66.9 million** – The objective of the Tourism Project is to grow the Namibian tourism industry with a focus on increasing income in households in communal conservancies.

3. This IFB follows the General Procurement Notice that appeared in dgMarket on 13 November 2013, UNDB Online on 13 November 2013, MCA Namibia website www.mcanamibia.org and local newspapers The Namibian, Die Republikein and New Era on 13 November 2013.

The Employer now invites sealed Bids for the execution and completion of the cited works comprising the Design, Manufacture, Supply and Erection of 61 Modular or Industrialized Building Solutions Classrooms at 21 Schools in the Ohangwena, Oshana and Omusati Regions.
of Namibia, divided into five (5) Lots, which are being offered as a Lump Sum Fixed Price Contracts.

4. One or more contractors will be selected under the Competitive Bidding procedures described in this Invitation for Bids. Bidders are advised that these procedures are governed by the MCA Namibia Procurement Rules. Although these procedures are similar to those set out in the World Bank Guidelines: Procurement under IBRD Loans and IDA Credits, there are several significant differences and firms are advised to review these instructions carefully.

5. Please note that a no site visit will be held, but that a pre-bid meeting, at which prospective bidders’ queries will be answered, will be conducted by the Employer at 10h00 on Thursday 12 December 2013 at the following venue:

   MCA Namibia
   Atlas House, Room 16
   117 Sam Nujoma Drive
   Windhoek, Namibia

6. The Bidding Documents include the following Sections:

   **Section I**  Instructions to Bidders (“ITB”)
   This section provides information to help Bidders prepare their Bids; it also provides information on the submission, opening, and evaluation of Bids and on the award of the proposed contract.

   **Section II**  Bid Data Sheet (“BDS”)
   This section includes provisions that are specific to the procurement and that supplement Section I, Instructions to Bidders.

   **Section III**  Evaluation and Qualification Criteria
   This section specifies the qualifications required of the Bidder and the criteria to be used to evaluate the Bids.

   **Section IV**  Bid Forms
   This section contains the forms which are to be completed by a Bidder and submitted as part of its Bid.

   **Section V**  Form of Agreement and General Conditions of Contract (“GCC”)
   This section contains the form of the contract agreement and the standard terms and conditions of the proposed contract.

   **Section VI**  Form of Special Conditions of Contract (“SCC”) and Annex to Contract
   This section contains the form of those clauses of the proposed contract that supplement the GCC. This Section also includes an Annex (Annex A: Additional Provisions) that forms part of the proposed contract and
contains clauses required to be included in all contracts supported by MCC funding.

**Section VII  Security Forms**
This section contains forms, some of which are used in the Bid and some of which, when and if completed, will form part of the proposed contract. Certain of these forms will only be completed by the successful Bidder if the contract is awarded.

**Section VIII  Schedule of Prices**
This section contains the Fixed Prices tendered by the Bidders for the design and execution of the Works.

**Section IX  Specifications and Performance Requirements**
This section sets out a description of the scope of the Works and presents the required standards for materials, plant, supplies, and workmanship to be provided. This section also presents the environmental, health and safety requirements to be satisfied by the contractor in executing the Works.

7. All Bids must be accompanied by an undertaking by a bank or financial institution to issue a Performance Guarantee in the form and amount specified in the Bidding Documents.

8. The closing time for receipt of Bids is 13:00 Namibian time on Friday **17 January 2014**. Bids received after this time and date shall not be considered and will be returned unopened. Bidders should be aware that distance and customs formalities may require longer than expected delivery time.

9. Bids will be opened in the presence of Bidders’ and/or their representatives who choose to attend at 14:00 Namibian time on the bidding deadline day at the following address:

   MCA Namibia
   Atlas House, Room 16
   117 Sam Nujoma Drive
   Windhoek, Namibia

Yours sincerely,

Penny Akwenye
Chief Executive Officer MCA-Namibia
Section I Instructions to Bidders

A. General

Definitions

(a) “associate” means any entity or person with whom the Bidder associates in order to provide any part of the Works.

(b) “BDS” means the Bid Data Sheet in Section II of these Bidding Documents used to reflect specific requirements and/or conditions.

(c) “Bid” means a bid for the provision of the Works submitted by a Bidder in response to these Bidding Documents.

(d) “Bid Security” means the security a Bidder may be required to furnish as part of its Bid in accordance with ITB Clause 17.

(e) “Bidder” means any eligible entity or person, including any associate of such eligible entity or person, which submits a Bid.

(f) “Bidding Documents” means Sections I – X of these documents, including any amendments that may be made, prepared by the Employer for the selection of the Contractor.

(g) “Compact” means the Millennium Challenge Compact identified in the BDS.

(h) “confirmation” means confirmation in writing.

(i) “Contract” means the contract proposed to be entered into between the Employer and the Contractor, including all of the documents specified in GCC Sub-Clause 2.3 and any attachments, appendices, and all documents incorporated by reference therein.

(j) “Contract Price” means the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.

(k) “Contractor” means the entity or person, including any associate, that provides the Works to the Employer under the Contract.

(l) “day” means a calendar day.

(m) “Employer” means the entity identified in the BDS, the party with which the Contractor signs the Contract for the provision of the Works.

(n) “Fraud and Corruption” means any of those actions defined in the GCC (including the phrases “coercive practice,” “collusive practice,” “corrupt practice,” “fraudulent practice,” “obstructive practice,” and “prohibited practice” as defined in GCC Sub-Clause 1.1), according to which action may be taken against the Bidder, the Contractor, the Employer, or any of their respective personnel.

(o) “GCC” means the General Conditions of Contract.
1. Scope of Bid

1.1 The Employer invites Bids for the provision of the Works, as described in the BDS and the SCC. The name and identification number of the Contract are provided in the BDS and the SCC.

1.2 The successful Bidder shall be expected to complete the Works by the Intended Completion Date specified in the BDS and SCC 1.1 (dd).

1.3 Throughout these Bidding Documents, except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and the feminine means the masculine and vice versa.
2. Source of Funds; Compact Terms and Conditions

2.1 The United States of America through the Millennium Challenge Corporation (“MCC”) and the Republic of Namibia (the “Government” or “GRN”) through the National Planning Commission (“NPC”) have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in Namibia (the “Compact”) in the amount of approximately $304,477,816 USD (“MCC Funding”). The Employer, on behalf of the Government, intends to apply a portion of the proceeds of the MCC Funding to eligible payments under the contract associated with these Bidding Documents for the project named in the BDS. Payment by MCC will be made only at the request of the Employer and, if applicable, upon approval by MCC, and will be subject, in all respects, to the terms and conditions, including restrictions on the use of MCC Funding, of the Compact. No party other than the Government and the Employer shall derive any rights from the Compact or have any claim to any proceeds of the MCC Funding.

2.2 The Compact provides a grant over the period 16 September 2009 to 15 September 2014 to fund projects focused on reducing poverty through sustainable economic growth. The Compact program is as briefly described in the BDS. The Compact and its related documents are available at www.mcc.gov or at the website of the Employer.

3. Fraud and Corruption and Trafficking in Persons

3.1 MCC requires that all beneficiaries of MCC funding, including the Employer and any bidders, suppliers, contractors, subcontractors and consultants under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Employer:

(a) will reject a Bid if it determines that the Bidder recommended to be selected as the Contractor has, directly or through an agent, engaged in Fraud and Corruption in competing for the Contract;

(b) has the right to sanction a Bidder or Contractor, including declaring the Bidder or Contractor ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if at any time it determines that the Bidder or Contractor has, directly or through an agent, engaged in Fraud and Corruption in competing for, or in executing, such a contract; and

(c) has the right to require that a provision be included in the Contract requiring the Contractor to permit the Employer, MCC, or any designee of MCC, to inspect its accounts, records and other documents relating to the submission of a Bid or performance of the Contract, and to have such accounts and records audited by auditors appointed by MCC or by the
Employer with the approval of MCC.

In addition, MCC has the right to cancel the portion of MCC Funding allocated to the Contract if it determines at any time that representatives of a beneficiary of the MCC Funding engaged in Fraud and Corruption during the selection process or the execution of the Contract, without the Employer or the beneficiary having taken timely and appropriate action satisfactory to MCC to remedy the situation.

MCC may also invoke, on its own behalf, any of the rights identified for the Employer in this ITB Sub-Clause 3.1 above.

3.2 Trafficking in Persons

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

3.3 The Technical Specifications may set out certain prohibitions, contractor requirements, remedies and other provisions that will be made a binding part of any contract that may be entered into with respect to this procurement. As such, those provisions, if included, should be given careful consideration.

3.4 Additional information on MCC’s requirements aimed at combating TIP can be found in Part 10 of the MCA Namibia Procurement Rules.

4. Eligible Bidders, Materials, Equipment, and Services

4.1 A Bidder may be a natural person, private entity, government-owned entity (subject to ITB Sub-Clause 4.4) or any combination of such entities supported by a letter of intent to enter into an agreement or under an existing agreement in association in the form of a joint venture or a consortium.

4.2 A Bidder, and all parties constituting the Bidder, may have the nationality of any country, subject to the restrictions specified in the paragraphs below.

4.3 Bidders and Contractors shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Contractor found to have a conflict of interest may have its contract terminated. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

(a) they have at least one controlling partner in common; or
(b) they have the same legal representative for purposes of this bid; or

(c) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or

(d) they participate in more than one Bid in this bidding process; participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the party is involved; however, this provision does not limit the inclusion of the same subcontractor in more than one Bid; or

(e) they are, or have been associated in the past, with any person or entity which has been engaged to provide consulting services for the preparation of the design, specifications, or other documents to be used for the procurement and provision of the Works expected to be contracted for under these Bidding Documents; or

(f) they or any of their affiliates has been hired (or is proposed to be hired) by the Employer as Project Manager for the Contract; or

(g) they are themselves, or have a business or family relationship with, a member of the Employer’s board of directors or staff or with the Procurement Agent or Fiscal Agent (as defined in the Compact or related agreements) hired by the Employer who is directly or indirectly involved in any part of (i) the preparation of these Bidding Documents, (ii) the Bid selection process, or (iii) supervision of the Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to MCC throughout the process of preparing the Bidding Documents and awarding and executing the Contract.

Bidders and the Contractor have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the Employer, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Bidder or Contractor or the termination of the Contract.

Eligibility of Government-owned Entities

4.4 Government-Owned Enterprises (GOEs) are not eligible to compete for MCC-funded contracts. GOEs (i) may not be party to any MCC-funded contract for goods, works, or services procured through an open solicitation process, limited bidding, direct contracting, or sole source selection; and (ii) may not be prequalified or shortlisted for any MCC-funded contract anticipated to be procured through these means. This prohibition does not apply to Government-owned Force Account units owned by the Government of the MCA Entity’s country, or Government-owned educational institutions and research centers, any statistical, mapping or other technical entities not formed primarily for
Continued Eligibility

4.5 Bidders shall provide such evidence of their continued eligibility, in a manner satisfactory to the Employer, as the Employer may reasonably request.

Ineligibility and Debarment

4.6 Bidders and the Contractor (including their associates, if any, Subcontractors, and any of their respective personnel and affiliates) shall not be any person or entity under a declaration of ineligibility for Fraud and Corruption in accordance with ITB Sub-Clause 3.1 above or that has been declared ineligible for participation in a procurement in accordance with the procedures set out in the MCC Program Procurement Guidance paper entitled “Excluded Parties Verification Procedures in MCA Entity Program Procurements” that can be found on MCC’s website at www.mcc.gov. This would also remove from eligibility for participation in a procurement any firm that is organized in or has its principal place of business or a significant portion of its operations in any country that is subject to sanction or restriction by law or policy of the United States. Those countries that are subject to sanction or restriction by law or policy of the United States as of the date of these Bidding Documents are specified in the BDS. However, the countries subject to these sanctions and restrictions are subject to change from time to time and it is necessary to refer to the websites identified in the guidance paper referenced above for the most current listing of sanctioned and restricted countries.

4.7 A Bidder or Contractor (including their associates, if any, Subcontractors, and any of their respective personnel and affiliates) not otherwise made ineligible for a reason described in ITB Sub-Clause 4.6 above shall be excluded if:

(a) as a matter of law or official regulation, the Government prohibits commercial relations with the country of the Bidder, the Contractor, their associates, Subcontractors or their personnel;

(b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Government prohibits any import of goods from the country of the Bidder, its associates or their personnel or any payments to persons or entities in such country; or

(c) such Bidder, Contractor, associate, Subcontractor or personnel are otherwise deemed ineligible by MCC pursuant to any policy or guidance that may, from time to time, be in effect as posted on the MCC website at www.mcc.gov.

Eligible Materials, Equipment and Services

4.8 The materials, equipment and services to be supplied under the Contract may have their origin in any country subject to the same
restrictions specified for Bidders and their associates and personnel set forth in ITB 4.6 and 4.7. At the Employer’s request, Bidders shall provide evidence of the origin of materials, equipment and services.

4.9 For purposes of ITB 4.8 above, “origin” means the place where the materials and equipment are mined, grown, cultivated, produced, manufactured or processed, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized article results that differs substantially in its basic characteristics, purposes or utility from its underlying components.

4.10 The origin of materials, equipment and services is distinct from the nationality of the Bidder or Contractor.

4.11 Country of origin for major items of plant, materials, goods and services to be provided under the Contract must be indicated in the Technical Proposal included in Section IV, Bid Forms.

4.12 Bidders must also satisfy the eligibility criteria contained in the MCC Program Procurement Guidelines governing MCC-funded procurements. In the case where a Bidder intends to join with an associate or sub-contract part of the Contract, then such associate or Subcontractor shall also be subject to the eligibility criteria set forth in these Bidding Documents and the MCC Program Procurement Guidelines.

5. Qualifications of the Bidder

5.1 All Bidders shall submit completed Bid Forms (Section IV), including a technical proposal which provides environmental and social plans, health and safety plans, work plan, preliminary description of the proposed work method and schedule, including drawings and charts, as necessary (the “Technical Proposal”).

5.2 In the event that pre-qualification of potential Bidders has been undertaken, only Bids from pre-qualified Bidders shall be considered for award of Contract. These qualified Bidders should submit with their Bids any information updating their original pre-qualification applications or, alternatively, confirm in their Bids that the originally submitted pre-qualification information remains essentially correct as of the date of Bid submission. The update or confirmation should be provided by completing Section IV Bid Forms.

5.3 If the Employer has not undertaken pre-qualification of potential Bidders, all Bidders shall include the following information and documents with their Bids in Section IV Bid Forms, unless otherwise stated in the BDS:

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

5.4 Bids submitted by a joint venture of two or more entities shall comply with the following requirements, unless otherwise **stated in the BDS:**

(a) the Bid shall include all the information listed in ITB Sub-Clause 5.3 above for each joint venture member;
(b) the Bid shall be signed so as to be legally binding on all members;
(c) all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
(d) one of the members shall be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all members of the joint venture;
(e) the execution of the entire Contract, including payment, shall be done exclusively with the member in charge; and
(f) a copy of the joint venture or similar agreement entered into by the members shall be submitted with the Bid; or a letter of intent to execute a joint venture or similar agreement in the event of a successful Bid shall be signed by all members and submitted with the Bid, together with a copy of the proposed agreement.

5.5 To qualify for award of the Contract, Bidders shall meet the following minimum qualifying criteria:

(a) an average annual financial amount of construction work as
stipulated in sub-factor 3.2 of Section III, Evaluation and Qualification Criteria;

(b) experience as prime contractor in the construction of at least the number of works of a nature and complexity equivalent to the Works over the period stipulated in sub-factor 4.2 of Section III, Evaluation and Qualification Criteria (to comply with this requirement, works cited should be at least 70 percent complete);

(c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed in the BDS;

(d) a contract manager with five years’ experience in works of an equivalent nature and volume, including no less than three years as manager;

(e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount stipulated in sub-factor 3.3 of Section III, Evaluation and Qualification Criteria; and

(f) the other minimum qualifying criteria set forth in Section III, Evaluation and Qualification Criteria.

A consistent history of litigation or arbitration awards against the Bidder or any member of a joint venture may result in disqualification.

5.6 The figures for each of the members of a joint venture shall be added together to determine the Bidder’s compliance with the minimum qualifying; however, for a joint venture to qualify, its members must meet the minimum qualifying criteria set forth in Section III, Evaluation and Qualification Criteria. Failure to comply with this requirement shall result in rejection of the joint venture’s Bid. Subcontractors’ experiences and resources shall not be taken into account in determining the Bidder’s compliance with the qualifying criteria, unless otherwise stated in the BDS.

6. One Bid per Bidder 6.1 Each Bidder shall submit only one Bid, either individually or as a member of a joint venture. A Bidder who submits or participates in more than one Bid (other than as a subcontractor or in cases of alternatives that have been permitted or requested) shall cause all the proposals with the Bidder’s participation to be disqualified.

7. Cost of Bidding 7.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall, in no case, be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

8. Pre-bid Meeting and Site Visit 8.1 The Bidder’s designated representative is invited to attend a pre-bid meeting, if provided for in the BDS. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be
raised at that stage. Non-attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

8.2 Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who acquired the Bidding Documents in accordance with ITB 9.3. Any modification to the Bidding Documents that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issuance of an addendum pursuant to ITB 11 and not through the minutes of the pre-bid meeting.

8.3 A site visit will be organized by the Employer if so specified in the BDS. The costs of participating in the pre-bid meeting and the site visit shall be at the Bidder’s own expense.

8.4 If no site visit is organized, the Bidder is advised to visit and examine the site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the site shall be at the Bidder’s own expense. If permission is required to gain access to the site, the Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon the premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.

B. Bidding Documents

9. Contents of Bidding Documents

9.1 The set of Bidding Documents comprises the documents listed below and addenda issued in accordance with ITB Clause 11:

Part I — Bidding Procedures

Section I. Instructions to Bidders (ITB)

Section II. Bid Data Sheet (BDS)

Section III. Evaluation and Qualification Criteria

Section IV. Bid Forms

Part II — Forms of Contract and Securities

Section V. Form of Agreement and General Conditions of Contract (GCC)

Section VI. Form of Special Conditions of Contract (SCC) and
Section I Instructions to Bidders

Additional Provisions Annex to the Contract
Section VII. Securities Forms
Part III -- Works Requirements
Section VIII. Schedule of Prices
Section IX. Specifications and Performance Requirements
Section X. Drawings

9.2 The Invitation for Bids issued by the Employer is not part of the Bidding Documents.

9.3 The Employer is not responsible for the completeness of the Bidding Documents and their addenda, if they were not obtained directly from the Employer.

9.4 The Bidder is expected to examine all instructions, forms, terms, and specifications, inclusive of environmental, social and health and safety requirements, in the Bidding Documents. Failure to furnish all information or documentation required by the Bidding Documents may result in the rejection of the Bid.

10. Clarification of Bidding Documents

10.1 A prospective Bidder requiring any clarification of the Bidding Documents may notify the Employer in writing at the Employer’s address indicated in the BDS. The Employer will respond to any request for clarification received earlier than the number of days indicated in the BDS prior to the deadline for submission of Bids. Copies of the Employer’s response will be forwarded to all prospective Bidders who have acquired the Bidding Documents directly from it. Alternatively, and if so indicated in the BDS, the response may be posted at the Employer’s website, including a description of the inquiry, but without identifying its source. Prospective Bidders are responsible for visiting this website and obtaining clarifications in relation to the Bidding Documents.

11. Amendment of Bidding Documents

11.1 Before the deadline for submission of Bids, the Employer may modify the Bidding Documents by issuing addenda.

11.2 Any addendum thus issued shall become part of the Bidding Documents and shall be forwarded by the Employer to all prospective Bidders who have acquired the Bidding Documents directly from it. Alternatively, and if so indicated in the BDS, the addendum may be posted at the Employer’s website. Prospective Bidders are responsible for visiting this website and obtaining addenda in relation to the Bidding Documents and shall acknowledge receipt of each addendum in writing to the Employer.

11.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Employer may, at its discretion, extend the deadline for submission of Bids, in accordance
Section I Instructions to Bidders

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with ITB Sub-Clause 21.2 below.

C. Preparation of Bids

12. Language of Bid

12.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Employer, shall be written in English and, at the discretion of the Employer, in another language if so specified in the BDS. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in English, in which case, for purposes of interpretation of the Bid, such translation shall govern. Bidders should understand that, for all documents provided, the English version prevails.

13. Documents Comprising the Bid

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

(a) The Bid (in the format indicated in Section IV);
(b) Bid Security, in accordance with ITB Clause 17, if required;
(c) priced Schedule of Prices;
(d) Qualification Information Form and Documents;
(e) Technical Proposal;
(f) alternative offers where invited;
(g) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 19.2; and
(h) any other materials required to be completed and submitted by Bidders, as specified in the BDS.

13.2 In addition to the requirements under ITB 13.1, Bids submitted by a joint venture shall include those documents specified in, and otherwise comply with the requirements of, ITB 5.4.

14. Bid Prices

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

14.2 The Bidder shall fill in prices for all items of the Works described in the Schedule of Prices. Items for which no price is entered by the Bidder shall not be paid for by the Employer when executed and shall be deemed covered by the other prices in the Schedule of Prices. Corrections, if any, shall be made by crossing out, initialing, dating and rewriting.

14.3 GCC Clause 49 of the form of Contract (Section V) sets forth the tax provisions applicable to any Bid and to performance of the Contract. Bidders should review and consider this clause carefully in preparing their Bid.

14.4 The prices quoted by the Bidder shall be subject to adjustment during
the performance of the Contract if provided for in the BDS and SCC and the provisions of Clause 47 of the GCC. The Bidder shall submit with the Bid all the information required under the SCC and GCC Clause 47.

14.5 If so indicated in the BDS, Bids are being invited for individual lots or for any combination of lots (packages). Bidders wishing to offer any price reduction for the award of more than one lot shall specify in their Bid the price reductions applicable to each package, or alternatively, to individual lots within the package. Price reductions or discounts shall be submitted in accordance with ITB 14.4, provided the Bids for all lots are submitted and opened at the same time.

15. Currencies of Bid and Payment

15.1 The currency(ies), or combinations thereof, of the Bid and payments shall be as specified in the BDS.

16. Bid Validity

16.1 Bids shall remain valid for the period specified in the BDS.

16.2 In exceptional circumstances, prior to the expiration of the Bid validity period, the Employer may request Bidders to extend the period of validity of their Bids for a specified additional period. The request and the Bidders’ responses shall be made in writing. If a Bid Security is requested in accordance with ITB Clause 17, it shall also be extended up to 28 days after the deadline of the extended Bid validity period. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request shall not be required or permitted to modify its Bid, except at the discretion of the Employer.

17. Bid Security

17.1 If required in the BDS, the Bidder shall furnish, as part of its Bid, a Bid Security in original form as specified in the BDS. If a Bidder is bidding on multiple lots or is submitting alternative Bids, only one Bid Security is required for all lots and for both base and alternative Bids.

17.2 The Bid Security (if required) shall be in the amount and currency specified in the BDS, and shall:

(1) at the Bidder’s option, be in the form of either an irrevocable letter of credit or an unconditional bank guarantee from a banking institution;

(2) be issued by a reputable institution selected by the Bidder and located in any eligible country (as determined in accordance with ITB 4); if the institution issuing the bank guarantee is located outside the Employer’s country, it shall have a correspondent financial institution located in the Employer’s country, acceptable to Employer, to make it enforceable;

(3) be substantially in accordance with one of the forms of Bid Security included in Section VII, Security Forms, or other form approved by the Employer prior to Bid submission; in either case, the form must include the complete name of the Bidder;

(4) be payable promptly upon written demand by the Employer in
case the conditions listed in ITB Sub-Clause 17.5 are invoked;
(5) be submitted in its original form; copies shall not be accepted;
(6) remain valid for a period of 28 days beyond the validity period of the Bids, as extended, if applicable, in accordance with ITB Sub-Clause 16.2.

17.3 Any Bid not accompanied by a substantially responsive Bid Security (if required) in accordance with ITB Sub-Clause 17.1 shall be rejected by the Employer as non-responsive.

17.4 The Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder’s furnishing of the performance security in accordance with GCC 56 as described in ITB 35.

17.5 The Bid Security may be forfeited:

(a) if a Bidder withdraws its Bid during the period of Bid validity specified by the Bidder on the Bid Submission Sheet, except as provided in ITB Sub-Clause 16.2; or

(b) if the Bidder does not accept the correction of its Bid Price pursuant to ITB Sub-Clause 28.

(c) if the successful Bidder fails within the specified time to:

(i) sign the Contract; or

(ii) furnish the required performance security.

17.6 The Bid Security of a joint venture must be in the name of the joint venture that submits the Bid. If the joint venture has not been legally constituted at the time of bidding, the Bid Security shall be in the names of all future members as named in the letter of intent or similar agreement in connection with the formation of the joint venture.

18. Alternative Proposals by Bidders

18.1 Alternative Bids shall not be considered, unless specifically allowed in the BDS. If so allowed, ITB Sub-Claus 18.1 and 18.2 shall govern, and the BDS shall specify which of the following options shall be allowed:

(a) Option One. A Bidder may submit alternative Bids with the base Bid and the Employer shall only consider the alternative Bids offered by the Bidder whose Bid for the base case was determined to be the lowest-evaluated Bid, or

(b) Option Two. A Bidder may submit an alternative Bid with or without a Bid for the base case. All Bids received, for the base case, as well as alternative Bids meeting the specifications and performance requirements pursuant to Section IX, shall be evaluated on their own merits.

18.2 Alternative Bids shall provide all information necessary for a complete evaluation of the alternative by the Employer, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details.
19. Format and Signing of Bid

19.1 The Bidder shall prepare one original set of the documents comprising the Bid as described in ITB 13 and clearly mark it **ORIGINAL**. Alternative Bids, if permitted in accordance with ITB 18, shall be clearly marked **ALTERNATIVE**. In addition, the Bidder shall submit copies of the Bid, in the language(s) and number specified in the BDS and clearly mark each one **COPY**. In the event of any discrepancy between the original and the copies, the original shall prevail.

19.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Bid where entries or amendments have been made shall be signed or initialed by the person signing the Bid.

19.3 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

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

D. Submission of Bids

20. Submission, Sealing, and Marking of Bids

20.1 Bidders may always submit their Bids by mail or by hand. When so specified in the BDS, Bidders shall have the option of submitting their Bids electronically. Bidders submitting Bids electronically shall follow the procedures specified in the BDS. For Bids submitted in hard copy, the Bidder shall seal the original and all copies of the Bid in two inner envelopes and one outer envelope, duly marking the inner envelopes as “**ORIGINAL**” and “**COPIES**.”

20.2 The inner and outer envelopes shall:

(a) bear the name and address of the Bidder;
(b) be addressed to the Employer at the address provided in the BDS;
(c) bear the name and identification number of the Contract as defined in the BDS section 1.1 and SCC; and
(d) provide a warning not to open before the specified time and date for Bid opening as defined in the BDS.

20.3 If the envelopes are not sealed and marked as above, the Employer shall assume no responsibility for the misplacement or premature opening of the Bid.
21. Deadline for Submission of Bids

21.1 Bids shall be delivered to the Employer at the address specified above no later than the time and date specified in the BDS.

21.2 The Employer may, at its discretion, extend the deadline for submission of Bids by issuing an addendum in accordance with ITB Clause 11, in which case all rights and obligations of the Employer and the Bidders previously subject to the original deadline shall then be subject to the new deadline.

22. Late Bids

22.1 Any Bid received by the Employer after the deadline prescribed in ITB Clause 21 shall be declared late, rejected, and returned unopened to the Bidder.

23. Withdrawal, Substitution, and Modification of Bids

23.1 A Bidder may withdraw, substitute or modify its Bid after it has been submitted by giving notice in writing before the deadline for Bid submission prescribed in ITB Clause 21, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB Clause 13.

23.2 Each Bidder’s withdrawal, substitution or modification notice shall be prepared, sealed, marked, and delivered in accordance with ITB Clauses 19 and 20 (except that withdrawal notices do not require copies), with the outer and inner envelopes additionally marked “WITHDRAWAL,” “SUBSTITUTION,” or “MODIFICATION”, as appropriate.

23.3 Bids requested to be withdrawn in accordance with ITB Sub-Clause 23.2 shall be returned unopened to the Bidders.

23.4 No Bid may be withdrawn, substituted or modified after the deadline for submission of Bids.

23.5 Bidders may only offer discounts to, or otherwise modify the prices of their Bids, by submitting Bid modifications in accordance with this clause or included in the initial Bid.

E. Bid Opening and Evaluation

24. Bid Opening

24.1 The Employer shall open the Bids, including modifications made pursuant to ITB Clause 23, in the presence of the Bidders’ representatives who choose to attend at the time and in the place specified in the BDS. Any specific opening procedures required, if electronic bidding is permitted in accordance with ITB Sub-Clause 20.1, shall be as specified in the BDS.

24.2 First, e-mail files and envelopes marked WITHDRAWAL shall be opened and read out and the envelope with the corresponding Bid shall not be opened, but returned to the Bidder. No Bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Bid opening.
Next, e-mail files and envelopes marked **Substitution** shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Bid opening. E-mail files and envelopes marked **Modification** shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening. Only Bids that are opened and read out at Bid opening shall be considered further.

24.3 All other e-mail files and envelopes shall then be opened one at a time, and the official shall read aloud: the name of the Bidder and whether there is a modification; the Bid price(s), including any discounts and alternative offers; the presence of a Bid Security, if required; and any other details as the Employer may consider appropriate. Only discounts and alternative offers read out at Bid opening shall be considered for evaluation. No Bid shall be rejected at Bid opening except for late Bids, in accordance with ITB 22. Substitution Bids and modifications submitted pursuant to ITB Clause 23 that are not opened and read out at Bid opening shall not be considered for further evaluation regardless of the circumstances. Late, withdrawn and substituted Bids shall be returned un-opened to Bidders.

24.4 The Employer shall prepare minutes of the Bid opening, including the information disclosed, to those present, in accordance with ITB Sub-Clause 24.3.

25. **Confidentiality; Undue Influence**

25.1 Information relating to the examination, clarification, evaluation, and comparison of Bids and recommendations for the award of a Contract shall not be disclosed to Bidders or any other persons not officially concerned with such process until publication of the award to the successful Bidder has been announced pursuant to ITB Sub-Clause 34.4. The undue use by any Bidder of confidential information related to the process may result in the rejection of its Bid and may subject the Bidder to the provisions of the Government’s, the Employer’s and MCC’s anti-fraud and corruption policies.

25.2 Any effort by a Bidder to influence the Employer’s processing of Bids or award decisions may result in the rejection of its Bid. Notwithstanding the above, from the time of Bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it should do so in writing.

26. **Clarification of Bids**

26.1 To assist in the examination, evaluation, and comparison of Bids, the Employer may, at its discretion, ask any Bidder for clarification of the Bidder’s Bid. The request for clarification and the response shall be in writing, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the
correction of arithmetic errors discovered by the Employer in the evaluation of the Bids in accordance with ITB Clause 28.

27. Examination of Bids and Determination of Responsiveness

27.1 Prior to the detailed evaluation of Bids, the Employer shall determine whether each Bid (a) meets the eligibility criteria defined in ITB Clause 4; (b) has been properly signed; (c) is accompanied by the Bid Security, if required; and (d) is substantially responsive to the requirements of the Bidding Documents.

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

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

28. Correction of Arithmetic Errors

28.1 Provided that the Bid is substantially responsive, the Employer shall correct arithmetical errors on the following basis:

(a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;

(b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

(c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

28.2 If the Bidder that submitted the lowest-evaluated Bid does not accept the correction of errors, its Bid shall be rejected and the Bid Security may be forfeited in accordance with ITB Sub-Clause 17.5(b).

29. Currency for Bid Evaluation

29.1 For evaluation and comparison purposes, the currency(ies) of the Bids shall be converted into a single currency as specified in the BDS.
30. Evaluation and Comparison of Bids

30.1 The Employer shall evaluate and compare only the Bids determined to be substantially responsive in accordance with ITB Clause 27.

30.2 In evaluating the Bids, the Employer shall determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:

(a) making any correction for errors pursuant to ITB Clause 28;

(b) excluding provisional sums and the provision, if any, for contingencies in the Schedule of Prices, but including daywork, where priced competitively;

(c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with ITB Clause 18;

(d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with ITB Sub-Clause 23.5; and

(e) the evaluation factors indicated in Section III, Evaluation and Qualification Criteria.

30.3 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive Bid is qualified to perform the Contract satisfactorily. The determination shall be based upon an examination of the documentary evidence of a Bidder’s qualifications submitted by a Bidder and the qualification criteria indicated in Section III, Evaluation and Qualification Criteria.

30.4 The Employer reserves the right to accept or reject any variation, deviation, or unsolicited alternative offer. Variations, deviations, and unsolicited alternative offers and other factors which are in excess of the requirements of the Bidding Documents or otherwise result in unsolicited benefits for the Employer shall not be taken into account in Bid evaluation.

30.5 The estimated effect of any price adjustment conditions under GCC Clause 51, during the period of implementation of the Contract, shall not be taken into account in Bid evaluation.

30.6 In the case of several lots, pursuant to ITB Sub-Clause 30.2(d), the Employer shall determine the application of discounts so as to minimize the combined cost of all the lots.

30.7 If the Bid, which results in the lowest evaluated Bid price, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security be
increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.

30.8 At any time during the evaluation process, the Employer reserves the right to conduct a verification of market-reasonableness of the prices offered, and a negative determination (either unreasonably high or unreasonably low) could be a reason for rejection of the Bid at the discretion of the Employer. The Bidder shall not be permitted to revise its Bid after this determination.

30.9 In accordance with the MCC Program Procurement Guidelines, the Bidder’s past performance on MCC-funded contracts will be considered as a criterion in the Employer’s evaluation of the Bid.

31. No Preference for Domestic Bidders

31.1 A margin of preference for domestic Bidders shall not apply in Bid evaluation.

F. Award of Contract

32. Award Criteria

32.1 Subject to ITB Clause 33, and prior to the expiration of the period of Bid validity, the Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the Bidding Documents and who has offered the lowest evaluated Bid price, provided that such Bidder has been determined to be (a) eligible in accordance with the provisions of ITB Clause 4, (b) qualified in accordance with the provisions of ITB Clause 5 and (c) otherwise determined qualified to perform the Contract.

33. Employer’s Right to Accept any Bid and to Reject any or all Bids

33.1 Subject only to MCC’s Program Procurement Guidelines and notwithstanding ITB Clause 32, the Employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all Bids, at any time prior to the award of Contract, without thereby incurring any liability to any Bidder or any obligation to inform the affected Bidder or Bidders of the grounds for the Employer’s action.

34. Notification of Award and Signing of Agreement

34.1 The Bidder whose Bid has been accepted shall be notified of the award by the Employer in writing prior to the expiration of the Bid validity period using a letter of acceptance substantially in the form set out in Section IV of these Bidding Documents (the “Letter of Acceptance”).

34.2 The Letter of Acceptance shall constitute the formation of the Contract, subject to the Bidder furnishing the Performance Security in accordance with ITB Clause 35 and signing the Contract in accordance with ITB Sub-Clause 34.3.

34.3 The Contract will constitute all agreements between the Employer and the successful Bidder as described in GCC Clause 2.3. Promptly after
providing the successful Bidder with the Letter of Acceptance, and after providing for the time period for Bid Challenges, the Employer will send the successful Bidder the Agreement. Within 21 days of receipt, the successful Bidder shall sign the Contract and deliver it to the Employer.

34.4 The Employer will publish in UNDB online and in the dgMarket the results identifying the Bid and lot numbers and the following information: (i) name of each Bidder who submitted a Bid; (ii) Bid prices as read out at Bid opening; (iii) name and evaluated prices of each Bid that was evaluated; (iv) name of Bidders whose Bids were rejected and the reasons for their rejection; and (v) name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the Contract awarded.

34.5 After publication of the award, unsuccessful Bidders may request in writing to the Employer for a debriefing seeking explanations for the failure of their Bids. The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB Sub-Clause 34.4, requests of the Employer in writing the grounds on which its Bid was not selected.

35. Performance Security

35.1 Within 21 days after receipt of the Letter of Acceptance, the successful Bidder shall deliver to the Employer a Performance Security in accordance with the terms of GCC Clause 56, using for that purpose the form of Performance Bank Guarantee included in Section VII of these Bidding Documents, or another form acceptable to the Employer. A foreign institution providing the Performance Security shall (a) be from an eligible country determined in accordance with ITB 4, (b) have a correspondent financial institution located in the Employer’s country and (c) be acceptable to the Employer.

35.2 Failure of the successful Bidder to comply with the requirements of ITB Sub-Clauses 34.3 and 35.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security.

35.3 Upon the successful Bidder’s signing of the Contract and furnishing of the Performance Security pursuant to GCC Clause 56, as described in ITB Sub-Clause 35.1, the Employer shall promptly notify the name of the winning Bidder to each unsuccessful Bidder and shall discharge the Bid Securities of the unsuccessful Bidders pursuant to ITB Sub-Clause 17.4.

36. Advance Payment

36.1 The Employer will not provide any Advance Payment on the Contract Price.

37. Adjudicator

37.1 The Employer proposes the person named in the BDS to be appointed as Adjudicator under the Contract, at an hourly fee specified in the BDS, plus reimbursable expenses. If the Bidder disagrees with this
proposal, the Bidder should so state in the Bid. If, in the Letter of Acceptance, the Employer has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the BDS and the SCC at the request of either party.

38. Bid Challenge System

38.1 Bidders may challenge the results of a Bid according to the rules established in the bid challenge system developed by the Employer and approved by MCC. The rules and provisions of the bid challenge system are as published on the Employer website www.mcanamibia.org.

39. Compact Conditionalities

39.1 Bidders are advised to examine and consider carefully the provisions that are set forth in Annex A to the Contract as these are a part of the Government’s and the Employer’s obligations under the Compact and related documents which, under the terms of the Compact and related documents, are required to be transferred onto any Bidder, Contractor or Subcontractor who partakes in procurement or subsequent contracts in which MCC funding is involved.

39.2 The provisions set forth in Annex A to the Contract apply during the bidding procedures as well as throughout the performance of the Contract.
## Section II. Bid Data Sheet

### A. General

<table>
<thead>
<tr>
<th>Definitions</th>
<th>“Compact” means the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Government, entered into on 28 July 2008 as may be amended from time to time.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>“Employer” means Millennium Challenge Account Namibia</td>
</tr>
<tr>
<td></td>
<td>“Government” means the government of the Republic of Namibia</td>
</tr>
<tr>
<td>ITB 1.1</td>
<td>The Works for which the Bidding Documents have been issued is: <strong>Design, Manufacture, Supply and Erection of 61 Modular or Industrialized Building Solutions Classrooms at 21 Schools in the Ohangwena, Oshana and Omusati Regions of Namibia, divided into five (5) Lots</strong></td>
</tr>
<tr>
<td>ITB 1.2</td>
<td>The Intended Completion Date of the Works is: <strong>four (4) months after award of contract.</strong></td>
</tr>
<tr>
<td>ITB 4.6</td>
<td>As of the date of these Bidding Documents, the countries that are subject to sanction or restriction by law or policy of the United States include <strong>Cuba, Iran, North Korea, Sudan and Syria.</strong></td>
</tr>
<tr>
<td>ITB 5.31</td>
<td>The following additional information is required from Namibian registered Bidders:</td>
</tr>
<tr>
<td></td>
<td>A certificate of Goods Standing from the Social Security Commission</td>
</tr>
<tr>
<td></td>
<td>A certificate of Goods Standing from the Receiver of Revenue in respect of VAT payments</td>
</tr>
<tr>
<td>ITB 5.3(j)</td>
<td>The ceiling for subcontractor participation is 40%</td>
</tr>
<tr>
<td>ITB 5.4</td>
<td>The qualification data required from Bidders in ITB Sub-Clause 5.4 are modified as follows: None</td>
</tr>
<tr>
<td>ITB 5.4(c)</td>
<td>If the Bidder is a joint venture or consortium, all members <strong>shall</strong> be jointly and severally liable.</td>
</tr>
<tr>
<td>ITB 5.5(c)</td>
<td>The essential equipment to be made available for the Contract by the successful Bidder shall be: <strong>All essential Equipment needed for the execution of the Works</strong></td>
</tr>
<tr>
<td>ITB 5.6</td>
<td>Subcontractors’ experience and resources <strong>shall not</strong> be taken into account.</td>
</tr>
<tr>
<td>ITB 8.1</td>
<td>No site visit will be held</td>
</tr>
<tr>
<td>ITB 8.3</td>
<td>A pre-bid meeting, at which prospective bidder’s queries will be answered, will be conducted by the Employer at 10h00 on Thursday 12 December 2013 at the following</td>
</tr>
</tbody>
</table>

---

1. *Delete if pre-qualification has been conducted.*
venue: MCA Namibia
Atlas House, Room 16
117 Sam Nujoma Drive
Windhoek, Namibia

B. Bidding Documents

ITB 10.1 For purposes of clarification, the Employer’s address is:

Attention: Melani de Klerk
Fax: +264 61 410415
E-mail: mdeklerk@mcanamibia.org

The minimum number of days prior to the deadline for submission of Bids to receive any request for clarification: 14 days

The minimum number of days prior to the deadline for submission of Bids that the Employer will respond: 7 days

The responses shall be posted on the Employer’s website.
If posted, the website is: www.mcanamibia.org

ITB 11.2 Addenda shall be posted on the Employer’s website.
If posted, the website is: www.mcanamibia.org

C. Preparation of Bids

ITB 12.1 Bids shall be submitted in the following languages: English only

ITB 13.1(h) The Bidder shall submit with its Bid the following additional documents: none

ITB 14.4 The prices quoted by the Bidder shall not be subject to adjustment

ITB 14.5 Bids are being invited for the following five lots.

<table>
<thead>
<tr>
<th>Lot #</th>
<th>Lot Title</th>
<th>Schools</th>
<th>Latitude</th>
<th>Longitude</th>
<th>Classrooms</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ohangwena A; 4 Schools; 13 Classrooms</td>
<td>Tulihongeni CS</td>
<td>17 38° 32'S</td>
<td>15 39° 16'E</td>
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<tr>
<td></td>
<td></td>
<td>Onanghulo CS</td>
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<td>15 47° 24'E</td>
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<td></td>
<td>Nanghonda</td>
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<td></td>
<td>Omakondo CS</td>
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<td>16 11° 08'E</td>
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</tr>
<tr>
<td>2</td>
<td>Ohangwena B; 5 Schools; 16 Classrooms</td>
<td>Onamukulo CS</td>
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<td>16 03° 25'E</td>
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<td></td>
<td>Onankali North CS</td>
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<td>16 13° 48'E</td>
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<tr>
<td></td>
<td></td>
<td>Iikelo CS</td>
<td>17 52° 43'S</td>
<td>16 24° 01'E</td>
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<td></td>
<td>Etsapa CS</td>
<td>17 51° 31'S</td>
<td>16 31° 29'E</td>
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<tr>
<td></td>
<td></td>
<td>Oupili</td>
<td>17 37° 00'S</td>
<td>16 58° 59'E</td>
<td>4</td>
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</tbody>
</table>
### Section II Bid Data Sheet

<table>
<thead>
<tr>
<th>Lot #</th>
<th>Lot Title</th>
<th>Schools</th>
<th>Latitude</th>
<th>Longitude</th>
<th>Classrooms</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Oshana 4 Schools; 10 Classrooms</td>
<td>Ondjora CS</td>
<td>17 50' 58&quot;S</td>
<td>15 43' 28&quot;E</td>
<td>2</td>
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<td></td>
<td></td>
<td>Ekwafo SS</td>
<td>17 46' 08&quot;S</td>
<td>15 45' 56&quot;E</td>
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<td></td>
<td></td>
<td>Onamutai CS</td>
<td>17 43' 53&quot;S</td>
<td>15 50' 20&quot;E</td>
<td>2</td>
</tr>
<tr>
<td>4</td>
<td>Omusati A 4 Schools; 13 Classrooms</td>
<td>Kampelo CS</td>
<td>17 52' 05&quot;S</td>
<td>15 16' 31&quot;E</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Okasheshete CS</td>
<td>17 41' 05&quot;S</td>
<td>14 39' 10&quot;E</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Oshikulufitu CS</td>
<td>17 33' 05&quot;S</td>
<td>15 08' 22&quot;E</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Oneeya CS</td>
<td>17 36' 33&quot;S</td>
<td>15 14' 08&quot;E</td>
<td>3</td>
</tr>
<tr>
<td>5</td>
<td>Omusati B 4 Schools; 9 Classrooms</td>
<td>Ekangolinene CS</td>
<td>17 28' 13&quot;S</td>
<td>15 29' 58&quot;E</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Etayi CS</td>
<td>17 33' 21&quot;S</td>
<td>15 31' 21&quot;E</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ekundu CS</td>
<td>17 25' 13&quot;S</td>
<td>15 20' 21&quot;E</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>John Shekudja CS</td>
<td>17 28' 03&quot;S</td>
<td>15 17' 13&quot;E</td>
<td>2</td>
</tr>
</tbody>
</table>

**ITB 15.1**

The currency of the Bid shall be **United States Dollars** or **Namibia Dollars**

The currency of the payment shall be **United States Dollars** or **Namibia Dollars**

**ITB 16.1**

The Bid validity period shall be **60** days from the deadline for Bid submission.

**ITB 17.1**

A Bid Security is **not** required.

*It is however required that the Bidder produce with his Bid a firm and irrevocable undertaking by a surety provider acceptable to MCA-Namibia (which must be a registered insurance company or bank licensed to do business in Namibia) to issue a Performance Security in the form specified in Section VII in the event of a Contract under this IFB being awarded to him.*

The form “Undertaking to Provide a Performance Security” specified in Section IV, Bidding Forms shall be used to produce this undertaking, in writing, with the bidding documents on the closing date for the bids. Failure to comply with the above will invalidate the Bid.

The undertaking to issue the Performance Security shall be valid for a period of 90 days beyond the date specified in ITB 23.1 as the deadline for Bid submission.

The value of the Performance Security shall be **10% of the Bid Price**.

The surety provider must be able to demonstrate the capacity to cover the performance security, subject to MCA Namibia’s approval.

**ITB 18.1**

Alternative Bids are permitted.

**ITB 19.1**

In addition to the original of the Bid, the number of required copies is: **1**
### D. Submission of Bids

**ITB 19.2**

The written confirmation of authorization to sign on behalf of the Bidder shall consist of a Power of Attorney.

---

**ITB 20.1**

Bidders **do not have** the option of submitting their Bids electronically.

**ITB 20.2(b)**

**For Bid submission purposes only,** the submission address is:
- **Attention:** Melani de Klerk, Procurement Manager
- Atlas House, Room 13
- 117 Sam Nujoma Avenue
- Windhoek
- Namibia

---

**ITB 21.1**

The deadline for Bid submission is:
- **Date:** Friday 17 January 2014
- **Time:** 13h00

---

### E. Bid Opening and Evaluation

**ITB 24.1**

The Bid opening shall take place at:
- Atlas House, Room 16
- 117 Sam Nujoma Avenue
- Windhoek
- Namibia

The Bid opening shall take place at **14:00 Namibian time on the bidding deadline day.**

**ITB 29.1**

The currency that shall be used for Bid evaluation and comparison is **United States Dollars.**

---

### F. Award of Contract

**ITB 35.1**

The form, amount and currency of the Performance Guarantee shall be **10% of the Contract Price** in the form prescribed in Section VII.

**ITB 37.1**

The Adjudicator shall be appointed in terms of the Procedures and Guidelines for the Nomination of Adjudicators of the National Adjudicators List (Namibia) administrated by the Engineering Professions of Namibia (EPA), which can be downloaded from EPA’s website [http://engineers-namibia.org](http://engineers-namibia.org)

The Adjudicator’s shall be remunerated at the standard rates contained in the above-mentioned publication.

**ITB 38.1**

The details of the Bid Challenge System can be found at [www.mcanamibia.org](http://www.mcanamibia.org)
SECTION III. EVALUATION AND QUALIFICATION CRITERIA

This Section contains the criteria that the Employer shall use to determine Bidders’ eligibility, Bid’s responsiveness, evaluate Bids and qualify Bidders. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

A. Eligibility Determination

The Employer’s determination of Bidder’s eligibility shall be based on the following criteria:

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Bidder Type</th>
<th>Source of Verification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Nationality in accordance with ITB 4.2.</td>
<td>Single Entity</td>
<td>Bidder’s Information Sheet and JV Information Sheet with attachments</td>
</tr>
<tr>
<td></td>
<td>Joint Venture or Association</td>
<td></td>
</tr>
<tr>
<td></td>
<td>All partners combined</td>
<td>Each partner</td>
</tr>
<tr>
<td></td>
<td>Must meet requirement</td>
<td>Existing or intended JVA must meet requirement</td>
</tr>
<tr>
<td>2. No conflicts of interests as described in ITB 4.3.</td>
<td>Must meet requirement</td>
<td>Existing or intended JVA must meet requirement</td>
</tr>
<tr>
<td>3. Not having been excluded as a Government owned Enterprise in accordance with ITB 4.4</td>
<td>Must meet requirement</td>
<td>Existing or intended JVA must meet requirement</td>
</tr>
<tr>
<td>4. Not having been deemed ineligible based on any of the criteria set forth in ITB 4.</td>
<td>Must meet requirement</td>
<td>Existing or intended JVA must meet requirement</td>
</tr>
</tbody>
</table>

B. Determination of Responsiveness

The Employer’s determination of a Bid’s responsiveness is to be based on the contents of the Bid itself, as defined in ITB 12. A substantially responsive Bid is one that meets the requirements of the Bidding Documents without material deviation, reservation or omission, including compliance of the Technical Offer with the Works Requirements. If a Bid is not substantially responsive to the requirements of the Bidding Documents, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
C. Bid Evaluation

The Bid Evaluation shall be based on the following factors:

1. The Bid Price, excluding Provisional Sums and the provision for contingencies in the Schedule of Payments.

2. Price adjustment for correction of arithmetic errors in accordance with ITB 28.

3. Adjustment for nonconformities in accordance with ITB 31.3. Where rates were not included by the Bidder, MCA-N will use maximum rates offered in a conforming bid.

4. The Bids shall be evaluated as follows:
   a. The Employer may award one or more Contract(s) to the Bidder(s) that offer(s) the lowest-evaluated lot combination of Bids and meets qualification criteria described in D below.
   b. To determine the lowest-evaluated lot combinations, the Employer will take into account:
      • the lowest-evaluated Bid for each lot;
      • the price reduction per lot and the methodology for their application as offered by a Bidder in its Bid; and
      • consider the Contract-award sequence that provides the most optimum economic combination taking into account any limitations due to constraints in execution capacity determined in accordance with qualification criteria as described in D below.
### D. Qualification

<table>
<thead>
<tr>
<th>Factor</th>
<th>Requirement</th>
<th>Bidder</th>
<th>Source of Verification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. History of Non-performing Contracts</td>
<td>Non-performance of a contract did not occur within the last 5 years prior to the deadline for Bid submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all appeal instances available to the Bidder have been exhausted.</td>
<td>Must meet requirement by itself or as partner to past or existing JVA</td>
<td>N / A</td>
</tr>
<tr>
<td>2. Failure to Sign a Contract</td>
<td>Failure to sign a contract after submitting a Bid security has not occurred in the past five years. Any deviation should be explained in the enclosed Contract Non-Performance form.</td>
<td>Must meet requirement</td>
<td>N / A</td>
</tr>
<tr>
<td>3. Pending Litigation</td>
<td>All pending litigation shall in total not represent more than ten percent (10%) of the Bidder’s net worth and shall be treated as resolved against the Bidder.</td>
<td>Must meet requirement by itself or as partner to past or existing JVA</td>
<td>N / A</td>
</tr>
<tr>
<td>4. Historical Financial Performance</td>
<td>Submission of audited financials or, if not required by the law of the Bidder’s country, other financial statements acceptable to the Employer, for the last five (5) years to demonstrate the current soundness of the Bidder’s financial position and its prospective long term profitability.</td>
<td>Must meet requirement</td>
<td>N / A</td>
</tr>
</tbody>
</table>
### Section III. Evaluation and Qualification Criteria

#### 4. Average Annual Construction Turnover

| Minimum average annual turnover equivalent to twice the bid price for the Lots bid for, calculated as total certified payments received for contracts in progress or completed, within last five (5) years. | Must meet requirement | Must meet requirement | Must meet twenty-five percent (25%) of the requirement | Must meet fifty-five percent (55%) of the requirement | Form: Average Annual Construction Turnover |

#### 5. Financial Resources

| Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet: i. a cash-flow requirement: of at least 25% of the of the bid price for the Lots that he is bidding for; and ii. the overall cash flow requirements for this Contract and its current commitments. | Must meet requirement | Must meet requirement | Must meet twenty-five percent (25%) of the requirement | Must meet fifty-five percent (55%) of the requirement | Forms: Financial Resources; Current Contract Commitments |

#### 6. General Construction Experience

| Experience under contracts in the role of contractor, subcontractor, or management contractor for at least the last five (5) years prior to Bid submission deadline, and with activity in at least nine (9) months each year. | Must meet requirement | N / A | Must meet requirement | N / A | Form: General Construction Experience |

#### 7. Similar Construction Experience

| Participation as contractor, management contractor, or subcontractor, in at least 3 contracts within the last 5 years, each with an average value of at least 80% of the bid price for the lots bid for, that have been successfully and substantially completed and that are similar to the proposed Works. The similarity shall be based on the physical size, complexity, methods, technology or other characteristics as described in Section IX, Technical Specifications. | Must meet requirement | Must meet requirements for all characteristics | N / A | Must meet requirement for one characteristic | Form: Specific Construction experience |
### 8. Specific Construction Experience in Key Activities

For the above or other contracts executed during the period stipulated in 4.2 above, minimum experience in following key activities:

a. Site preparation, clearing, excavation and final contour grading
b. Pouring of foundations and footings as required
c. Modular/Industrialised Classroom Buildings
d. Electrical utilities installation
e. Aprons, ramps, connecting to the services, etc.

- Must meet requirements
- Must meet requirements
- N/A
- Must meet the requirement for four out of the six key activities in which experience is required.

**Form:** Specific Construction Experience in Key Activities

### 9. Personnel

The bidder must demonstrate that it has the personnel, or has identified subcontractors, with adequate qualifications and experience for the following key positions and tasks:

a. Project/Contract Management
b. Site/Construction Management

- Must meet requirements
- Must meet requirements
- N/A
- N/A

**Form:** CVs of Key Personnel

### 10. Equipment

The bidder must demonstrate that it has or can get access to all the plant and equipment required to implement the Works

- Must meet requirements
- Must meet requirements
- N/A
- N/A

**Form:** Construction Equipment

### 11. Environmental and Health and Safety Compliance

The Bidder must demonstrate that it has sufficient experience and resources to ensure Environmental and Public Health and Safety compliance.

- Must meet requirement
- Must meet requirements for all characteristics
- N / A
- N / A

**Forms:** Environment and; Health and Safety Documents.

### 12. Conformance of the proposed solution to the specifications

The Bidder must demonstrate that the proposed solution and design described in its Technical Proposal conforms the Employer’s requirements in Section IX, Specifications and Performance Requirements

- Must meet requirement
- Must meet requirement
- N / A
- N / A

**Form:** Technical Proposal. Bidders proposed design and drawings

### 13. Conformance to the specified time for completion

The Bidder must commit to the time for completion

- Must meet requirement
- Must meet requirement
- N / A
- N / A

**Form:** Technical Proposal. Program
Section IV. Bid Forms

1. Contractor’s Bid

[Date]

Name of Contract: Design, Manufacture, Supply and Erection of 61 Modular or Industrialized Building Solutions Classrooms at 21 Schools in the Ohangwena, Oshana and Omusati Regions of Namibia, divided into five (5) Lots

To: The Director Procurement

Millennium Challenge Account Namibia
Windhoek
Namibia

Dear Sir,

1. In accordance with the Conditions of Contract, Technical Specifications, Drawings, and Bills of Quantities and Addenda Nos. [insert Addenda Nos.] for the execution of the above-named Works, we, the undersigned, offer to construct and install such Works and remedy any defects therein in conformity with the Conditions of Contract, Technical Specifications, Drawings, Schedule of Prices, and Addenda for the sum(s) of:  

Table 1

<table>
<thead>
<tr>
<th>Lots</th>
<th>Currency and amount in numbers and words, exclusive of VAT, for each Lot individually (Before discounts offered for Lot combination Packages)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot 1: Ohangwena A;</td>
<td></td>
</tr>
<tr>
<td>4 Schools; 13 Classrooms</td>
<td></td>
</tr>
<tr>
<td>Lot 2 Ohangwena B;</td>
<td></td>
</tr>
<tr>
<td>5 Schools; 16 Classrooms</td>
<td></td>
</tr>
<tr>
<td>Lot 3: Oshana;</td>
<td></td>
</tr>
<tr>
<td>4 Schools; 10 Classrooms</td>
<td></td>
</tr>
<tr>
<td>Lot 4: Omusati A;</td>
<td></td>
</tr>
<tr>
<td>4 Schools; 13 Classrooms</td>
<td></td>
</tr>
<tr>
<td>Lot 5: Omusati B;</td>
<td></td>
</tr>
<tr>
<td>4 Schools; 9 Classrooms</td>
<td></td>
</tr>
</tbody>
</table>

2 This table must be filled out for all Lots that the Bidder wish to bid for and must contain the base price for each lot, without any discounts for proposed Lots combination Packages. Bidders must bid for all Schools in each Lot.
We understand our obligation to register as a VAT payer in Namibia and we undertake to add the VAT to our invoices to MCA-N.

2. We only wish to be considered for the Lots individually. / We wish to be considered for the Lots individually and for the Lots combinations as indicated in 3 below. / We only wish to be considered for the Lots combinations as indicated in 3 below.  

3. We wish to be considered for the following Lots combination Packages. In case we are awarded more than one Lot, we will provide the following discount(s) on the combined Package Prices:  

Table 2

<table>
<thead>
<tr>
<th>Packages</th>
<th>Total of Bid Prices for individual Lots in the Package (From Table 1)</th>
<th>Discount amount for the Package</th>
<th>Bid Price for the Package</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lots:</td>
<td>A</td>
<td>B</td>
<td>A-B</td>
</tr>
<tr>
<td>Lots:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lots:</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Lots:</td>
<td></td>
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<td></td>
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<tr>
<td>Lots:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lots:</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4. We acknowledge that the Appendix to Bid forms part of our Bid.

5. We undertake, if our Bid is accepted, to obtain a performance security in accordance with the Bidding Documents and commence the Works as soon as is reasonably possible after the receipt of the Engineer’s notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Bid.

6. We agree to abide by this Bid until the date specified in ITB Clause 19 [insert date], and it shall remain binding upon us and may be accepted at any time before that date.

7. Unless and until a formal Contract is prepared and executed, this Bid, together with your written acceptance thereof, shall constitute a binding contract between us.

8. We understand that you are not bound to accept the lowest or any Bid you may receive.

9. We certify/confirm that we and any subcontractors and suppliers comply with the requirements of ITB Clauses 3 and 5 of the Bidding Documents.

10. We hereby certify that we are not engaged in, facilitating, or allowing any of the prohibited activities described in Part 10 of the MCA-Namibia Procurement Rules (Combating Trafficking in

3 Delete choices that are not applicable.
4 Fill in for only the Lots combination Packages that you wish to be considered for.
Persons) and that we will not engage in, facilitate, or allow any such prohibited activities for the duration of the Contract. Further, we hereby provide our assurance that the prohibited activities described in Part 10 of the MCA-Namibia Procurement Rules will not be tolerated on the part of our employees, or any subcontractor or supplier, or their respective employees. Finally, we acknowledge that engaging in such activities is cause for suspension or termination of employment or of the Contract.

11. Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to Contract execution if we are awarded the Contract, are listed below:

<table>
<thead>
<tr>
<th>Name and address of agent</th>
<th>Amount and currency</th>
<th>Purpose of commission or gratuity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(if none, state “none”)

12. We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in bribery.

13. Please find attached the required Bid Submission Forms, Support Documentation and the Bills of Quantities for the Lots that we are bidding for.\(^5\)

Dated this __________________ day of ___________________ 2012

Signature ___________________________ In the capacity of _______________________

Duly authorized to sign Bids for and on behalf of ________________________________

Address: ______________________________

Witness: ______________________________

Address: ______________________________

Occupation: ________________

\(^5\) Please do not include the Instruction to Bidders, Bid Data Sheet, Evaluation and Qualification Criteria, General Conditions of Contract, Conditions of Particular Application, Forms of Agreement and Security, Technical Specifications or Drawings in your bid submission.
2. Qualification Information

[The information to be filled in by Bidders in the following pages shall be used for purposes of qualification or for verification of pre-qualification as provided for in ITB Clause 5. This information shall not be incorporated in the Contract. Attach additional pages as necessary. Pertinent sections of attached documents should be translated into English. If used for pre-qualification verification, the Bidder should fill in updated information only.]

1. Individual Bidders or Individual Members of Joint Ventures/Consortia

1.1 Constitution or legal status of Bidder: [attach copy]
   
   Place of registration: [insert]
   
   Principal place of business: [insert]
   
   Power of attorney of signatory of Bid: [attach]

1.2 Annual amounts of construction works performed during the last [insert number pursuant to Section III, Sub-Clause 3.2] years [insert amounts in United States Dollar equivalent].

1.3 Number [insert number pursuant to Section III, Sub-Clausues 4.1 and 4.2] of works of a nature and amount similar to the Works [insert number pursuant to Section III, Sub-Clausues 4.1 and 4.2] years. [The amounts should be indicated in the same currency used for Item 1.2 above. Also list details of work under way or committed, including expected completion date(s).]

<table>
<thead>
<tr>
<th>Project name and country</th>
<th>Name of client and contact person</th>
<th>Type of work performed and year of completion</th>
<th>Value of contract (USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1.4 Major items of Contractor’s Equipment proposed for carrying out the Works. [List all information requested below. Refer also to ITB Sub-Clause 5.3.]

<table>
<thead>
<tr>
<th>Item of equipment</th>
<th>Description, make, and age (years)</th>
<th>Condition (new, good, poor) and number available</th>
<th>Owned, leased (from whom?), or to be purchased (from whom?)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. [Attach biographical data. Refer also to ITB Sub-Clause 5.3 (i) and GCC Sub-Clause 9.1.]

<table>
<thead>
<tr>
<th>Position</th>
<th>Name</th>
<th>Years of experience (general)</th>
<th>Years of experience in proposed position</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1.6 Financial reports for the last 5 years: balance sheets, profit and loss statements, auditors’ reports, etc. [List below and attach copies.]

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

1.8 Name, address, and telephone, telex, and facsimile numbers of banks that may provide references if contacted by Employer.

1.9 Information on current litigation(s) in which the Bidder is involved.

<table>
<thead>
<tr>
<th>Other party(ies)</th>
<th>Cause of dispute</th>
<th>Amount involved</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. Joint Ventures/Consortia

2.1 The information listed in Items 1.1-1.9 above shall be provided for each member of the joint venture or consortium.

2.2 Attach the power of attorney of the signatory(ies) of the Bid authorizing signature of the Bid on behalf of the joint venture/consortium.

2.3 Attach the agreement or letter of intent (or similar agreement) among all members of the joint venture/consortium (and which is legally binding on all members), which shows that:

(a) all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;

(b) one of the members shall be nominated as the Representative, authorized to incur liabilities, and receive instructions for and on behalf of any and all members of the joint
venture/consortium; and
(c) the execution of the entire Contract, including payment, shall be done exclusively with the member in charge.

3. Additional Requirements

3.1 Bidders should provide any additional information required in the BDS.
3. Government-Owned Enterprise Certification Form

Government-Owned Enterprises are not eligible to compete for MCC-funded contracts. Accordingly, GOEs (i) may not be party to any MCC-funded contract for goods, works, or services procured through an open solicitation process, limited bidding, direct contracting, or sole source selection; and (ii) may not be prequalified or shortlisted for any MCC-funded contract anticipated to be procured through these means.

This prohibition does not apply to Government-owned Force Account units owned by the Government of the Republic of Namibia, or Government-owned educational institutions and research centers, or any statistical, mapping or other technical entities not formed primarily for a commercial or business purpose, or where a waiver is granted by MCC in accordance with Part 7 of the Rules. The full policy is available for your review on the Compact Procurement Guidelines page at the MCC Website (www.mcc.gov). As part of the eligibility verification for this procurement, please fill in the form below to indicate the status of your entity.

For purposes of this form, the term “Government” means one or more governments, including any agency, instrumentality, subdivision or other unit of government at any level of jurisdiction (national or subnational).

CERTIFICATION

Full Legal Name of Bidder:

__________________________________________________________________________________

Full Legal Name of Bidder in Language and Script of Country of Formation (if different from the above):

__________________________________________________________________________________

Address of Principal Place of Business or Chief Executive Office of Bidder:

__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

Full Name of Three (3) Highest Ranking Officials of Bidder (for any Bidder that is an entity):

__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
Full Legal Name(s) of Parent Entity or Entities of Bidder (if applicable; if Bidder has no parent, please so state):

__________________________________________________________________________________

Full Legal Name(s) of Parent Entity or Entities of Bidder in Language and Script of Country of Formation (if applicable and if different from above):

__________________________________________________________________________________

Address(es) of Principal Place of Business or Chief Executive Office of Parent Entity or Entities of Bidder (if applicable):

__________________________________________________________________________________

__________________________________________________________________________________

__________________________________________________________________________________

Does a Government own a majority or controlling interest (whether by value or voting interest) of your shares or other ownership interest (whether directly or indirectly and whether through fiduciaries, agents or other means)?

Yes [ ] No [ ]

If your answer to question 1 was yes, are you a Government-owned:

a. Force Account unit [ ] Yes [ ] No [ ]

b. Educational institution [ ] Yes [ ] No [ ]

c. Research center [ ] Yes [ ] No [ ]

d. Statistical entity [ ] Yes [ ] No [ ]

e. Mapping entity [ ] Yes [ ] No [ ]

f. Other technical entities not formed primarily for a commercial or business purpose [ ] Yes [ ] No [ ]

Regardless of how you answered question 1, please answer the following:

a. Do you receive any subsidy or payment (including any form of subsidized credit) or any other form of assistance (financial or otherwise) from a Government? [ ] Yes [ ] No [ ]

If yes, describe: _________________________________________________________

b. Has a Government granted to you any special or exclusive legal or economic rights or benefits that may alter the competitiveness of your goods, works or services or otherwise influence your business decisions? [ ] Yes [ ] No [ ]

If yes, describe: _________________________________________________________
c. Does a Government have the ability to direct or decide any of the following with respect to you:
   
   i. any reorganization, merger, or dissolution of you or the formation or acquisition of any subsidiary or other affiliate by you   
      Yes □  No □
   
   ii. any sale, lease, mortgage, pledge, or other transfer of any of your principal assets, whether tangible or intangible and whether or not in the ordinary course of business   
      Yes □  No □
   
   iii. the closing, relocation, or substantial alteration of the production, operational, or other material activities of your business   
      Yes □  No □
   
   iv. your execution, termination, or non-fulfillment of material contracts   
      Yes □  No □
   
   v. the appointment or dismissal of your managers, directors, officers or senior personnel or otherwise participate in the management or control of your business   
      Yes □  No □

Have you ever been Government-owned or controlled?   
Yes □  No □

If your answer to question 4 was yes, please answer the following questions

a. How long were you Government-owned? _______________

b. When were you privatized? _______________

c. Do you receive any subsidy or payment (including any form of subsidized credit) or any other form of assistance (financial or otherwise) from a Government?   
   Yes □  No □

   If yes, describe: _______________________________________________________

d. Even though not majority or controlling, does a Government continue to hold any ownership interest or decision making authority in you or your affairs?   
   Yes □  No □

   If yes, describe: _______________________________________________________

e. Do you send any funds to a Government other than taxes and fees in the ordinary course of your business in percentages and amounts equivalent to other non-Government-owned enterprises in your country that are engaged in the same sector or industry?   
   Yes □  No □

   If yes, describe: _______________________________________________________

Participants are advised that:

1. Prior to announcing the winning bidder or consultant or any list of pre-qualified bidders or shortlisted consultants for this procurement, MCA Namibia will verify the eligibility of such bidder(s) or consultant(s) with MCC. MCC will maintain a database (internally, through subscription services, or both) of known GOEs and each winning or pre-qualified bidder and winning or shortlisted consultant subject to this provision will be compared against the database
and subject to such further due diligence as MCC may determine necessary under the circumstances.

2. Any misrepresentation by any entity submitting a bid or proposal for this procurement may be deemed a “fraudulent practice” for purposes of the Rules and any other applicable MCC policy or guidance, including MCC’s Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations.

3. Any entity that is determined by MCC to have organized itself, subcontracted any part of its MCC-funded contract, or otherwise associated itself with any other entity for the purpose of, or with the actual or potential effect of, avoiding or otherwise subverting the provisions of the Rules may be deemed to be a GOE for all purposes of those Rules.

4. Any credible accusation that any entity submitting a bid or proposal for this procurement is a GOE ineligible to submit a bid or proposal in accordance with the Rules will be subject to review in a bid challenge in accordance with those Rules and MCA Namibia’s Bid Challenge System.

I hereby certify that the information provided above is true and correct in all material respects and understand that any material misstatement, misrepresentation or failure to provide the information requested in this certification may be deemed a “fraudulent practice” for purposes of the Rules and other applicable MCC policy or guidance, including MCC’s Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations.

Authorized Signature: ____________________________ Date: __________

Printed Name of Signatory: ____________________________
4. Technical Proposal

[The information to be filled in by Bidders in the following pages shall be used for purposes of establishing responsiveness in accordance with ITB Clause 27. With the exception of item 2.1 below, this information shall not be incorporated in the Contract. Attach additional pages as necessary.]

1. Environmental, Health and Safety Requirements

1.1 The Contractor will be required to carry out the Works in accordance with Namibian legislation pertaining to Health, Safety and the Environment as well the Construction Environmental Management Plan ("CEMP"), prepared by the Employer and which will form part of the Contract. Bidders shall demonstrate that they possess a high level of Environmental and Social ("E&S") management expertise and can successfully manage the E&S risks associated with the implementation of the Works.

2. Bidder’s proposed design and drawings

2.1 The Bidder shall provide a description of its proposed design and illustrative drawings.

2.2 Bidders must provide detail specifications and drawings of their proposed system.

2.3 Bidders must provide details of their proposed foundation details.

2.4 Bidders must provide copies of pro-forma Guarantees of system durability as well as any Agreement certificates applicable to their system.

2.5 The design of the classrooms and all associated works shall demonstrate that it is safe, functional, environmentally sound, and thermally efficient and that it will remain that way with normal maintenance for its intended design life and complies with all relevant legislation and regulations.

3. Program

3.1 Proposed work program (work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the Bidding Documents.

4. Resources

4.1 Equipment. Same as item 1.4 on Qualification Information Form.

4.2 Key Personnel. Same as item 1.5 on Qualification Information Form.

4.3 Subcontractors. Provide information on proposed sub-contracts and firms involved. Refer to GCC Clause 7 of the form of Contract in Section V.
5. **Country of Origin**  

5.1 The country(ies) of origin of major items of plant, materials, goods and services proposed to be provided is(are) as follows:

**Table of Plant and Materials**

<table>
<thead>
<tr>
<th>Item</th>
<th>Country of Origin</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plant (list all major items)</td>
<td></td>
</tr>
<tr>
<td>Materials (list all major items)</td>
<td></td>
</tr>
<tr>
<td>Equipment (list all major items)</td>
<td></td>
</tr>
<tr>
<td>Goods (list all major items)</td>
<td></td>
</tr>
<tr>
<td>Services (list all major items)</td>
<td></td>
</tr>
</tbody>
</table>
5. Form of Undertaking to Provide a Performance Security

[Insert Surety Provider’s Name, and Address of Issuing Branch or Office]

Beneficiary: Millennium Challenge Account Namibia
117 Sam Nujoma Drive
P.O. Box 23005
Windhoek
Namibia

[Insert date]

Reference No.: [Insert Reference Number]

We have been informed that [name of the Bidder] (hereinafter called "the Bidder") is submitting to you its Bid dated (hereinafter called "the Bid") for the execution of the Construction of Uukumwe School Hall under Invitation for Bids reference MCAN/COM/IFB/1A01018 (“the IFB”).

Furthermore, we understand that, according to your conditions, Bids must be supported by a firm undertaking by a surety provider acceptable to MCA-Namibia (which must be a registered insurance company or bank licensed to do such business) to issue a Performance Security in the form specified in Section VII of the IFB in the event of a Contract being awarded to the Bidder.

At the request of the Bidder, we [name of Surety] hereby irrevocably undertake to issue a Performance Security in favour of the Millennium Challenge Account – Namibia in the event of a Contract under IFB MCAN/COM/IFB/1A01018 being awarded to the Bidder. The Performance Security shall be for 10% of the Contract amount up to a limit of [Insert Currency of bid and an amount equal to the Bid Price for the largest Lot or combination of Lots that the Bidder is bidding for].

This undertaking shall be valid for 90 days from the closing date of the said IFB (the date specified in ITB 23.1 as the deadline for Bid submission).

[Signature(s)]
6. Letter of Acceptance

[Letterhead paper of the Employer]

[The Letter of Acceptance shall be the basis for formation of the Contract as described in ITB Clauses 34 and 35. This Standard Form of Letter of Acceptance shall be filled in and sent to the successful Bidder only after evaluation of Bids has been completed, subject to any review by MCC as required.]

[insert date]

Identification No and Title of Contract: [insert identification number and title of the Contract]

To: [insert name and address of the Contractor]

This is to notify you that your Bid dated [insert date] for execution of the [insert name of the Contract and identification number, as given in the Bidding Documents] for the Contract Price of the equivalent of [insert amount in numbers and words] [insert name of currency], as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by the Employer.

[either of the following (a) or (b) options 6]

(a) We accept that [insert name proposed by Bidder] be appointed as the Adjudicator. 6

(b) We do not accept that [insert name proposed by Bidder] be appointed as Adjudicator, and by sending a copy of this Letter of Acceptance to [insert name of the Appointing Authority], we are hereby requesting [insert name], the Appointing Authority, to appoint the Adjudicator in accordance with ITB Clause 37.1.7

You are hereby instructed to (a) proceed with the execution of the said Works in accordance with the Contract (b) sign and return the attached Agreement, and (c) forward the performance security pursuant to GCC Sub-Clause 56.1 within 21 days after receipt of this Letter of Acceptance.

Authorized Signature:

Name and Title of Signatory: [insert proper name of the Employer]

Attachment: Agreement

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6 Delete “of the equivalent” if the Contract Price is expressed wholly in one currency.
7 Delete “corrected and” or “and modified” if not applicable.
8 Delete this entire section if the Adjudicator originally proposed by the Employer is accepted by the Bidder.
9 To be used only if the Contractor disagrees in the Bid with the Adjudicator proposed by the Employer in the Instructions to Bidders, and has accordingly offered another candidate.
10 To be used only if the Contractor disagrees in the Bid with the Adjudicator proposed by the Employer in the ITB, has accordingly offered another candidate, and the Employer does not accept the counterproposal.
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Agreement

This CONTRACT AGREEMENT (this “Contract”) is made as of the [day] of [month], [year], between [full legal name of the Employer] (the “Employer”), on the one part, and [full legal name of the Contractor] (the “Contractor”), of the other part.

RECITALS

WHEREAS

(a) The Millennium Challenge Corporation (“MCC”) and the Government of the Republic of Namibia (the “Government” or “GRN”) have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in Namibia (the “Compact”) in the amount of approximately US$304.5 million (“MCC Funding”). The Government, acting through the Millennium Challenge Account Namibia (“MCA Namibia” or “Employer”), intends to apply a portion of the MCC Funding to eligible payments under a contract for which this Invitation for Bids (“IFB”) is issued. Any payments made under the proposed contract will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use of MCC funding and conditions to the disbursements of MCC funding. No party other than the Government and the Employer shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding; and

(b) the Employer invited bids for the performance of certain works and related services identified in this Contract and has accepted a bid by the Contractor for the supply of those works and related services for the amount set forth in the this Contract.

NOW, THEREFORE, the parties to this Contract agree as follows:

1. In consideration of the payments to be made by the Employer to the Contractor as set forth in this Contract, the Contractor hereby covenants with the Employer to provide the Works (as defined in this Contract) and to remedy defects therein in conformity in all respects with the provisions of this Contract.

2. Subject to the terms of this Contract, the Employer hereby covenants to pay the Contractor in consideration of the provision of the Works, the Contract Price (as defined in this Contract) or such other sum as may become payable under the provisions of this Contract at the times and in the manner prescribed by this Contract.
N WITNESS whereof the parties hereto have caused this Contract to be executed in accordance with the laws of [Country] as of the day, month and year first indicated above.

For [full legal name of the Employer]:
Signature
Name
Witnessed By:

For [full legal name of the Contractor]:
Signature
Name
Witnessed By:
General Conditions of Contract

A. General

1. Definitions

1.1 Capitalized terms used in this Contract and not otherwise defined have the meanings given such terms in the Compact or related document. Unless the context otherwise requires, the following words whenever used in this Contract have the following meanings:

(a) “Adjudicator” means the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC Clauses 24 and 25.
(b) “Agreement” means that portion of this Contract entitled Agreement that is signed by authorized representatives of the Employer and the Contractor.
(c) “Applicable Law” means the laws and any other instruments having the force of law in the Employer’s country, that from time to time are in force and effect.
(d) “Appointing Authority” means the person or entity identified in SCC Sub-Clause 26.1 and any successor Appointing Authority appointed pursuant to the terms of this Contract.
(e) “Bid” means the bid for the construction of the Works submitted by the Contractor and accepted by the Employer and that forms a part of this Contract.
(f) “Certificate of Completion” means the certificate to be issued by the Project Manager upon completion of the Works, in accordance with GCC Clause 59.
(g) “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, persons or their property, to influence their participation in a procurement process, or affect the execution of a contract.
(h) “collusive practice” means a scheme or arrangement between two or more parties, with or without the knowledge of the Employer, designed to establish prices at artificial, non-competitive levels or to otherwise deprive the Employer of the benefits of free and open competition.
(i) “Compact” has the meaning given such term in the recital clauses to the Agreement.
(j) “Compensation Events” means those events defined as such in GCC Clause 48.
(k) “Completion Date” means the date of completion of the Works as certified by the Project Manager, in accordance with GCC Clause 59.
(l) “Contract” means this agreement between the Employer and
the Contractor to execute, complete, and maintain the Works and consists of the documents listed in GCC Sub-Clause 2.3, as the same may be amended, modified, or supplemented from time to time in accordance with the terms hereof and thereof.

(m) “Contract Price” means the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of this Contract.

(n) “Contractor” has the meaning given such term in the initial paragraph of the Agreement.

(o) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of a public official (including Employer and MCC staff and employees of other organizations taking or reviewing selection decisions) in the selection process or in contract execution or the making of any payment to any third party, in connection with or in furtherance of a contract, in violation of (i) the United States Foreign Corrupt Practices Act of 1977, as amended (15 USC 78a et seq.) (“FCPA”), or any other actions taken that otherwise would be in violation of the FCPA if the FCPA were applicable, or (ii) any Applicable Law.

(p) “day” means a calendar day.

(q) “Dayworks” means varied work inputs subject to payment on a time basis for the Contractor’s employees and Equipment, in addition to payments for associated Materials and Plant.

(r) “Defect” means any part of the Works not completed in accordance with this Contract.

(s) “Defects Liability Certificate” means the certificate issued by the Project Manager upon correction of Defects by the Contractor.

(t) “Defects Liability Period” means the period specified in SCC Sub-Clause 39.1 and calculated from the Completion Date.

(u) “Drawings” means calculations and other information provided or approved by the Project Manager for the execution of this Contract.

(v) “EMP” has the meaning given such term in GCC Sub-Clause 19.1.

(w) “Employer” has the meaning given such term in the initial paragraph of the Agreement.

(x) “Equipment” means the Contractor’s machinery and vehicles brought temporarily to the Site to construct the Works.

(y) “Force Majeure” has the meaning given such term in GCC Sub-Clause 67.1.

(z) “fraudulent practice” means any act or omission, including any misrepresentation, in order to influence (or attempt to influence) a selection process or the execution of a contract to
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obtain a financial or other benefit or to avoid (or attempt to avoid) an obligation;

(aa) “GCC” means the General Conditions of Contract;

(bb) “Government” has the meaning given such term in the recital clauses to the Agreement.

(cc) “HSP” has the meaning given such term in GCC Sub-Clause 19.1.


(ee) “Intended Completion Date” means the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the SCC. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.

(ff) “Letter of Acceptance” means the letter, dated as specified in the SCC from the Employer to the Contractor notifying the Contractor that its Bid has been accepted and that forms an integral part of this Contract.

(gg) “Materials” means all supplies, including consumables, used by the Contractor for incorporation in the Works.

(hh) “MCC” has the meaning given such term in the recital clauses to the Agreement.

(ii) “MCC Funding” has the meaning given such term in the recital clauses to the Agreement.

(jj) “month” means a calendar month and “monthly” refers to a calendar month.

(kk) “obstructive practice” means:

(i) destroying, falsifying, altering or concealing evidence material to the investigation or making false statements to investigators in order to impede an investigation into allegations of a corrupt, fraudulent, coercive, collusive, or prohibited practice; and threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, and

(ii) acts intended to impede the exercise of the inspection and audit rights of MCC provided under the Compact and related agreements.

(ll) “Payment Certificate” means the certificate issued by the Project Manager in accordance with GCC Clause 46.

(mm) “Performance Security” means the security to be provided by the Contractor in accordance with GCC Clause 56.

(nn) “Plant” means any integral part of the Works that shall
have a mechanical, electrical, chemical, or biological function.

(oo) “Program” has the meaning given such term in GCC Sub-Clause 31.1.

(pp) “prohibited practice” means any action that violates Section E (Compliance with Anti-Corruption, Anti-Money Laundering and Terrorist Financing Statutes and Other Restrictions) of Annex A to this Contract.

(qq) “Program” has the meaning given such term in GCC Sub-Clause 31.1.

(rr) “Project Manager” means the person named in the SCC (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering this Contract.

(ss) “SCC” means Special Conditions of Contract.

(tt) “Schedule of Key Personnel” means the schedule of key personnel employed by the Contractor, described in GCC Clause 9.

(uu) “Schedule of Prices” means the priced and completed Schedule of Prices forming part of the Bid.

(vv) “Schedule of Other Contractors” means the schedule of other contractors working on the Site, described in GCC Clause 8.

(ww) “Site” means the area defined as such in the SCC.

(xx) “Site Investigation Reports” means those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.

(yy) “Site Possession Dates” means a date on which the Employer is to give possession of all or part of the Site to the Contractor in accordance with GCC Clause 21.

(zz) “Specifications” means the specifications of the Works included as part of this Contract and any modification or addition made or approved by the Project Manager.

(aaa) “Start Date” means the date specified in the SCC as the latest date by which the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.

(bbb) “Subcontractor” means a person or corporate body who has a contract with the Contractor to carry out a part of the work in this Contract, which includes work on the Site.

(ccc) “Tax” and “Taxes” have the meanings given such terms in the Compact or related agreement.

(ddd) “Temporary Works” means those works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
Section VI Special Conditions of Contract and Additional Provisions Annex to the Contract

(eee) “Variation” means an instruction given by the Project Manager which varies the Works.

(fff) “Works” means what this Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the SCC.

2. Interpretation 2.1 In interpreting this Contract, unless otherwise indicated:

(i) “confirmation” means confirmation in writing;

(ii) “in writing” means communicated in written form (e.g., by mail, e-mail, or facsimile) delivered with proof of receipt;

(iii) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular;

(iv) the feminine means the masculine and vice versa;

(v) headings are for convenience only and have no other significance; and

(vi) the Project Manager shall provide instructions clarifying queries about the interpretation of this Contract.

2.2 If sectional completion is specified in the SCC, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).

2.3 The following documents are each deemed to form an integral part of this Contract and shall be interpreted in the following order of priority:

(a) Agreement,
(b) Letter of Acceptance,
(c) Bid,
(d) SCC and Annex A to this Contract entitled “Annex A: Additional Provisions,”
(e) GCC,
(f) Specifications,
(g) Drawings,
(h) Schedule of Prices, and
(i) any other document listed in the SCC as forming part of this Contract.

3. Language and Law 3.1 This Contract has been executed in the language(s) specified in the SCC. If the Contract is executed in both the English and another language, the English language version shall be the binding and controlling language for all matters relating to the meaning or
3.2 This Contract, its meaning and interpretation and the relation between the parties shall be governed by Applicable Law.

4. Project Manager’s Decisions

4.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Employer and the Contractor in the role representing the Employer.

5. Delegation

5.1 The Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.

6. Communications

6.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Subject to Applicable Law, any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the party to whom the communication is addressed, or when delivered to such party at the address specified in the SCC, or sent by confirmed facsimile or confirmed email, in either case if sent during normal business hours of the recipient party.

6.2 A party may change its address for receiving notice under this Contract by giving the other party notice in writing of such change to the address specified in SCC 6.1.

7. Subcontracting

7.1 The Contractor may sub-contract with the approval of the Project Manager, but may not assign this Contract without the approval of the Employer in writing. Sub-contracting shall not alter the Contractor’s obligations under this Contract.

8. Other Contractors

8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the SCC. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.

9. Personnel

9.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the SCC, to carry out the functions stated in such schedule or other personnel approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule of Key Personnel.

9.2 If the Project Manager asks the Contractor to remove a person who
is a member of the Contractor’s staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in this Contract.

10. Employer’s and Contractor’s Risks

10.1 The Employer carries the risks which this Contract states are Employer’s risks, and the Contractor carries the risks which this Contract states are Contractor’s risks.

11. Employer’s Risks

11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Employer’s risks:

(a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to

(i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works; or

(ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.

(a) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer’s design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer’s risk except loss or damage due to

(a) Defect which existed on the Completion Date,

(b) an event occurring before the Completion Date, which was not itself an Employer’s risk, or

(c) the activities of the Contractor on the Site after the Completion Date.

12. Contractor’s Risks

12.1 From the Start Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer’s risks are Contractor’s risks.

13. Insurance

13.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the SCC for the following events which are due to the Contractor’s risks:
(a) loss of or damage to the Works, Plant, and Materials;  
(b) loss of or damage to Equipment;  
(c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with this Contract; and  
(d) personal injury or death.

13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager’s approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

13.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due from the Contractor to the Employer.

13.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.

13.5 Both parties shall comply with any conditions of the insurance policies.

14. Eligibility; Source of Equipment, Material and Services

14.1 The Contractor and its Subcontractors, including their respective personnel and affiliates, shall at all times during the term of this Contract have the nationality of a country or territory eligible, in accordance with the Compact, the MCC Program Procurement Guidelines and Annex A to this Contract ("Eligible Countries"). The Contractor or a Subcontractor and their respective personnel and affiliates shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.

14.2 All Equipment, Materials, Plant and any services to be incorporate in or required for the Works shall have their origin in Eligible Countries.

14.3 For the purpose of this GCC Clause 14, “origin” means the place where the Equipment, Materials or Plant have been mined, grown, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics, purposes or utility from its underlying components. With respect to any services, the term “origin” means the place from which the services are supplied.
### 15. Queries about the Special Conditions of Contract

15.1 The Project Manager shall clarify queries on the SCC.

### 16. Contractor to Construct the Works

16.1 The Contractor shall construct and install the Works in accordance with its accepted Design, Specifications and Drawings.

### 17. The Works to Be Completed by the Intended Completion Date

17.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and shall complete the Works by the Intended Completion Date.

### 18. Approval by the Project Manager

18.1 The Contractor shall submit Specifications and Drawings showing any proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.

18.2 The Contractor shall be responsible for the design of any Temporary Works.

18.3 The Project Manager’s approval shall not alter the Contractor’s responsibility for the design of any Temporary Works.

18.4 The Contractor shall obtain approval of third parties to the design of any Temporary Works, where required.

18.5 All Drawings prepared by the Contractor for the execution of any Temporary Works or the Works, are subject to prior approval by the Project Manager before their use.

### 19. Safety and Environment

19.1 The Contractor shall at all times abide to all Namibian Legislation pertaining to Health, Safety and the Environment as well as the Construction Environmental Management Plan that

19.2 The Contractor shall, throughout the execution and completion of the Works, and remedying of the Defects therein:

   (a) have full regard for the safety of persons entitled to be upon the Site and keep the Site (so far as the same is under its control) and the Works (so far as the same are not occupied by the Employer) in an orderly state appropriate to the avoidance of danger to such persons;

   (b) provide and maintain at the Contractor’s own costs all lights, guards, fencing, warning signs and watching, when and where necessary or required by the Project Manager or by duly constituted authority, for the protection of the Works or for the safety and convenience of the public or others;

   (c) notify the Project Manager and Employer within 48 hours or as soon as reasonably possible after the occurrence of any
accident which has resulted in a disability or loss of human life or which has or which could reasonably be foreseen to have a material impact on the environment and shall submit to the Project Manager and Employer no later than 30 days after the occurrence of such an event, a summary report thereof;

(d) take all reasonable steps to protect the environment on and off the Site and to limit damage to people and property resulting from pollution, noise and other results from the Contractor’s operations;

(e) ensure that emissions, surface discharges and effluent from the Contractor’s activities shall not exceed the values indicated in the Specifications and shall not exceed the values prescribed by Applicable Law;

(f) ensure the adequate disposal of construction and excavation wastes;

(g) restore the Site to original conditions or to a state after the completion of the Works as set out in the Specifications; and

(h) complete the work in compliance with the MCC’s Environmental Guidelines and apply the recommendations of the project environmental assessment or impact study and the EMP and HSP, each in the form approved by the Project Manager in accordance with GCC Sub-Clause 19.1 in respect of health, safety, security and protection of the environment, as described in the Specifications.

20. Discoveries  
20.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager’s instructions for dealing with them.

21. Possession of the Site  
21.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part of the Site is not given by the Site Possession Date(s) stated in the SCC, the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.

22. Access to the Site  
22.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with this Contract is being carried out or is intended to be carried out.

23. Instructions, Inspections and Audits  
23.1 The Contractor shall carry out all instructions of the Project Manager which comply with the Applicable Law where the Site is located.

23.2 The Contractor shall permit MCC and/or persons appointed by MCC to inspect the Site and/or the accounts and records of the Contractor and any Subcontractors relating to the performance of this Contract,
and to have such accounts and records audited by auditors appointed by MCC, if so required by MCC in accordance with the provisions of the Annex to this Contract entitled “Additional Provisions.”

24. Disputes

24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by this Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager’s decision.

25. Procedure for Disputes

25.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.

25.2 The Adjudicator shall be paid by the hour at the rate specified in the SCC, together with reimbursable expenses of the types specified in the SCC, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to arbitration within 14 days of the Adjudicator’s written decision in accordance with GCC Sub-Clause 25.1. If neither party refers the dispute to arbitration within the above 14 days, the Adjudicator’s decision shall be final and binding.

25.3 The arbitration shall be conducted in accordance with the terms specified in the SCC and the arbitration procedures published by the institution named and in the place specified in the SCC.

25.4 MCC has the right to be an observer of any arbitration proceeding arising under this Contract, at its sole discretion, but does not have the obligation to observe any arbitration proceeding. Whether or not MCC is an observer to any arbitration arising under this Contract, the Employer shall provide MCC with written English transcripts of any arbitration proceedings or hearings and a copy of the reasoned written award within 14 days after (a) each such proceeding or hearing or (b) the date on which any such award is issued. The acceptance by MCC of the right to be an observer to the arbitration shall not constitute consent by MCC to the jurisdiction of the courts or any other organism of the Employer’s or the Contractor’s countries or any other jurisdiction or to the jurisdiction of any arbitral panel or other body.

26. Replacement of Adjudicator

26.1 Should the Adjudicator resign or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of this Contract; a new Adjudicator shall be jointly appointed by the Employer and the Contractor. If the Employer and the Contractor cannot reach agreement as to the appointment of such new Adjudicator within 28 days, either party may then request that the Appointing Authority designated in the SCC appoint a new Adjudicator and such replacement Adjudicator
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shall be designated by the Appointing Authority within 14 days of receipt of such request.

27. Conflict of Interest

27.1 The Contractor shall not engage, and shall cause its personnel as well as any Subcontractors and their personnel not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

28. Commissions and Fees

28.1 The Contractor shall disclose any commissions or fees that may have been paid or, at any time during the execution of this Contract are paid, to agents, representatives, or commission agents with respect to the selection process or performance of this Contract. The information disclosed must include at least the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.

29. Confidentiality

29.1 Each of the parties shall treat the details of this Contract as private and confidential, except to the extent necessary to carry out their respective obligations under this Contract or to comply with Applicable Laws. The parties shall not publish or disclose any particulars of the Works prepared by the other party without the previous agreement of the other. However, the Contractor shall be permitted to disclose any publicly available information, or, with the prior consent of the Employer in writing, information otherwise reasonably required to establish its qualifications to compete for other projects. If any dispute arises as to the necessity of any publication or disclosure of the details of this Contract, the same shall be referred to the Employer whose determination shall be final. The Contractor shall ensure that the requirements imposed on the Contractor by this Sub-Clause apply equally to all of its personnel and each Subcontractor and its personnel.

29.2 The Contractor shall disclose, and shall cause its personnel as well as any Subcontractor and its personnel to disclose, all such confidential and other information as may be reasonably required in order to verify the Contractor’s compliance with this Contract and to allow for this Contract’s proper implementation.

30. Entire Agreement

30.1 This Contract contains all of the covenants, stipulations and provisions agreed to by the parties. No agent or representative of either party has the authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth in this Contract.
B. Time Control

31. Program

31.1 Within the time stated in the SCC, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a program showing the general methods, arrangements, order, and timing for all the activities in the Works (the “Program”).

31.2 An update of the Program shall be a Program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

31.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the SCC. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the SCC from the next Payment Certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted and approved by the Project Manager.

31.4 The Project Manager’s approval of the Program shall not alter the Contractor’s obligations. The Contractor may revise the Program and submit it to the Project Manager for approval again at any time. A revised Program shall show the effect of any Variation and Compensation Events.

32. Extension of the Intended Completion Date

32.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work in a manner that would cause the Contractor to incur additional cost. The Project Manager shall also extend the Intended Completion Date if it determines an event of Force Majeure has occurred in accordance with GCC Clause 67.

32.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of (a) the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation or (b) the Contractor or the Employer asking the Project Manager for a decision on the occurrence of an event of Force Majeure. In each case, such request is to be in writing and shall be supplemented by full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.
33. Acceleration  
33.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor.

33.2 If the Contractor’s priced proposals for acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.

34. Delays Ordered by the Project Manager  
34.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.

35. Management Meetings  
35.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.

35.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

36. Early Warning  
36.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

36.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

C. Quality Control

37. Identifying Defects  
37.1 The Project Manager shall check the Contractor’s work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor’s responsibilities. The Project Manager
may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.

38. Tests

38.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specifications to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

39. Correction of Defects

39.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the SCC. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

39.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager’s notice of Defect.

40. Uncorrected Defects

40.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager’s notice of Defect, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

D. Cost Control

41. Schedule of Prices

41.1 The Schedule of Prices contains fixed prices for items for the construction, installation, testing, and commissioning work to be done by the Contractor.

42. Changes in the Quantities

42.1 Not applicable for a Fixed Price Contract.

43. Variations

43.1 All Variations shall be included in updated Programs produced by the Contractor.

44. Payments for Variations

44.1 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.

44.2 If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in GCC Sub-Clause 42.1 or
the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

44.3 If the Contractor’s quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager’s own forecast of the effects of the Variation on the Contractor’s costs.

44.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation from being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

44.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning in accordance with GCC Clause 36.

45. Cash Flow Forecasts

45.1 When the Program is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in this Contract, converted as necessary using the exchange rates provided for in this Contract.

46. Payment Certificates

46.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

46.2 The Project Manager shall check the Contractor’s monthly statement and certify the amount to be paid to the Contractor which certified amount shall be set forth in a Payment Certificate issued by the Project Manager.

46.3 The value of work executed shall be determined by the Project Manager.

46.4 The value of work executed shall comprise a fair portion of the Fixed Contract Price, excluding provisional sums and contingencies, based on the percentage of the work estimated to be completed.

46.5 The value of work executed shall include the valuation of Variations and Compensation Events.

46.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

47. Payments

47.1 Payments shall be adjusted for deductions for advance payments and retention, if any. The Employer shall pay, or cause to be paid to, the
Contractor the amounts certified by the Project Manager within 28 days of the date of each Payment Certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the rate of interest for each of the relevant currencies as indicated in the SCC.

47.2 If an amount certified is increased in a later Payment Certificate or as a result of an award by the Adjudicator or in arbitration in accordance with GCC Clause 25, the Contractor shall be paid interest on the delayed payment. Such interest shall be calculated from the date on which the increased amount would have been paid in the absence of dispute at the rate provided for in GCC Sub-Clause 47.1.

47.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.

47.4 Items of the Works for which no rate or price has been entered shall not be paid for by the Employer and shall be deemed covered by other rates and prices in this Contract.

48. Compensation Events

48.1 The following shall be “Compensation Events”:

(a) The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 21.1.

(b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under this Contract.

(c) The Project Manager orders a delay.

(d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.

(e) The Project Manager unreasonably does not approve a sub-contract to be let.

(f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.

(g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.

(h) Other contractors (other than Subcontractors), public authorities, utilities, or the Employer does not work within the dates and other constraints stated in this Contract, and they cause delay or extra cost to the Contractor.

(i) The advance payment, if any, is delayed.
(j) The effects on the Contractor of any of the Employer’s Risks.
(k) The Project Manager unreasonably delays issuing a Certificate of Completion.

48.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

48.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor’s forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor’s forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager’s own forecast. The Project Manager shall assume that the Contractor shall react competently and promptly to the event.

48.4 The Contractor shall not be entitled to compensation to the extent that the Employer’s interests are adversely affected by the Contractor’s not having given early warning or not having cooperated with the Project Manager.

49. Tax

49.1 The Contract Price for the Services payable to the Contractor, any Sub-Contractors, and their respective Personnel shall be free from the payment of Taxes only to the extent permitted and as set forth in Section 2.8 of the Compact and the Tax Agreement entered into between MCC and the Government. The Contractor, any Sub-Contractors, and their respective Personnel shall be responsible and shall pay all applicable Taxes levied under Namibian law not exempted pursuant to the Compact or Tax Agreement. If the Contractor, any of its Sub-Contractors or employees are required to pay any Taxes in contravention of Section 2.8 of the Compact or the Tax Agreement, such person shall promptly pay such Taxes as imposed and the Consultant shall promptly notify MCA-Namibia (or such agent or representative designated by MCA-Namibia) of any such Taxes paid. The Contractor shall cooperate with MCA-Namibia or its agents and representatives in seeking the prompt and proper reimbursement of such Taxes. For the avoidance of doubt, (i) the Contractor, the Sub-Contractors, and their respective Personnel will be subject to applicable Namibian law regarding the following Taxes (collectively, the “Non-Exempt Taxes”), and are not exempt from such Taxes pursuant to the provisions of the Compact: income and profit taxes (including individual and corporate), transfer duty taxes, stamp duty taxes, fuel levies, motor vehicle taxes and rates and taxes; and (ii) in the case of value-added Taxes, each of the Contractor and
the Sub-Contractors, who is registered in Namibia as a payer of value-added Taxes (A) may invoice MCA-Namibia for value-added Taxes associated with performing the Services and (B) may receive tax exemption from import customs and value-added Taxes on supplies, goods and services imported for the performance of the Services if such supplies, goods or services are consigned to MCA-Namibia. The Contractor, any Subcontractor and their respective personnel, and their eligible dependents, shall follow the usual customs procedures of the Employer’s country in importing property into the Employer’s country.

49.2 If the Contractor, any Subcontractor or any of their respective personnel, or any of their eligible dependents, do not withdraw but dispose of any property in the Employer’s country upon which customs duties or other Taxes have been exempted, the Contractor, the Subcontractor or such personnel or eligible dependents, as the case may be, (a) shall bear such customs duties and other Taxes in conformity with Applicable Law, or (b) shall reimburse such customs duties and Taxes to the Employer if such customs duties and Taxes were paid by the Employer at the time the property in question was brought into the Employer’s country.

49.3 Without prejudice to the rights of the Contractor under this GCC Clause 49, the Contractor, any Subcontractor and their respective Personnel will take reasonable steps as requested by the Employer or the Government with respect to the determination of the Tax status described in this GCC Clause 49.

49.4 If the Contractor, any Subcontractor, or any of their respective personnel, is required to pay Taxes that are exempt under the Compact or a related agreement, the Contractor shall promptly notify the Employer (or such agent or representative designated by the Employer) of any such Taxes paid, and the Contractor shall cooperate with, and take such actions as may be requested by the Employer, MCC, or either of their agents or representatives, in seeking the prompt and proper reimbursement of such Taxes.

49.5 The Employer shall use reasonable efforts to ensure that the Government provides the Contractor, any Subcontractor, and their respective personnel, the exemptions from taxation applicable to such persons or entities, in accordance with the terms of the Compact or related agreement.

50. Currencies 50.1 Where payments are made in currencies other than the currency of the Employer’s country specified in the SCC, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor’s Bid.

51. Price Adjustment 51.1 No Price Adjustments shall be made for fluctuations in the cost of inputs.
52. Retention

52.1 The Employer shall retain from each payment due to the Contractor the proportion **stated in the SCC** until completion of the whole of the Works.

52.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of the Defects Liability Period have been corrected.

52.3 On completion of the whole Works, the Contractor may substitute retention money with an “on demand” bank guarantee in a form and issued by a bank acceptable to the Employer.

53. Liquidated Damages

53.1 The Contractor shall pay liquidated damages to the Employer at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.

53.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next Payment Certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 51.1.

54. Bonus

This Contract does not make provision for the payment of any bonus to the Contractor.

55. Advance Payment

55.1 This Contract does not make provision for any advance payment to the Contractor.

56. Securities

56.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in the amount **specified in the SCC**, in a form and by a bank acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion.

57. Dayworks

57.1 If applicable, the Dayworks rates in the Contractor’s Bid shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

57.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each
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completed form shall be verified and signed by the Project Manager within two days of the work being done.

57.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

58. Cost of Repairs

58.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Liability Periods shall be remedied by the Contractor at the Contractor’s cost if the loss or damage arises from the Contractor’s acts or omissions.

E. Finishing the Contract

59. Completion

59.1 The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the work is completed.

60. Taking Over

60.1 The Employer shall take over the Site and the Works within seven days of the Project Manager’s issuing a Certificate of Completion.

61. Final Account

61.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under this Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor’s account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a Payment Certificate.

62. Drawings, Operating and Maintenance Manuals

62.1 “As built” Drawings shall be supplied by the Contractor to the Project Manager, in form and substance satisfactory to the Project Manager, by the date stated in the SCC.

62.2 If operating and maintenance manuals are required, the Contractor shall supply them to the Project Manager, in form and substance satisfactory to the Project Manager, by the date stated in the SCC.

62.3 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the SCC, or they do not receive the Project Manager’s approval, the Project Manager shall withhold the amount stated in the SCC from payments due to the Contractor.
63. Termination

63.1 The Employer or the Contractor may terminate this Contract if the other party causes a fundamental breach of this Contract.

63.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

(a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;

(b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;

(c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;

(d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager’s issuance of a Payment Certificate;

(e) the Project Manager gives notice that failure to correct a particular Defect is a fundamental breach of this Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;

(f) the Contractor does not maintain a Performance Security, which is required in accordance with GCC Clause 56;

(g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the SCC;

(h) the Contractor, in the judgment of the Employer, has, directly or through an agent, engaged in any coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices (each as defined in GCC Clause 1.1) in competing for or in the performance of this Contract or another MCC-funded contract; and

(i) the Contractor, in the judgment of the Employer or MCC, fails to perform its obligations relating to the use of funds set out in Annex to this Contract entitled “Annex: Additional Provisions” (which such termination will obligate the Contractor to repay any and all funds so misused within a maximum of 30 days after termination).

63.3 When either party to this Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC Sub-Clause 63.2, the Project Manager shall decide whether the breach is fundamental or not.

63.4 In addition to termination of this Contract for a fundamental breach in accordance with GCC Sub-Claus es 63.1 through 63.3, if the execution of substantially all of the Works in progress is prevented for a continuous period of days as specified in the SCC (or for
multiple periods that total more than the days as specified in the SCC due to the same event) by reason of an event of Force Majeure as determined by the Project Manager in accordance with GCC Clause 67, then either party may give the other party a notice of termination of this Contract. In this event, the termination shall take effect seven days after such notice of termination is given and the Contractor shall proceed in accordance with GCC Sub-Clause 63.6.

63.5 In addition to termination of this Contract for a fundamental breach in accordance with GCC Sub-Clauses 63.1 through 63.3, or resulting from an event of Force Majeure in accordance with GCC Sub-Clause 63.4, the Employer may terminate this Contract for convenience or upon termination or suspension of the Compact.

63.6 If this Contract is terminated for any reason, the Contractor shall (a) stop work immediately, (b) make the Site safe and secure, (c) hand over any Drawings, Specifications, other documents, Materials, Plant, and other work for which the Contractor has received payment (and all Materials, Plant, Equipment, Temporary Works, and Works in accordance with GCC Clause 66), and (d) leave the Site as soon as reasonably possible.

64. Fraud and Corruption; Measures to be Taken

64.1 MCC requires that the Employer and any other beneficiaries of MCC funding, including bidders, suppliers, contractors, and subcontractors under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts. In addition to any remedy the Employer may have pursuant to GCC Sub-Clause 63.2(h) or otherwise under the terms of this Contract or Applicable Law, the provisions of this GCC Clause 64 shall also apply.

64.2 MCC and the Employer may pursue sanction of the Contractor, including declaring the Contractor ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if at any time it determines that the Contractor has, directly or through an agent, engaged in any coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices (each as defined in GCC Clause 1.1) in competing for, or in the performance of, this Contract or another MCC-funded contract.

64.3 MCC may cancel the portion of the MCC Funding allocated to this Contract if it determines at any time that representatives of the Employer, the Contractor or any other beneficiary of the MCC Funding were engaged in any coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices (each as defined in GCC Clause 1.1) during the selection process or the performance of this Contract, without the Employer, the Contractor or such other beneficiary having taken timely and appropriate action satisfactory to MCC to remedy the situation.
64.4 MCC may also require the Employer to invoke any of its rights under this Contract or Applicable Law in any such situation.

64.5 Should any employee of the Contractor be determined to have engaged in any coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices (each as defined in GCC Clause 1.1) during the competition for or the performance of this Contract, then that employee shall be removed in accordance with GCC Sub-Clause 9.1, regardless of whether the Employer or MCC exercise any other of their rights under this Contract (including termination) or Applicable Law.

65. Payment upon Termination

65.1 If this Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments, if any, received up to the date of the issue of such certificate and less the percentage to apply to the value of the work not completed, as indicated in the SCC. Additional liquidated damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.

65.2 If this Contract is terminated for the Employer’s convenience, suspension or termination of the Compact, or because of a fundamental breach of Contract by the Employer, or as the result of an event of Force Majeure, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor’s personnel employed solely on the Works, and the Contractor’s costs of protecting and securing the Works, and less advance payments, if any, received up to the date of the certificate.

66. Property

66.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if this Contract is terminated because of the Contractor’s default.

67. Force Majeure

67.1 For the purposes of this Contract, “Force Majeure” means an event or condition that (a) is not reasonably foreseeable and is beyond the reasonable control of a party, and is not the result of any acts, omissions or delays of the party relying on such Force Majeure (or any third person over whom such party has control, including any Subcontractor), (b) is not an act, event or condition the risks or consequence of which such party has expressly agreed to assume under this Contract, (c) could not have been prevented, remedied or cured by such party’s reasonable diligence, and (d) makes such party’s performance of its obligations under this Contract impossible or so impractical as to be considered impossible under the circumstances. Such events may include, but are not restricted to, acts of the Government in its sovereign capacity, wars or revolutions,
terrorism, fires, floods, earthquakes, epidemics, quarantine restrictions, freight embargoes, and strike or lockout by persons other than the Contractor, any Subcontractor, or any of their personnel.

67.2 The failure of a party to fulfill any of its obligations under this Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure; provided that the party affected by such an event has (a) taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, (b) informed the other party as soon as practicable (and in no event later than seven days following the occurrence) about the occurrence of an event giving rise to a claim of Force Majeure, and (c) has made a request to the Project Manager with respect to the claim of Force Majeure in accordance with CGG Clause 32.2.

67.3 Subject to GCC Sub-Clause 67.6, a party affected by an event of Force Majeure shall continue to perform its obligations under this Contract as far as is reasonably practical, and shall take all reasonable measures to minimize and otherwise mitigate the consequences of any event of Force Majeure.

67.4 A party affected by an event of Force Majeure shall provide evidence of the nature and cause of such event in accordance with GCC Clause 32 and GCC Sub-Clause 67.2, and shall similarly give written notice of the restoration of normal conditions as soon as practicable.

67.5 If a party is prevented from performing any of its obligations under this Contract as the result of an event of Force Majeure and is otherwise in compliance with each of its obligations under GCC Clause 32 and this GCC Clause 67, such party shall be entitled to an extension of the Intended Completion Date in accordance with GCC Clause 32.

67.6 If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this GCC Clause 67, such additional or broader force majeure events, circumstances or provisions shall in no way excuse the Contractor’s non-performance under this Contract or otherwise entitle the Contractor to relief under this GCC Clause 67.

68. Trafficking in Persons

MCC, along with other United States Government entities, has adopted a zero tolerance policy with regard to trafficking in persons (“TIP”). In pursuance of this policy:

(a) Defined Terms. For purposes of the application and interpretation of this Sub-Clause 6.15, the terms, “coercion,” “commercial sex act,”
“debt bondage,” “employee,” “forced labor,” “fraud,” “involuntary servitude,” “severe forms of trafficking in persons,” and “sex trafficking” have the meanings given such terms in Part 10 [Combating Trafficking in Persons] of the MCA-Namibia Procurement Rules and such definitions are incorporated by reference into this Sub-Clause 6.15.

(b) Prohibition. The Contractor, the Contractor’s Personnel, any Subcontractor or supplier, or any of their respective personnel, or any agent or affiliate of any of the forgoing shall not:

(i) engage in severe forms of trafficking in persons during the period of performance of the Contract;

(ii) procure commercial sex acts during the period of performance of the Contract; or

(iii) use forced labor in the performance of the Contract.

(c) Contractor Requirements. The Contractor shall:

(i) fulfill its obligations under this Sub-Clause 6.15 and any additional obligations related to TIP that may be set forth in the Specification or any other documents that make up this Contract;

(ii) notify Contractor’s Personnel with respect to MCC’s policy regarding TIP and the prohibited activities described in this Sub-Clause 6.15;

(iii) notify the Engineer and the Employer within 48 hours or as soon as reasonably possible upon the Contractor:

a. becoming aware of any information it receives from any source (including law enforcement) that alleges any Contractor’s Personnel, Subcontractor or supplier, or any of their respective personnel, or any agent or affiliate of any of them, has engaged in conduct that violates MCC’s TIP policy; or

b. taking any action against any Contractor’s Personnel, Subcontractor or supplier, or any of their respective personnel, or any agent or affiliate of any of them, pursuant to these requirements; and

(iv) ensure that any subcontract or subaward entered into by the Contractor, as permitted by this Contract, includes the
Section VI Special Conditions of Contract and Additional Provisions Annex to the Contract

substance of the provisions of this Sub-Clause 6.15.

(d) Remedies. In addition to any other remedies that may be available under the terms of this Contract or applicable Laws, any breach of this Sub-Clause 6.15 may result in:

(i) the Employer requiring the Contractor to remove the involved Contractor’s Personnel, Subcontractor or supplier, any of their involved personnel, or any involved agent or affiliate;

(ii) the Employer requiring the termination of a subcontract or subaward;

(iii) suspension of Contract payments until the breach is remedied to the satisfaction of the Employer and MCC;

(iv) loss of incentive payment, consistent with the incentive plan set out in the Contract, if any, for the performance period in which the Employer or MCC determine the breach remains unremedied;

(v) the Employer or MCC pursing sanction of the Contractor, including declaring the Contractor ineligible, either indefinitely or for a stated period of time, to be awarded any MCC-funded contract; and

68.1 termination by the Employer or MCC of the Contractor’s employment under the Contract and expelling him from the Site, in which case the provisions of Clause 15 [Termination by Employer] shall apply as if such expulsion had been made under Sub-Clause 15.2(f).”


69.1 For the avoidance of doubt, the parties to this Contract agree and understand that the provisions set forth in Annex A to this Contract reflect certain requirements of the Government and the Employer under the terms of the Compact and related documents that are required to be transferred onto any contractor, subcontractor or associate who partakes in procurement or subsequent contracts in which MCC funding is involved and that, as with the other clauses under this Contract, the provisions of Annex A are binding obligations under this Contract.

69.2 In any sub-contract or sub-award entered into by the Contractor, as permitted by the terms of this Contract, the Contractor shall ensure the inclusion of all the provisions contained in Annex A in any agreement related to such sub-contract or sub-award.
Section VI. Special Conditions of Contract and Additional Provisions Annex to the Contract

Special Conditions of Contract

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

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<th>A. General</th>
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<td><strong>GCC 3.1</strong></td>
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| **GCC 6.1** | For notices that are served on the Employer, the address shall be:  
Mr J Botha  
Director Procurement  
MCA Namibia  
P.O. Box 23005  
Windhoek  
Email: jbotha@mcanamibia.org  
For notices that are served on the Contractor, the address shall be:  
[insert complete address, including e-mail] |
Section VI Special Conditions of Contract and Additional Provisions Annex to the Contract

GCC 8.1  Schedule of Other Contractors: [insert Schedule of Other Contractors, if appropriate].

GCC 9.1  Schedule of Key Personnel: [insert Schedule of Key Personnel].

GCC 13.1  The minimum insurance amounts and deductibles shall be:

(a) for the Works, Plant and Materials: The Contract Price.
(b) for loss or damage to Equipment: N$ 1,000,000
(c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract: N$ 1,000,000
(d) for personal injury or death:
   (i) of the Contractor’s employees: N$ 1,000,000
   (ii) of other people: N$ 1,000,000

GCC 21.1  The Site Possession Date(s) shall be: [insert location(s) and date(s)].

GCC 25.2  The Adjudicator shall be appointed in terms of the Procedures and Guidelines for the Nomination of Adjudicators of the National Adjudicators List (Namibia) administrated by the Engineering Professions of Namibia (EPA), which can be downloaded from EPA’s website http://engineers-namibia.org

The Adjudicator’s shall be remunerated at the standard rates contained in the above-mentioned publication

GCC 25.3  Any dispute, controversy, or claim arising out of or relating to this Contract, or breach, termination, or invalidity thereof, shall be settled by arbitration by one arbitrator agreed upon by the Parties in accordance with the UNCITRAL Arbitration Rules as at present in force.

Should the Parties fail to agree upon the nomination of an arbitrator, such nomination shall be done by the President of the Engineering Council of Namibia

The place of arbitration shall be Windhoek, Namibia

GCC 26.1  The Adjudicator shall be appointed in terms of the Procedures and Guidelines for the Nomination of Adjudicators of the National Adjudicators List (Namibia) administrated by the Engineering Professions of Namibia (EPA),

B. Time Control

GCC 31.1  The Contractor shall submit for approval a Program for the Works within 20 days from the date of the Letter of Acceptance.

GCC 31.3  The period between Program updates is 30 days.

The amount to be withheld for late submission of an updated Program is N$ 5,000

C. Quality Control
GCC 39.1 | The Defects Liability Period is: **90** days.

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**D. Cost Control**

GCC 47.1 | The interest rate on payments in United States Dollars shall be the London Interbank Lending Rate (LIBOR) plus 3 (three) percentage points.

The interest rate on payments in the currency of the Employer’s country shall be the repro rate of the Bank of Namibia plus 3 (three) percentage points.

GCC 49.1 | Copies of the Compact and other agreements relevant to the Tax treatment of MCC Funding may be found at [www.mvanamibia.org](http://www.mvanamibia.org)

GCC 50.1 | The currency of the Employer’s country is: Namibia Dollars

GCC 51.1 | This Contract is **not** subject to price adjustment in accordance with GCC Clause 51.

GCC 52.1 | The proportion of payments retained is **10%**

GCC 53.1 | The liquidated damages for the whole of the Works are **$1/14\text{th} \%$ of the final Contract Price** per day.

The maximum amount of liquidated damages for the whole of the Works is **10\%** of the final Contract Price.

GCC 56.1 | The Performance Security amount is [insert amount(s) denominated in the types and proportions of the currencies in which the Contract Price is payable] in the form of an Unconditional Performance Guarantee;

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**E. Finishing the Contract**

GCC 62.1 | The date by which “as built” Drawings are required is [insert date].

GCC 62.2 | The date by which operating and maintenance manuals are required is **NA**

GCC 62.3 | The amount to be withheld for failing to produce “as built” Drawings and/or operating and maintenance manuals by the date required in GCC Sub-Clauses 62.1 and 62.2 is **N$ 10,000**

GCC 63.2 (g) | The maximum number of days is: **100**

GCC 63.4 | The number of continuous days is: **60 days**.

The number of days (for multiple periods but due to the same event) is: **90 days**.

GCC 65.1 | The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, is **10\%**

Capitalized terms that are used but not defined in this Annex shall have the meaning given to them in the GCC or in the Compact or related agreements.

The Employer is responsible for the oversight and management of the implementation of the Compact on behalf of the Government and intends to apply a portion of the proceeds of the Compact to eligible payments under this Contract, provided that (a) such payments will only be made at the request of and on behalf of the Employer and as authorized by the Fiscal Agent, (b) MCC shall have no obligations to the Contractor under the Compact or this Contract, (c) such payments will be subject, in all respects, to the terms and conditions of the Compact, and (d) no party other than the Government and the Employer shall derive any rights from the Compact or have any claim to MCC Funding.

A. MCC Status; Reserved Rights; Third-Party Beneficiary

1. MCC Status. MCC is a United States Government corporation acting on behalf of the United States Government in the implementation of the Compact. As such, MCC has no liability under this Contract, and is immune from any action or proceeding arising under or relating to this Contract. In matters arising under or relating to this Contract, MCC is not subject to the jurisdiction of the courts or any other juridical or other body of any jurisdiction.

2. MCC Reserved Rights.

   (a) Certain rights are expressly reserved to MCC under this Contract, the Compact and other related Compact documents, including the right to approve the terms and conditions of this Contract, as well as any amendments or modifications hereto, and the right to suspend or terminate this Contract.

   (b) MCC, in reserving such rights under this Contract, the Compact or other related Compact documents, has acted solely as a funding entity to assure the proper use of United States Government funds, and any decision by MCC to exercise or refrain from exercising these rights shall be made as a funding entity in the course of funding the activity and shall not be construed as making MCC a party to this Contract.

   (c) MCC may, from time to time, exercise its rights, or discuss matters related to this Contract with the Parties or the Government, as appropriate, jointly or separately, without thereby incurring any responsibility or liability to any party.

   (d) Any approval (or failure to approve) or exercise of (or failure to exercise) any rights by MCC shall not bar the Government, the Employer, MCC or any other person or entity from asserting any right against the Contractor, or relieve the Contractor of any liability which the Contractor might otherwise have to the Government, the Employer, MCC, or any other person or entity. For the purposes of this clause (d), MCC shall be deemed to include any MCC officer, director, employee, affiliate, contractor, agent or representative.
3. **Third-Party Beneficiary.** MCC shall be deemed to be a third-party beneficiary under this Contract.

**B. Limitations on the Use or Treatment of MCC Funding**

The use and treatment of MCC Funding in connection with this Contract does not, and shall not, violate any limitations or requirements specified in the Compact or any other relevant agreement or Implementation Letter or applicable law or United States Government policy. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at www.mcc.gov/guidance/compact/funding_limitations.pdf.  

**C. Procurement**

The Contractor shall ensure that all procurements of goods, services or works under, related to or in furtherance of this Contract shall be consistent with the general principles set forth in the Compact and in the MCC Program Procurement Guidelines from time to time in effect as posted on the MCC website at www.mcc.gov. The Contractor shall comply with the eligibility requirements related to prohibited source or restricted party provisions in accordance with U.S. law, regulations and policy, applicable World Bank policies or guidelines and in accordance with other eligibility requirements as may be specified by MCC or the Employer. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at www.mcc.gov/guidance/compact/procurement_awards_provisions.pdf.

**D. Reports and Information; Access; Audits; Reviews**

1. **Reports and Information.** The Contractor shall maintain such books and records and provide such reports, documents, data or other information to the Employer in the manner and to the extent required by the Compact or related documents and as may be reasonably requested by the Employer from time to time in order to comply with its reporting requirements arising under the Compact or related documents. MCC may freely use any information it receives in any report or document provided to it in any way that MCC sees fit. The provisions of the Compact and [insert references to related documents] that are applicable to the Government in this regard shall apply, mutatis mutandis, to the Contractor as if the Contractor were the Government under the Compact. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf.

2. **Access; Audits and Reviews.** Upon MCC’s request, the Contractor shall permit such access, audits, reviews and evaluations as provided in the Compact or related documents. The provisions of the Compact and [insert references to related documents] that are applicable to the Government with respect to access and audits shall apply, mutatis mutandis, to the Contractor as if the Contractor were

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11 Prior to finalizing this as part of a specific contract, confirm that this remains the proper link.
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13 Language citing the specific sections of the relevant compact and other agreements related to the particular country in connection with which this form of contract is used in a procurement should be inserted here.
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Section VI Special Conditions of Contract and Additional Provisions Annex to the Contract

the Government under the Compact. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at [www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf].

3. Application to Providers. The Contractor shall ensure the inclusion of the applicable audit, access and reporting requirements in its contracts or agreements with other providers in connection with this Contract. A summary of the applicable requirements may be found on the MCC website at [www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf].

E. Compliance with Anti-Corruption, Anti-Money Laundering and Terrorist Financing Statutes and Other Restrictions

1. The Contractor shall ensure that no payments have been or will be made by the Contractor to any official of the Government, the Employer, or any third party (including any other government official) in connection with this Contract in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a et seq.) (the “FCPA”) or that would otherwise be in violation of the FCPA if the party making such payment were deemed to be a United States person or entity subject to the FCPA, or similar statute applicable to this Contract, including any local laws. The Contractor affirms that no payments have been or will be received by any official, employee, agent or representative of the Contractor in connection with this Contract in violation of the FCPA or that would otherwise be in violation of the FCPA if the party making such payment were deemed to be a United States person or entity subject to the FCPA, or similar statute applicable to this Contract, including any local laws.

2. The Contractor shall not provide material support or resources directly or indirectly to, or knowingly permit MCC Funding to be transferred to, any individual, corporation or other entity that the Contractor knows, or has reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities (i) on the master list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury’s Office of Foreign Assets Control, which list is available at [www.treas.gov/offices/enforcement/ofac], (ii) on the consolidated list of individuals and entities maintained by the “1267 Committee” of the United Nations Security Council, (iii) on the list maintained on [www.epis.gov] or (iv) on such other list as the Employer may request from time to time. For purposes of this provision, “material support and resources” includes currency, monetary instruments or other financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

3. The Contractor shall ensure that its activities under this Contract comply with all applicable U.S. laws, regulations and executive orders regarding money laundering, terrorist financing, U.S. sanctions laws, restrictive trade practices, boycotts, and all other economic sanctions promulgated from time to time by means of statute, executive order, regulation or as administered by the Office of Foreign Assets Control of the United States Treasury Department or any successor governmental

16 Prior to finalizing this as part of a specific contract, confirm that this remains the proper link.
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authority, including, 18 U.S.C. § 1956, 18 U.S.C. § 1957, 18 U.S.C.§ 2339A, 18 U.S.C.§ 2339B, 18 U.S.C. § 2339C, 18 U.S.C. § 981, 18 U.S.C. § 982, Executive Order 13224, 15 C.F.R. Part 760, and those economic sanctions programs enumerated at 31 C.F.R. Parts 500 through 598 and shall ensure that its activities under this Contract comply with any policies and procedures for monitoring operations to ensure compliance, as may be established from time to time by MCC, the Employer, the Fiscal Agent, or the Bank, as may be applicable. The Contractor shall verify, or cause to be verified, appropriately any individual, corporation or other entity with access to or recipient of funds, which verification shall be conducted in accordance with the procedures set out in the MCC Program Procurement Guidance paper entitled “Excluded Parties Verification Procedures in Purchaser Program Procurements” that can be found on MCC’s website at www.mcc.gov. The Contractor shall (A) conduct the monitoring referred to in this paragraph on at least a quarterly basis, or such other reasonable period as the Employer or MCC may request from time to time and (B) deliver a report of such periodic monitoring to the Employer with a copy to MCC.

4. Other restrictions on the Contractor shall apply as set forth in the Compact or related documents with respect to any activities in violation of other applicable U.S. laws, regulations, executive orders or policies, any misconduct injurious to MCC or the Employer, any activity contrary to the national security interests of the United States or any other activity that materially and adversely affects the ability of the Government or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of the Compact or any related document or that materially and adversely affects the Program assets or any Permitted Account.

F. Publicity, Information and Marking

1. The Contractor shall cooperate with the Employer and the Government to provide the appropriate publicity to the goods, works and services provided under this Contract, including identifying Program activity sites and marking Program assets as goods, works and services funded by the United States, acting through MCC, all in accordance with the MCC Standards for Corporate Marking and Branding, available on the MCC website at [http://www.mcc.gov/documents/mcc-marking-corporate-v2.pdf]; provided, however, that any press release or announcement regarding MCC or the fact that MCC is funding the Program or any other publicity materials referencing MCC, shall be subject to MCC’s prior written approval and must be consistent with any instructions provided by MCC from time to time in relevant Implementation Letters.

2. Upon the termination or expiration of the Compact, the Contractor shall, upon MCC’s request, cause the removal of any such markings and any references to MCC in any publicity materials.

G. Insurance

The Contractor shall obtain insurance, performance bonds, guarantees or other protections appropriate to cover against risks or liabilities associated with performance of this Contract. The Contractor shall be named as payee on any such insurance and the beneficiary of any such performance bonds and guarantees. The Employer and, at MCC’s request MCC, shall be named as additional insureds on any

18 Prior to finalizing this as part of a specific contract, confirm that this remains the proper link.
such insurance or other guarantee, to the extent permissible under applicable laws. The Contractor shall ensure that any proceeds from claims paid under such insurance or any other form of guarantee shall be used to replace or repair any loss or to pursue the procurement of the covered goods, works and services; provided, however, that at MCC’s election, such proceeds shall be deposited in an account as designated by the Employer and acceptable to MCC or as otherwise directed by MCC.

H. Conflict of Interest

10. The Contractor shall ensure that no officer, director, employee, affiliate, contractor, subcontractor, agent, advisor or representative of the Contractor participates in the selection, award, administration or oversight of a contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding in connection with this Contract, in which (i) the entity, the person, members of the person’s immediate family or household or his or her business partners, or organizations controlled by or substantially involving such person or entity, has or have a financial or other interest or (ii) the person or entity is negotiating or has any arrangement concerning prospective employment, unless such person or entity has first disclosed in writing to the parties under this Contract and MCC the conflict of interest and, following such disclosure, the parties to this Contract agree in writing to proceed notwithstanding such conflict. The Contractor shall ensure that none of its officers, directors, employees, affiliates, contractors, subcontractors, agents, advisors or representatives involved in the selection, award, administration, oversight or implementation of any contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding in connection with this Contract shall solicit or accept from or offer to a third party or seek or be promised (directly or indirectly) for itself or for another person or entity any gift, gratuity, favor or benefit, other than items of de minimis value and otherwise consistent with such guidance as MCC may provide from time to time. The Contractor shall ensure that none of its officers, directors, employees, affiliates, contractors, subcontractors, agents, advisors or representatives engage in any activity which is, or gives the appearance of being, a conflict of interest in connection with this Contract. Without limiting the foregoing, the Contractor shall comply, and ensure compliance, with the applicable conflicts of interest and ethics policies of the Employer as provided by the Employer to the Contractor.

I. Inconsistencies

In the event of any conflict between this Contract and the Compact and/or the [Disbursement Agreement or the Procurement Agreement/Program Implementation Agreement], the term(s) of the Compact and/or the [Disbursement Agreement or the Procurement Agreement/Program Implementation Agreement] shall prevail.

J. Other Provisions

The Contractor shall abide by such other terms or conditions as may be specified by the Employer or MCC in connection with this Contract.

19 The appropriate agreement in connection with the particular country for which this form is being used is to be referenced here.

In any sub-contract or sub-award entered into by the Contractor, as permitted by this Contract, the Contractor shall ensure the inclusion of all the provisions contained in paragraphs (A) through (J) above.
Section VII Security Forms

Section VII. Security Forms

Samples of acceptable forms of Undertaking of Surety and Performance Guarantee are provided in Section VII.

It is required that the Bidder produce with his Bid a firm and irrevocable undertaking by an acceptable surety provider (an insurance or other registered company or bank licensed to do business in Namibia) to issue a Performance Security in the form specified in this Section VII in the event of a Contract under this IFB being awarded to him.

The form “Undertaking of Surety” specified in this Section VII shall be used to produce this undertaking, in writing, with the bidding documents on the closing date for the bids. Failure to comply with the above will invalidate or prejudice the Bid.

The undertaking to issue the Performance Security shall be valid for a period of 90 days.

The value of the undertaking to issue a Performance Security shall be 10% of the Bid Price for the largest lot or combination of Lots that the Bidder is bidding for.

Bidders shall not provide the completed Performance Guarantee form at this stage of the procurement process. Only the successful Bidder shall be required to provide a Performance Guarantee.
Section VII Security Forms

Form of Undertaking of Surety

[Insert Surety Provider’s Name, and Address of Issuing Branch or Office]

Beneficiary: Millennium Challenge Account Namibia
117 Sam Nujoma Drive
P.O. Box 23005
Windhoek
Namibia

[Inset date]

Reference No.: [Insert Reference Number]

We have been informed that [name of the Bidder] (hereinafter called "the Bidder") has submitted to you its Bid dated (hereinafter called "the Bid") for the execution of the Design, Manufacture, Supply and Erection of 61 Modular or Industrialised Building Solutions Classrooms at 21 Schools in the Ohangwena, Oshana and Omusati Regions of Namibia under Invitation for Bids reference MCAN/COM/CB/1A01026 (“the IFB”).

Furthermore, we understand that, according to your conditions, Bids must be supported by a firm undertaking by an acceptable surety provider (an insurance or other registered company or bank licensed to do such business) to issue a Performance Security in the form specified in Section VII of the IFB in the event of a Contract being awarded to the Bidder.

At the request of the Bidder, we [name of Surety] hereby irrevocably undertake to issue a Performance Security in favour of the Millennium Challenge Account – Namibia in the event of the a Contract under IFB MCAN/COM/CB/1A01026 being awarded to the Bidder. The Performance Security shall be for 10% of the Contract amount of [Insert Currency of bid and the Bid Price]

This undertaking shall be valid for 90 days from the closing date of the said IFB.

[Signature(s)]
Section VII Security Forms

Performance Guarantee
(Unconditional)

[The Guarantor providing the Guarantee shall fill in this form in accordance with the instructions indicated in brackets.]

[insert Guarantor’s name, and address of issuing branch or office]

Beneficiary:  [insert name and address of the Employer]

Date:  [insert date]

PERFORMANCE GUARANTEE No.:  [insert Performance Guarantee number]

We have been informed that [insert name of Contractor] (hereinafter called the “Contractor”) has entered into Contract No. MCAN/COM/CB/1A01026 dated [Insert Date] with you, for the execution of the Design, Manufacture, Supply and Erection of 61 Modular or Industrialized Building Solutions Classrooms at 21 Schools in the Ohangwena, Oshana and Omusati Regions of Namibia (hereinafter called the “Contract”).

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we [insert name of bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [insert amount in figures] ([insert amount in words]), 20 such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire no later than twenty-eight days from the date of issuance of the Taking-Over Certificate, calculated based on a copy of such Certificate which shall be provided to us, or on the [insert number day of [insert month], [insert year]], 21 whichever occurs first. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

____________________
[signature(s) of an authorized representative(s) of the bank]

20 The Guarantor (bank) shall insert an amount representing the percentage of the Contract Price specified in the Contract and denominated in the currency(ies) of the Contract.

21 Insert the date twenty-eight days after the expected Completion date. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this Guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this Guarantee for a period not to exceed [six months/one year], in response to the Employer’s written request for such extension, such request to be presented to the Guarantor before the expiry of the Guarantee.”
Section VIII Schedule of Prices

Section VIII. Schedule of Prices

PREAMBLE

The cost of complying with all conditions, obligations and liabilities specified in the Instructions to Bidders, General and Special Conditions of Contract, including all overhead charges and profit and the cost of carrying out the work as proposed in the Bidder’s Design and Drawings, shall be deemed to be included in the Prices tendered in the Schedule of Prices. All prices for line items quoted shall be exclusive to VAT.

1. PRELIMINARY AND GENERAL

1.1 Fixed Price Site Establishment

Bidders must price for the establishing of their construction team on site for each of the lots they bid for, inclusive of temporary accommodation and offices, plant and equipment required for the execution of the works. This will be paid when the contractor has established its team on site ready to start with the construction work to the satisfaction of the Project Manager, provided that the Performance Guarantee is in place.

1.2 Fixed Price to meet contractual obligations.

This price shall include the cost for the final design of the works, provision of the performance guarantee and insurances and the cost of other fixed obligations under the Contract. This, less retention money, will be paid when the Contractor has submitted the Performance Guarantee and proof of insurances as required in the Contract.

1.3 Fixed Price for de-establishment and site clearance

This amount, less retention money, will be paid when the Contractor has completed the works, removed its temporary structures and cleared all rubble from the sites.

1.4 Price for Time Related Preliminary and General Costs

This price shall include all time related expenses such as management, supervision and administration costs; utilities; rent; compliance with environmental, social, health and safety requirements; etc. This amount, less retention money, will be paid in four equal monthly installments during the four months execution period for the Contact, provided that the Contractor is adhering to the approved execution program. The bid price for Time Related Preliminary and General Costs will be utilised to determine the Contractor’s entitlement to the reimbursements of costs for approved Extensions of Time in terms of the Contract.

2. FIXED PRICES FOR THE WORKS

The Bidder shall provide fixed prices for the execution of the works at each of the sites within each of the lots the he bids for, for each the following activities:

- Earthworks, footings and/or slabs required for the erection of the classrooms.
- Construction/erection of the classrooms inclusive of all walls, floors, ceilings, doors and windows.
- Finishing including inside electrical wiring and fittings, floor covers painting, aprons, etc.
Progress and final payments for the execution of the works shall be made on a monthly basis as provided for in the General Conditions of Contract.

3. **PROVISIONAL SUMS**

The Schedules of Prices shall each make provision for a Provisional Sum for an amount allowing N$ 25,000 for each of the schools in the Lot to engage a licensed electrical sub-contractor for each of the Lots for the installation of equipment and cabling for the connection of the new classrooms to the existing electrical reticulation at the schools. The contractor shall obtain quotations for the work and submit them to the Project Manager for approval of the selected sub-contractor. The Contractor shall be compensated for payments made to the electrical sub-contractor at actual cost plus 5% for handling and profit.

4. **CONTINGENCIES**

The Schedules of Prices shall each make provision for a Contingency amount allowing N$ 50,000 for each of the schools in the Lot for compensation to the Contractor for small variations approved by the Project Manager.
### SCHEDULE OF PRICES

**LOT 1 – Ohangwena A; 4 Schools; 13 Classrooms**

<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
<th>Fixed Prices Excluding VAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Preliminary and General</td>
<td></td>
</tr>
<tr>
<td>1.1</td>
<td>Fixed Price Site Establishment</td>
<td>N$</td>
</tr>
<tr>
<td>1.2</td>
<td>Fixed Price to meet contractual obligations</td>
<td>N$</td>
</tr>
<tr>
<td>1.3</td>
<td>Fixed Price for de-establishment and site clearance</td>
<td>N$</td>
</tr>
<tr>
<td>1.4</td>
<td>Price for Time Related Preliminary and General Costs</td>
<td>N$</td>
</tr>
<tr>
<td>2</td>
<td>Fixed Prices for the Works</td>
<td></td>
</tr>
<tr>
<td>2.1</td>
<td><em>Tulihongeni CS - 2 Classrooms</em></td>
<td></td>
</tr>
<tr>
<td>2.1.1</td>
<td>Earthworks, footings and/or slabs</td>
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</tr>
<tr>
<td>2.1.2</td>
<td>Construction/Erection of the Classrooms</td>
<td>N$</td>
</tr>
<tr>
<td>2.1.3</td>
<td>Finishing</td>
<td>N$</td>
</tr>
<tr>
<td>2.2</td>
<td><em>Onanghulo CS - 4 Classrooms</em></td>
<td></td>
</tr>
<tr>
<td>2.2.1</td>
<td>Earthworks, footings and/or slabs</td>
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</tr>
<tr>
<td>2.2.2</td>
<td>Construction/Erection of the Classrooms</td>
<td>N$</td>
</tr>
<tr>
<td>2.2.3</td>
<td>Finishing</td>
<td>N$</td>
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<td>2.3</td>
<td><em>Nanghonda – 2 Classrooms</em></td>
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<td>2.3.3</td>
<td>Finishing</td>
<td>N$</td>
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<tr>
<td>2.4</td>
<td><em>Omakondo CS – 5 Classrooms</em></td>
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<td>Construction/Erection of the Classrooms</td>
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<td>2.4.3</td>
<td>Finishing</td>
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</tr>
<tr>
<td>3</td>
<td>Provisional sum for Electrical Contractor to connect power supply</td>
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</tr>
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<td>4</td>
<td>Contingencies</td>
<td>N$</td>
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<tr>
<td></td>
<td><strong>TOTAL PRICE FOR LOT 1</strong></td>
<td><strong>N$</strong></td>
</tr>
</tbody>
</table>

Bidders MUST bid for every school in the Lot
### SCHEDULE OF PRICES

**LOT 2 – Ohangwena B; 5 Schools; 16 Classrooms**

<table>
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<tr>
<th>Number</th>
<th>Description</th>
<th>Fixed Prices Excluding VAT</th>
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<tbody>
<tr>
<td>1</td>
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<td>1.1</td>
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<tr>
<td>1.2</td>
<td>Fixed Price to meet contractual obligations</td>
<td>N$</td>
</tr>
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<td>1.3</td>
<td>Fixed Price for de-establishment and site clearance</td>
<td>N$</td>
</tr>
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<td>1.4</td>
<td>Price for Time Related Preliminary and General Costs</td>
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</tr>
<tr>
<td>2</td>
<td>Fixed Prices for the Works</td>
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</tr>
<tr>
<td>2.1</td>
<td>Onamukulo CS - 4 Classrooms</td>
<td></td>
</tr>
<tr>
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<td>Earthworks, footings and/or slabs</td>
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</tr>
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<td>2.1.2</td>
<td>Construction/Erection of the Classrooms</td>
<td>N$</td>
</tr>
<tr>
<td>2.1.3</td>
<td>Finishing</td>
<td>N$</td>
</tr>
<tr>
<td>2.2</td>
<td>Onankali North CS - 3 Classrooms</td>
<td></td>
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<td>2.2.1</td>
<td>Earthworks, footings and/or slabs</td>
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</tr>
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<td>2.2.2</td>
<td>Construction/Erection of the Classrooms</td>
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</tr>
<tr>
<td>2.2.3</td>
<td>Finishing</td>
<td>N$</td>
</tr>
<tr>
<td>2.3</td>
<td>Iikelo CS – 2 Classrooms</td>
<td></td>
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<tr>
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<td>Earthworks, footings and/or slabs</td>
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<td>Construction/Erection of the Classrooms</td>
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</tr>
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<td>2.3.3</td>
<td>Finishing</td>
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</tr>
<tr>
<td>2.4</td>
<td>Etsapa CS – 3 Classrooms</td>
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<tr>
<td>2.5</td>
<td>Oupili – 4 Classrooms</td>
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<td>3</td>
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</tr>
<tr>
<td>4</td>
<td>Contingencies</td>
<td>N$</td>
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</tbody>
</table>

**TOTAL PRICE FOR LOT 2**  N$

Bidders MUST bid for every school in the Lot
# SCHEDULE OF PRICES

## LOT 3 – Oshana; 4 Schools; 10 Classrooms

<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Preliminary and General</td>
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<tr>
<td>1.1</td>
<td>Fixed Price Site Establishment</td>
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<tr>
<td>1.2</td>
<td>Fixed Price to meet contractual obligations</td>
<td>N$</td>
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<tr>
<td>1.3</td>
<td>Fixed Price for de-establishment and site clearance</td>
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<td>1.4</td>
<td>Price for Time Related Preliminary and General Costs</td>
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<tr>
<td>2</td>
<td>Fixed Prices for the Works</td>
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</tr>
<tr>
<td>2.1</td>
<td><em>Enguwantale CS - 2 Classrooms</em></td>
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<td>Construction/Erection of the Classrooms</td>
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</tr>
<tr>
<td>2.1.3</td>
<td>Finishing</td>
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<tr>
<td>2.2</td>
<td><em>Ondjora CS - 2 Classrooms</em></td>
<td></td>
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<tr>
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<td>Earthworks, footings and/or slabs</td>
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<td>Construction/Erection of the Classrooms</td>
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<td>2.2.3</td>
<td>Finishing</td>
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<tr>
<td>2.3</td>
<td><em>Ekwafo SS – 4 Classrooms</em></td>
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<tr>
<td>2.4</td>
<td><em>Onamutai CS – 2 Classrooms</em></td>
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<td>2.4.2</td>
<td>Construction/Erection of the Classrooms</td>
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<td>2.4.3</td>
<td>Finishing</td>
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<td>3</td>
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<tr>
<td>4</td>
<td>Contingencies</td>
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</table>

**TOTAL PRICE FOR LOT 3**  
N$

Bidders MUST bid for every school in the Lot.
## SCHEDULE OF PRICES

**LOT 4 – Omusati A; 4 Schools; 13 Classrooms**

<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
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<tbody>
<tr>
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<td>Preliminary and General</td>
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<td>Fixed Price Site Establishment</td>
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<td>1.2</td>
<td>Fixed Price to meet contractual obligations</td>
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<tr>
<td>2</td>
<td>Fixed Prices for the Works</td>
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<tr>
<td>2.1</td>
<td>Kampelo CS - 3 Classrooms</td>
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<td>Construction/Erection of the Classrooms</td>
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<td>2.2</td>
<td>Okasheshete CS - 4 Classrooms</td>
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<td>Oshikulufitu CS – 3 Classrooms</td>
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<td>2.4</td>
<td>Oneeya CS – 3 Classrooms</td>
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<td>2.4.3</td>
<td>Finishing</td>
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<td>3</td>
<td>Provisional sum for Electrical Contractor to connect power supply</td>
<td>N$</td>
</tr>
<tr>
<td>4</td>
<td>Contingencies</td>
<td>N$</td>
</tr>
</tbody>
</table>

**TOTAL PRICE FOR LOT 4** N$

Bidders MUST bid for every school in the Lot
### SCHEDULE OF PRICES

#### LOT 5 – Omusati B; 4 Schools; 9 Classrooms

<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
<th>Fixed Prices Excluding VAT</th>
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<tbody>
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<td>Fixed Price Site Establishment</td>
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<tr>
<td>1.2</td>
<td>Fixed Price to meet contractual obligations</td>
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<tr>
<td>1.3</td>
<td>Fixed Price for de-establishment and site clearance</td>
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<td>1.4</td>
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<td>2</td>
<td>Fixed Prices for the Works</td>
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</tr>
<tr>
<td>2.1</td>
<td>Ekangoline CS – 2 Classrooms</td>
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</tr>
<tr>
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<td>Earthworks, footings and/or slabs</td>
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<tr>
<td>2.1.2</td>
<td>Construction/Erection of the Classrooms</td>
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<tr>
<td>2.2</td>
<td>Etayi CS - 2 Classrooms</td>
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<td>N$</td>
</tr>
<tr>
<td>2.3</td>
<td>Ekundu CS – 3 Classrooms</td>
<td></td>
</tr>
<tr>
<td>2.3.1</td>
<td>Earthworks, footings and/or slabs</td>
<td>N$</td>
</tr>
<tr>
<td>2.3.2</td>
<td>Construction/Erection of the Classrooms</td>
<td>N$</td>
</tr>
<tr>
<td>2.3.3</td>
<td>Finishing</td>
<td>N$</td>
</tr>
<tr>
<td>2.4</td>
<td>John Shekudja CS – 2 Classrooms</td>
<td></td>
</tr>
<tr>
<td>2.4.1</td>
<td>Earthworks, footings and/or slabs</td>
<td>N$</td>
</tr>
<tr>
<td>2.4.2</td>
<td>Construction/Erection of the Classrooms</td>
<td>N$</td>
</tr>
<tr>
<td>2.4.3</td>
<td>Finishing</td>
<td>N$</td>
</tr>
<tr>
<td>3</td>
<td>Provisional sum for Electrical Contractor to connect power supply</td>
<td>N$</td>
</tr>
<tr>
<td>4</td>
<td>Contingencies</td>
<td>N$</td>
</tr>
</tbody>
</table>

**TOTAL PRICE FOR LOT 5**  N$

Bidders MUST bid for every school in the Lot
Section IX. Specifications and Performance Requirements

1. General

Introduction

This Specification was prepared for a typical design and build contract of single storey freestanding modular and/or Industrialised Building Solution Classroom Buildings.

The Contractor shall allow for all necessary detailed site investigation, and design and construction to satisfy the requirements of the contract.

The design of the classrooms and all associated works shall demonstrate that it is safe, functional, environmentally sound, and thermally efficient and that it will remain that way with normal maintenance for its intended design life and complies with all relevant legislation and regulations.

Scope of the Work

The buildings shall have a minimum of fifteen (15) year service life and be certified to assure this life.

Suppliers/bidders shall bid for classrooms as close as possible and feasible to the standard Ministry of Education (MoE) classroom sizes (7.20 x 7.20m internal dimensions). It is recognised that it may be economically desirable for the bidder to offer slightly different module sizes and bidders shall not be expected to provide the precise sizes indicated, but should tender based upon achieving an economical floor area close to the size of the MoE standard.

Where more than one classroom building is to be provided on site the bidder may join two to three buildings together.

The Works includes the following:

- Site preparation, clearing, excavation and final contour grading
- Pouring of foundations and footings as required
- Construction/erection of Modular/Industrialised Classroom Buildings
- Electrical utilities installation
- The aprons, ramps, connecting to the services, etc.

The successful bidders shall provide all manuals and periodic maintenance schedules associated with the buildings and fittings

The Contractor shall meet in full any expenses associated with the safety and welfare requirements of the Works to conform to Health and Safety Legislation and best practice.

It is expected that bids will be awarded prior to the beginning of March 2014 and the period for completion will be 4 months.
2. Specifications

- 1x Solid Timber or FLB Door and frame
- Windows sufficient for ventilation to building regulations with burglar bars to all opening sections
- Sufficient internal lights installed
- 1x External weather proof light
- 2x Plug points (220V AC)
- Light switches
- Mini DB Board (per building)
- Roof covered with galvanized profiled sheeting
- Ceiling
- Insulation in roof/ceiling space
- Floor covered with 2mm industrial vinyl and welded on seams with threshold protection as necessary
- Finished floor level should be a minimum of 350mm above natural ground level
- Internal and External walls to be painted
- 1000mm Wide concrete or interlocked apron around sides and back of building and 1500mm wide apron/verandah in front of building, Together with concrete edge beam curb
- Anti-termite and ant proofing including weed killer
- Roof/ceiling space shall be sufficiently sealed to prevent ingress of bats and other vermin.
- Classrooms shall be fitted with a 1x 1200mm x2200mm Vitrex Blackboard and a 1x 1000mm x 1800mm pinning board

3. Health, Safety and the Environment

The Contractor will be required to carry out the Works in accordance with Namibian legislation pertaining to Health, Safety and the Environment as well the attached Construction Environmental Management Plan ("CEMP"), prepared by the Employer and which will form part of the Contract.

4. Sites, Locations, Lots & School Numbers

<table>
<thead>
<tr>
<th>Lot #</th>
<th>Lot Title</th>
<th>Schools</th>
<th>Latitude</th>
<th>Longitude</th>
<th>Classrooms</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ohangwena A; 4 Schools; 13 Classrooms</td>
<td>Tulihongeni CS</td>
<td>17 38' 32&quot;S</td>
<td>15 39’ 16&quot;E</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Onanghulo CS</td>
<td>17 33’ 00&quot;S</td>
<td>15 47’ 24&quot;E</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Nanghonda</td>
<td>17 37’ 06&quot;S</td>
<td>15 55’ 39&quot;E</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Omakondo CS</td>
<td>17 34’ 59&quot;S</td>
<td>16 11’ 08&quot;E</td>
<td>5</td>
</tr>
<tr>
<td>Lot #</td>
<td>Lot Title</td>
<td>Schools</td>
<td>Latitude</td>
<td>Longitude</td>
<td>Classrooms</td>
</tr>
<tr>
<td>------</td>
<td>-------------------</td>
<td>---------------------------</td>
<td>----------</td>
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</tr>
<tr>
<td>2</td>
<td>Ohangwena B;</td>
<td>Onamukulo CS</td>
<td>17 40’ 55&quot;S</td>
<td>16 03’ 25&quot;E</td>
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<tr>
<td></td>
<td>5 Schools;</td>
<td>Onankali North CS</td>
<td>17 46’ 19&quot;S</td>
<td>16 13’ 48&quot;E</td>
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</tr>
<tr>
<td></td>
<td>16 Classrooms</td>
<td>Iikelo CS</td>
<td>17 52’ 43&quot;S</td>
<td>16 24’ 01&quot;E</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>Etsapa CS</td>
<td>17 51’ 31&quot;S</td>
<td>16 31’ 29&quot;E</td>
<td>3</td>
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<tr>
<td></td>
<td></td>
<td>Oupili</td>
<td>17 37’ 00&quot;S</td>
<td>16 58’ 59&quot;E</td>
<td>4</td>
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<tr>
<td>3</td>
<td>Oshana</td>
<td>Enguwantale CS</td>
<td>17 59’ 16&quot;S</td>
<td>15 41’ 33&quot;E</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>4 Schools;</td>
<td>Ondjora CS</td>
<td>17 50’ 58&quot;S</td>
<td>15 43’ 28&quot;E</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>10 Classrooms</td>
<td>Ekwafo SS</td>
<td>17 46’ 08&quot;S</td>
<td>15 45’ 56&quot;E</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Onamutai CS</td>
<td>17 43’ 53&quot;S</td>
<td>15 50’ 20&quot;E</td>
<td>2</td>
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<tr>
<td>4</td>
<td>Omusati A</td>
<td>Kampelo CS</td>
<td>17 52’ 05&quot;S</td>
<td>15 16’ 31&quot;E</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>4 Schools;</td>
<td>Okasheshete CS</td>
<td>17 41’ 05&quot;S</td>
<td>14 39’ 10&quot;E</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>13 Classrooms</td>
<td>Oshikulufitu CS</td>
<td>17 33’ 05&quot;S</td>
<td>15 08’ 22&quot;E</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Oneeya CS</td>
<td>17 36’ 33&quot;S</td>
<td>15 14’ 08&quot;E</td>
<td>3</td>
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<tr>
<td>5</td>
<td>Omusati B</td>
<td>Ekangolinene CS</td>
<td>17 28’ 13&quot;S</td>
<td>15 29’ 58&quot;E</td>
<td>2</td>
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<tr>
<td></td>
<td>4 Schools;</td>
<td>Etayi CS</td>
<td>17 33’ 21&quot;S</td>
<td>15 31’ 21&quot;E</td>
<td>2</td>
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<tr>
<td></td>
<td>9 Classrooms</td>
<td>Ekundu CS</td>
<td>17 25’ 13&quot;S</td>
<td>15 20’ 21&quot;E</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>John Shekudja CS</td>
<td>17 28’ 03&quot;S</td>
<td>15 17’ 13&quot;E</td>
<td>2</td>
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</tbody>
</table>
47 SCHOOLS ACTIVITIES

CONSTRUCTION OF ADDITIONAL INFRASTRUCTURE AT 47 SCHOOLS

CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN

Prepared by: MCA-NAMIBIA
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<td>31</td>
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**SCOPE AND INTERPRETATIONS**

1.1. **General**

This Construction Environmental Management Plan (CEMP) covers the requirements for controlling the impact of construction activities on the environment. Environmental management is concerned not only with the final results of the Contractor’s operations to carry out the Works but most importantly with the manner in which operations are carried out. It is thus a requirement that the Contractor shall comply with the environmental requirements on an on-going basis.

The Contractor shall take full responsibility for protecting the natural environment and eliminating or minimising the negative impacts of construction on the environment during construction. The Contractor shall prevent or limit the occurrence of accidents which may cause damage to the environment, prevent or limit the consequences of such accidents and shall return the environment to a state as close as possible to its condition prior to any such accident occurring. Nothing specified herein shall relieve the Contractor of any obligations or responsibilities in this regard.

The requirements of this Specification apply to all areas under the Contractor’s control, including but not limited to the Working Area, all borrow pits, the construction camp and offices, all access/haul routes and all labour accommodation areas.

The general principles contained within the CEMP shall apply to all construction activities and shall observe all relevant legislation, including the Conditions of Authorisation (COA) as contained in the Environmental Clearance.

**DEFINITIONS**

For the purposes of this Specification, the following definitions shall apply:

- **Assembly area** means any area used for the assembly of transmission infrastructure prior to its erection. Such assembly areas may be within the construction camp or elsewhere within the Working Area.

- **Clearing** means the clearing and removal of all vegetation, including trees and shrubs to be identified prior to construction commencing.

- **Construction site** means the area to which the Contractor is allowed access for the execution of the Works.

- **Contaminated water** means water contaminated by the Contractor’s activities, e.g. concrete water and runoff from equipment/personnel wash areas.

- **Demolish** means the demolition and complete removal and disposal of buildings, sheds, poles, concrete and any other objects and structures.

- **Environment** means the surroundings within which humans exist and that are made up of:
  
i) The land, water and atmosphere of the earth;
  
ii) Micro-organisms, plant and animal life;
  
iii) Any part or combination of i) and ii) and the interrelationships among and between them; and
iv) The physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being.

- **Establishment period** means the period that commences from the time of actual planting or re-vegetation until at least six months after planting.

- **Maintenance period** means the period after the establishment period up to and until the end of the defects liability period, during which the contractor shall be responsible to maintain the vegetation, and shall be at least one growing season.

- **Natural vegetation** means all existing species, indigenous or otherwise, of trees, shrubs, groundcover, grasses and all other plants found growing on the site.

- **Oil Separator** means a trap that separates oil from the water and prevents oil from being carried from the Works into watercourses and water bodies.

- **Pollution Incident** means any incident that may or has caused contamination of the natural environment.

- **Potentially Hazardous Substance** is a substance that, in the reasonable opinion of the Project Manager, can have a deleterious effect on the environment.

- **Reasonable** means, unless the context indicates otherwise, reasonable in the opinion of the Project Manager after he has consulted with a person, not an employee of the Employer, suitably experienced in environmental management practices.

- **Settlement Ponds** means ponds that retain sediment-laden water from the Works for a sufficient period for the sediment to settle.

- **Sensitive area** means any area that is denoted as sensitive by this Specification or Project Manager due to its particular attributes, which could include the presence of rare or endangered vegetation, the presence of heritage resources (e.g. archaeological artefact or graves), the presence of a unique natural feature, the presence of a watercourse or water body etc.

- **Slope** means the inclination of a surface expressed as one unit of rise or fall for so many horizontal units.

- **Solid waste** means all solid waste, including construction debris, chemical waste, excess cement/concrete, wrapping materials, timber, tins and cans, drums, wire, nails, food and domestic waste (e.g. plastic packets and wrappers).

- **Spoil** means excavated material which is unsuitable for use as material in the Works or is material which is surplus to the requirements of the Works.

- **Topsoil** means a varying depth (up to 150 mm) of the soil profile irrespective of the fertility appearance, structure, agricultural potential, fertility and composition of the soil.

- **Watercourse** means any river, stream and natural drainage channel whether carrying water or not.

- **Water body** means body containing any form of water and includes dams and wetlands, whether ephemeral or permanent. In this regard, **wetland** means all areas where the soils were formed under seasonal or permanent saturation.

- **Works** means the Works to be executed in terms of the Contract and in accordance with this
• *Working area* means the land and any other place on, under, over, in or through which the Works are to be executed or carried out, and any other land or place made available by the Employer in connection with the Works. The Working Area shall include the construction camp, stockpile and laydown areas, assembly areas, batching areas, the construction servitude, all access routes and any additional areas to which the Project Manager permits access.
**THE PROJECT**

**Introduction**

This Specification was prepared for a typical design and build contract of single storey freestanding modular and/or Industrialised Building Solution Classroom Building.

The Contractor shall allow for all necessary detailed site investigation, and design and construction to satisfy the requirements of the contract.

The design of the classrooms and all associated works shall demonstrate that it is safe, functional, environmentally sound, and thermally efficient and that it will remain that way with normal maintenance for its intended design life and complies with all relevant legislation and regulations.

**Scope of the Work**

The buildings are to have a fifteen (15) year life and be certified to assure this life.

Suppliers/bidders are to bid based as close to the standard Ministry of Education (MoE) classroom sizes (7.20 x 7.20m internal dimensions) and specification as possible and feasible. It is recognised that it may be economically desirable for the bidder to offer slightly different module sizes and bidders shall not be expected to provide the precise sizes indicated, but should tender based upon achieving an economical floor area close to the size of the MoE standard.

Where more than one classroom building is to be provided on site the bidder may join two to three buildings together.

The Works includes the following:

- Site preparation, clearing, excavation and final contour grading
- Pouring of foundations and footings as required
- Modular/Industrialised Classroom Buildings
- Electrical utilities installation
- The aprons, ramps, connecting to the services, etc.

The bidder is to provide all manuals and periodic maintenance schedules associated with the buildings and fittings

The bidder is to meet in full any expenses associated with the safety and welfare requirements of the Works to conform to Health and Safety Legislation and best practice.

It is expected that bids will be awarded prior to the beginning of March 2014 and the period for completion will be 4 months.

**ROLES AND RESPONSIBILITIES FOR CEMP IMPLEMENTATION**

3.1. **CLIENT**

The Client, in terms of the project, is the Ministry of Education (MoE). However, since funding for the project will be provided by MCA-N, the latter will be closely involved and may in some instances provide play a supporting role to the Client in its dealings with other role-players. In terms of this Plan, the Client is required to:
• Ensure that the potential contractor has made provision for the cost of a health and safety plan or measures.

• Reasonably satisfy himself that the contractor he intends to use has the necessary competencies and resources to carry out the work safely.

• The Client shall also carry out the following tasks:
  o Environmental monitoring;
  o Social monitoring; and
  o Monitor and oversee the construction process to ensure that public health and safety issues and social impacts arising from construction activities are properly identified, managed and mitigated;

3.2. PROJECT MANAGER (PM)

Prior to commencement of construction, the Client will appoint a Project Manager, who will be the sole person invested with the authority to issue orders to persons on site. The Project Manager must work closely with the Contractor and the Client. Any instructions issued by any one of these persons must be channelled via the Project Manager. The Project Manager will be responsible with overall Project management and Construction supervision.

3.3. PRINCIPAL CONTRACTOR

The Principal Contractor will be a construction firm appointed by the Client to undertake the construction process. The Principal Contractor will report to the Client through the Project Manager. In terms of this Plan, the Principal Contractor is required to:

• Implement in full this CEMP and achieve full compliance in term of this CEMP.

• Ensure that all health and safety requirements outlined in this CEMP are fully implemented and compliant with on site.

• Ensure that the subcontractors under her management and supervision fully implemented and compliant with this CEMP.

• Assign the role of Environmental / Health and Safety Officer to a suitably qualified and experienced member of the company’s management team, or appoint a dedicated person in this position;

• Appoint a full-time competent employee as Site Supervisor.

3.4. ENVIRONMENTAL MONITORING

The Environmental / Health and Safety Officer (EHSO) shall be responsible for environmental monitoring and control. Where feasible and applicable, the role of EHSO may or can be performed by the Site Foreman. The duties of the EHSO will include:

• Liaison with the Site Supervisor and Project Manager.

• Monitoring of all of the Contractor’s activities for compliance with the various environmental requirements contained in this Specification;

• Monitoring of compliance with other relevant environmental legislation;
• Instituting remedial action in the event of non-compliance;
• Implementation and management of environmental protection measures;
• Keeping a register of public complaints and recording and addressing any public comments or issues;
• Routine recording and reporting of environmental activities;
• Recording and reporting of environmental incidents; and
• Environmental training and presentation of the Environmental Awareness Training courses to the Contractor’s staff.
• The organisation of health- and safety-related information to be passed from management to workers, including those of subcontractors;
• Implementation of safety awareness raising programmes, including induction training and toolbox talks for all workers on the site;
• Compiling a health and safety checklist based on the specific hazards identified in the Risk Assessment.
• The investigation and review of the circumstances and causes of accidents and occupational diseases so as to advise on preventive measures;
• Participation in pre-site planning to ensure that relevant health and safety considerations are included.

To carry out these functions the EHSO should have experience of the industry and should be properly trained and qualified, and should preferably be a member of a recognised professional safety and health body.

3.5. **SITE SUPERVISOR**

The role of the Site Supervisor is to supervise the day-to-day construction work on the project. The Supervisor will manage and control all construction activities at that site. In terms of Section 4 of H&S Regulations, the Site Supervisor must:

• Be trained to understand the hazards associated with all work he or she has to supervise;
• Ensure that all required precautionary measures are implemented;
• Ensure that all employees under his or her control are informed, instructed and trained by a competent person regarding any hazard and the related work procedures before any work commences and thereafter at such times as may be determined by the risk assessment;
• Ensure that every employee on site is in possession of proof of the health and safety induction training;
• Hold **toolbox talks** on at least a weekly basis. A toolbox talk is about five- to ten-minute session with workers just prior to starting work for the day, which emphasises and reinforces a safety-conscious attitude. Toolbox talks also give workers and the supervisor a chance to talk about safety problems likely to be encountered, as well as potential solutions to those problems;
• Issue a “Stop Work” order when conditions arise that pose an imminent danger to personnel, environment or equipment. All Stop Work orders must be reported to the Environmental Health and Safety Control Officer.
3.6. **SUBCONTRACTORS**

The Principal Contractor may appoint specialised subcontractors to undertake various tasks during the construction process. Every subcontractor is responsible to ensure that his employees comply with the applicable legislation, with this CEMP. Subcontractors are required to:

- Retain full responsibility for the safety of their personnel;
- Review possible safety hazards, work activities, etc., with their personnel;
- Issue a “Stop Work” order when conditions arise that pose an imminent danger to personnel, environment or equipment. All Stop Work orders must be reported to the Site Supervisor;
- Ensure that their personnel understand all necessary precautions to be taken and that these precautions are carried out;
- Make regular inspections of hand tools and equipment used in all phases of work;
- Immediately correct any safety deficiencies when identified and/or notified;
- Immediately inform the Site Supervisor Contractor and the Principal Contractor’s Health and Safety Representative of any and all unsafe conditions or activities.

There must be an open and continuous line of communication between the Principal Contractor and Subcontractors to discuss any unsafe acts or conditions that arise or may arise in the course of this project.

**GENERAL**

**GENERAL AND LEGAL OBLIGATIONS**

All construction activities shall observe and obey any relevant environmental legislation and in so doing shall be undertaken in such a manner so as to minimise impacts on the surrounding environment, the public and adjoining landowners. The Contractor shall absolve the Employer of any and all risk or liability in terms of compliance with all relevant statutory obligations.

The Contractor shall construct and/or implement all the necessary environmental protection measures in each area before any construction work will be allowed to proceed. The Project Manager may suspend the Works at any time in terms the Conditions of Contract should the Contractor, in the Project Manager’s opinion, fail to implement, operate or maintain any of the environmental protection measures adequately.

The required actions are summarised in Table 3 below, with details provided in the following section.
## List of construction impacts and required mitigation and monitoring activities require

<table>
<thead>
<tr>
<th>Environmental management impacts requiring mitigation</th>
<th>Source of impacts</th>
<th>Mitigation measures</th>
<th>Monitoring actions and methods</th>
<th>Responsibility for implementation</th>
<th>Resources required for the implementation</th>
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<tr>
<td>Site meetings</td>
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<td>Monthly</td>
<td></td>
<td>Contractor</td>
<td>EMP, ESAF</td>
</tr>
<tr>
<td>Environmental awareness training</td>
<td></td>
<td>Carry out brief, practical and simple awareness raising events for all employees aimed at helping employees to: i) Acquire a basic understanding of the key environmental features within the Working Area and its immediate environs; ii) Become familiar with the environmental controls contained within this Specification; and iii) Are made aware of any other environmental matters as deemed necessary by the Project Manager</td>
<td>At beginning of construction and then once a month thereafter.</td>
<td>Contractor</td>
<td>EMP, ESAF</td>
</tr>
<tr>
<td>Interface with landowners and local communities</td>
<td></td>
<td>Liaison through approved channels or forums; Respect property rights; Maintain complaints register</td>
<td>At beginning of construction and then once a month thereafter during the site meetings</td>
<td>Contractor</td>
<td>EMP, ESAF</td>
</tr>
<tr>
<td>Safety of the Workforce</td>
<td></td>
<td>Fencing of construction site; Fencing and demarcation of unattended open excavations</td>
<td>Daily monitoring of EMP implementation by Environmental / Safety Officer; Weekly Monitoring and Supervising of EMP implementation by Site Foreman &amp; Project Manager; Monthly Monitoring and Supervising of EMP implementation by Project Manager</td>
<td>Contractor</td>
<td>EMP, ESAF</td>
</tr>
<tr>
<td>Environmental management impacts requiring mitigation</td>
<td>Source of impacts</td>
<td>Mitigation measures</td>
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</tbody>
</table>
| Protection of natural features and heritage resources | Defacing, painting, damaging or marking of natural features (e.g. rock formations) | • No defacing, painting, damaging or marking of natural features | • Daily monitoring of EMP implementation by Environmental / Safety Officer  
• Weekly Monitoring and Supervising of EMP implementation by Site Foreman & Project Manager  
• Monthly Monitoring and Supervising of EMP implementation by Project Manager | Contractor | • EMP  
• ESAF |
| Protection of watercourses and water bodies |  | • The Contractor shall program the execution of the Works such that Construction within flowing water is minimized. All diversions shall be in place, water diverted away from the Working Area and the area sandbagged prior to excavations commencing;  
• Construction equipment shall not ford any watercourse or operate from within the river channel unless it is essential to the execution of the Works. All works within flowing water shall be subject to prior authorisation from the Project Manager;  
• During the execution of the Works, the Contractor shall take appropriate measures to prevent pollution and contamination of the riverine environment e.g. including ensuring that construction equipment is well maintained, using drip trays, provision of bins, monitoring etc;  
• Where earthwork is being undertaken in close proximity to any watercourse, slopes shall be stabilised using sandbags or geo-fabric to prevent sand and rock from entering the channel; and | • Daily monitoring of EMP implementation by Environmental / Safety Officer  
• Weekly Monitoring and Supervising of EMP implementation by Site Foreman & Project Manager  
• Monthly Monitoring and Supervising of EMP implementation by Project Manager | Contractor | • EMP  
• ESAF |
<p>| Protection of | Removing, | • Identification of indigenous flora for preservation and demarcation of | As above | Contractor | • EMP |</p>
<table>
<thead>
<tr>
<th>Environmental management impacts requiring mitigation</th>
<th>Source of impacts</th>
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<th>Monitoring actions and methods</th>
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<th>Resources required for the implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flora and fauna</td>
<td>Damaging or disturbing vegetation</td>
<td>Area to protect flora</td>
<td></td>
<td></td>
<td>• ESAF</td>
</tr>
</tbody>
</table>
| Prevention and control of fires                     | Smoking in fire hazard places (e.g. workshop and fuel storage areas, dry vegetation) | • Smoking in designated areas;  
• Clearing of vegetation around construction fence (allow for 10m buffer) | As above | Contractor | • EMP  
• ESAF |
| Emergency procedures                                | Outbreak of fires or accidental leaks and spillages | • Telephone numbers of emergency services displayed at conspicuous places;  
• Development of emergency procedures to respond to environmental emergencies e.g. fires & spillages. | As above | Contractor | • EMP  
• ESAF |
| Plant and materials                                  | Dust generation   | • Inform delivery drivers of procedures & restrictions;  
• Supervision during delivery;  
• PM to approve stockpiling, laydown & assembly areas | • At beginning of construction, during delivery and then once a month thereafter. | Contractor | • EMP  
• ESAF |
| Hazardous substances:  
• Fuel  
• Oils and curing compound  
• Herbicides and pesticides | Storage & disposal of hazardous chemical substances pose risk of causing water and soil contamination | • Fuel to be stored in area approved by PM;  
• Oils and curing compound containers to be stored within a banded area | As above | PM & contractor | • EMP  
• ESAF |
<p>| Equipment                                            | Leakages &amp; maintenance | • Vehicles and equipment shall be kept in good working order | • Daily monitoring of EMP | Contractor | • EMP |</p>
<table>
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</thead>
<tbody>
<tr>
<td>Maintenance and storage</td>
<td>activities may contaminate soil and water</td>
<td>• Leaking equipment to be repaired immediately or removed from site; • Outside maintenance not to contaminate soil &amp; vegetation • Portable drip trays to be used in construction areas to collect waste oil &amp; lubricants; • Washing of equipment only in designated wash bays;</td>
<td>implementation by Environmental / Safety Officer • Weekly Monitoring and Supervising of EMP implementation by Site Foreman • Monthly Monitoring and Supervising of EMP implementation by Project Manager</td>
<td>Contractor</td>
<td>• ESAF</td>
</tr>
<tr>
<td>Pumping</td>
<td>Fuel spills and leakages</td>
<td>• Reasonable precautions to prevent spillage during refuelling of pumps</td>
<td>As above</td>
<td>Contractor</td>
<td>• EMP • ESAF</td>
</tr>
<tr>
<td>Dust and emissions</td>
<td>Dust emission</td>
<td>• Minimisation of the area disturbed at any one time and protection of exposed soil against wind erosion, e.g. dampening with water, covering with straw or applying suitable dust suppressing agents; • Location and treatment of material stockpiles taking into consideration prevailing wind directions</td>
<td>As above</td>
<td>Contractor</td>
<td>• EMP • ESAF</td>
</tr>
</tbody>
</table>

**SITE ESTABLISHMENT**

<p>| Site layout                                         | | • Consultation with PM regarding site layout • Restrict size | • At beginning of construction and then once a month thereafter. | Contractor &amp; PM | • EMP • ESAF |
| Site demarcation                                    | Disturbance of community and their daily operations | • Demarcation fencing and barriers or working areas, excavations, stockpiles to be kept in good working order; • Construction site to be located at the site agreed with community • All activities should be restricted to the defined Working Area | As above | Contractor | • EMP • ESAF |
| Site clearing                                       | Destruction of sensitive vegetation Clearing of | • Identification and management of sensitive vegetation. • Clearing only with written permission of PM • Restricted to construction camp, approved access roads, approved stockpiling and laydown areas, approved assembly areas and | Daily monitoring of EMP implementation by Environmental / Safety Officer • Weekly Monitoring and | Contractor | • EMP • ESAF |</p>
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</thead>
<tbody>
<tr>
<td></td>
<td>vegetation</td>
<td>infrastructure footprints</td>
<td>Supervising of EMP implementation by Site Foreman</td>
<td>Contractor</td>
<td>EMP, ESAF</td>
</tr>
<tr>
<td></td>
<td>Erosion and sediment control</td>
<td>Erosion and siltation</td>
<td>Limit erosion and sedimentation.</td>
<td>As above</td>
<td>Contractor</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Phasing of construction activities;</td>
<td></td>
<td>EMP, ESAF</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Surface stormwater not to concentrate and flow down cut or fill slopes;</td>
<td>Monthly Monitoring and Supervising of EMP implementation by Project Manager</td>
<td></td>
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<td></td>
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<td></td>
<td>Repair signs of erosion immediately;</td>
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<td></td>
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<td></td>
<td>Start landscaping and rehabilitation as soon as possible.</td>
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</tbody>
</table>

**TEMPORARY SERVICES AND FACILITIES**

<table>
<thead>
<tr>
<th>Site structures</th>
<th>Accommodation of site staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site structures</td>
<td>The locality of the campsite must adhere to the following specifications:</td>
</tr>
<tr>
<td></td>
<td>• The campsite must be away from the residential areas, schools, churches, clinics and other community social infrastructures and also not situated near footpaths and other routes that are frequently used by community. In case of schools, the campsite must be at least 300m away from schools.</td>
</tr>
<tr>
<td></td>
<td>• The campsite must be erected on or nearby working area and on area where the least possible damage will be inflicted on the vegetation and also away from waterways. However, the site must also be accessible, enabling the movement of people and vehicles.</td>
</tr>
<tr>
<td></td>
<td>• Daily monitoring of EMP implementation by Environmental / Safety Officer</td>
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<td></td>
<td>• Weekly Monitoring and Supervising of EMP implementation by Site Foreman</td>
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<td></td>
<td>• Monthly Monitoring and Supervising of EMP implementation by Project Manager</td>
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</tbody>
</table>

Contractor |

EMP, ESAF |
<table>
<thead>
<tr>
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</table>
|                                                      |                  | • The site must preferably not be in close proximity of pensioner pay-out points and shebeens. The land use and ownership of the proposed site must be determined beforehand. Permission must be obtained from relevant authorities, e.g. village Headman and/or owners of the land where the construction campsite will be erected.  
• To prevent conflict, the construction campsite should preferably not be erected near agricultural fields and also not close to community water points.  
The campsite should adhere to the following requirements:  
• The campsite must be fenced-off, access should be controlled and children, young people and students are not allowed within the boundaries of the campsite.  
• The contractor should in no way permit or allow prostitution to take place at the campsite.  
• Designated access roads to the campsite should be used at all times and NO off-road driving is allowed. Large trees, found within the campsite, may also not be removed.  
• The campsite should have a designated area for servicing of vehicles.  
• The campsite should have sufficient ablution facilities available, separately for men and woman and clearly indicated as such.  
• Potable water must also be supplied to construction workers residing at the construction camp. | As above         | Contractor         | EMP ▪ ESAF                     |
<table>
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</thead>
<tbody>
<tr>
<td>Damage or disturbance to fauna and flora</td>
<td></td>
<td>• No member of the construction team are allowed to hunt, trap, set snares or cause any other disturbance to any fauna or flora species</td>
<td>As above</td>
<td>Contractor</td>
<td>EMP, ESAF</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Small mammal, reptile, and bird nesting should be avoided where possible. Birds or animals should not be hurt, killed, or unnecessarily disturbed.</td>
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</tr>
<tr>
<td>Disturbance or damage to historical, archaeological or cultural heritage.</td>
<td>Stockpiling and stockpile areas</td>
<td>• Stockpiles should be within demarcated construction camp; • Stockpiles not higher than 2 m; • Not be located within 50 m of any watercourse.</td>
<td>As above</td>
<td>Contractor</td>
<td>EMP, ESAF</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• In the event of the Contractor finding a grave site or any other object or structure that could be of possible archaeological or historical importance, work in that area is to be stopped immediately and the Engineer contacted for further instructions.</td>
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</tr>
<tr>
<td>Access roads</td>
<td>Access roads</td>
<td>• Only designated access roads to be used to access the working area; • New roads subject to prior approval by PM; • Control dust nuisance by watering roads; • Temporary access roads to be rehabilitated to their original condition at end of contract. • Mud and sand deposited onto public roads to be cleared daily.</td>
<td>As above</td>
<td>Contractor</td>
<td>EMP, ESAF</td>
</tr>
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<td></td>
<td></td>
<td>• Toilets shall be located within the safe distance from any point of work but no closer than 50 m to any watercourse or water body; • Discharge of waste from toilets into the environment and burial of waste is strictly prohibited; • Toilets shall be provided with an external closing mechanism to prevent toilet paper from being blown out.</td>
<td>As above</td>
<td>Contractor</td>
<td>EMP, ESAF</td>
</tr>
<tr>
<td>Eating areas</td>
<td>Eating areas</td>
<td>• Areas to be designated &amp; clearly demarcated</td>
<td>As above</td>
<td>Contractor</td>
<td>EMP, ESAF</td>
</tr>
<tr>
<td>Environmental management impacts requiring mitigation</td>
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<tr>
<td>Water use</td>
<td>Water use</td>
<td>• Water for construction purposes to be used sparingly</td>
<td>As above</td>
<td>Contractor</td>
<td>EMP, ESAF</td>
</tr>
<tr>
<td>Solid waste management</td>
<td>Solid waste disposal</td>
<td>• Waste management to be strictly controlled and monitored</td>
<td>As above</td>
<td>Contractor</td>
<td>EMP, ESAF</td>
</tr>
<tr>
<td>Contaminated water management:</td>
<td>Release of contaminated runoff from construction camps, discharge of contaminated water, chemicals, oils, fuels etc.</td>
<td>• Appropriate pollution control facilities necessary to prevent discharge of water containing polluting matter or visible suspended materials into watercourses or water bodies shall be designed and implemented; • Runoff from the cement mixing areas shall be strictly controlled, and contaminated water shall be collected, stored, evaporated and either treated or disposed of off-site, at a location approved by the Project Manager. The approval of the Project Manager shall be required prior to the release of treated runoff from cement mixing areas into any watercourse; • Runoff from vehicle wash bays, workshops and diesel / fuel tank areas shall pass through oil traps. The oil sludge thus collected shall be disposed of at an approved waste disposal site; • All spillage of oil onto concrete surfaces shall be controlled by the use of an approved absorbent material; • Natural storm water runoff not contaminated by construction operations and clean water can be discharged directly to watercourses and water bodies, subject to the Project Manager’s approval. Water that has been contaminated with suspended solids, like soils and silt may be released into watercourses or water bodies only once all suspended solids have been removed from water by settling out these solids in settlement ponds. The release of settled water back into the environment shall be subject to the Project Managers approval.</td>
<td>As above</td>
<td>Contractor</td>
<td>EMP, ESAF</td>
</tr>
<tr>
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</tbody>
</table>
| Access to site                                        | Access to site and associated infrastructure and equipment to be off-limits to public during construction | • The Contractor shall notify the Project Manager immediately of any pollution incidents on Site. Verbal reports must be followed up by a written report, which shall be within 24 hours of the incident. | • Daily monitoring of EMP implementation by Environmental / Safety Officer  
• Weekly Monitoring and Supervising of EMP implementation by Site Foreman  
• Monthly Monitoring and Supervising of EMP implementation by Project Manager | Contractor | • EMP  
• ESAF |

### HIV / AIDS AWARENESS RAISING: VOLUNTARY COUNCILLING & TESTING AND CONDOM DISTRIBUTION

#### Raise awareness about HIV / AIDS and Promote correct and persistent use of male and female condoms
- New HIV / AIDS infections due to the construction of this dam and introduction of construction team in this area.
  - Source/obtain and distribute male and female condoms free of charge.  
  - During meetings, toolbox talks and safety or environmental awareness meetings, discuss on with workers topics related to HIV/AIDS transmission, avoidance & prevention measures for the purpose to educate Workers  
  - Distribute relevant information materials such as posters, pamphlets to workers and display them at workers camp for more information.
- • Daily monitoring of EMP implementation by Environmental / Safety Officer  
• Weekly Monitoring and Supervising of EMP implementation by Site Foreman  
• Monthly Monitoring and Supervising of EMP implementation by Project Manager | Contractor | • EMP  
• ESAF |

### SAFE WORKING PROCEDURES
<table>
<thead>
<tr>
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</tr>
</thead>
</table>
|                                                        | Injuries due lack of proper and sufficient PPE for workers and non-adherence to local safety requirements. | • Provide first aid and emergency facilities, and put emergency preparedness & response measures & procedures in place according with GN 156 of 1992, Chapter 7 B; Regulation 228-239. The first aid kit must contain all equipment and bandages as per the Labour Act No11 of 2007. In addition, the first aid kit must also have sufficient rubber gloves. | • Daily monitoring of EMP implementation by Environmental / Safety Officer  
• Weekly Monitoring and Supervising of EMP implementation by Site Foreman  
• Monthly audits by Client | Contractor | • EMP  
• ESAF |
|                                                        | Personal Protective Equipment/Clothing (PPE): Provide employee with adequate personal protective clothing and equipment if reasonable necessary in accordance with GN 156 of 1992; Chapter 6 C, Regulation 210-216. | • Personal Protective Equipment/Clothing (PPE): Provide employee with adequate personal protective clothing and equipment if reasonable necessary in accordance with GN 156 of 1992; Chapter 6 C, Regulation 210-216. | As above | Contractor | |
|                                                        | Traffic | • Implement safety measures;  
• Control vehicle movement and equipment;  
• Enforce speed limit of 30 km/h around construction site | As above | Contractor | • EMP  
• ESAF |
|                                                        | Construction activities | • Disturbed areas to be subjected to landscaping and rehabilitation  
• Timing of landscaping and rehabilitation: As soon as possible after cessation of work in a specific area  
• Demolition and removal of structures: Prior to landscaping and rehabilitation  
• Shaping and trimming: Lessen visual impact of disturbed areas | Daily monitoring of EMP implementation by Environmental / Safety Officer  
• Weekly Monitoring and Supervising of EMP implementation by Site Foreman  
• Monthly audits by Client | Contractor | • EMP  
• EMP |
|                                                        | Under take Induction training;  
Site specific training:  
• Basic construction health and safety;  
• Housekeeping and environmental hygiene procedures;  
• Legal health and safety requirements; | Under take Induction training;  
Site specific training:  
• Basic construction health and safety;  
• Housekeeping and environmental hygiene procedures;  
• Legal health and safety requirements; | Daily monitoring of EMP implementation by Environmental / Safety Officer  
• Weekly Monitoring and | Contractor | • EMP  
• ESAF |
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<tbody>
<tr>
<td></td>
<td></td>
<td>Material and chemical hazards and safety; Personal protective clothing and equipment; Vehicles and mobile equipment; Electrical safety; Excavations and working at height; and Drug- and alcohol-free workplace.</td>
<td>Supervising of EMP implementation by Site Foreman Monthly audits by Client</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Section IX Specifications and Performance Requirements

**FINES AND PENALTIES**

The following fines and penalties are in place for transgressions listed below. It will be issued after the procedure in 4.1 has been duly followed and only in severe cases and after repeated non-compliance. The graveness of the transgression is justified by each specific penalty. This applies to this Construction Environmental Management Plan (CEMP)

### 7.1 FINES

Fines may be issued per incident at the discretion of the Project Manager. Such fines will be issued in addition to any remedial costs incurred as a result of noncompliance with the CEMP. The PM will inform the Contractor of the contravention and the amount of the fine, and will deduct the amount from monies due under the Contract. Fines for the activities detailed below, will be imposed by the Project Manager on the Contractor and/or his Subcontractors.

- Any persons, vehicles, plant, or thing related to the Contractors operations within the designated boundaries of a “no-go” area. N$2,000
- Any vehicle guilty of reckless driving on and in the vicinity of the site, including excessive speeds. N$1,000
- Any vehicle being driven and items of plant or materials being parked or stored outside the demarcated boundaries of the site. N$2,000
- Persons repeatedly walking outside the demarcated walking path on site. N$1,000
- Persistent and un-repaired spilling of hazardous materials and materials causing pollution. N$3,000
- Persistent littering on site. N$500
- Individuals repeatedly not making use of the designated toilet facilities. N$200
- Disposal of waste in a manner other than what was agreed upon on site or the prescribed method in the waste management plan section. N$5,000
- Deliberate lighting of illegal fires on site (e.g. outside of the designated campsite). N$2,000
- For each subsequent similar offence the fine may, at the discretion of the PM, be doubled in value to a maximum value of N$10,000.

The Project Manager shall be the judge as to what constitutes a transgression in terms of this document.
Section IX Specifications and Performance Requirements

7.2. PENALTIES

Where the Contractor inflicts non-repairable damage upon the environment or fails to comply with any of the environmental specifications, he shall be liable to pay a penalty fine over and above any other contractual consequence.

The Contractor is deemed NOT to have complied with this Specification if:

- Within the boundaries of the site, site extensions and haul/ access roads there is evidence of contravention of the Specification;
- Environmental damage due to negligence;
- Safety of contractor personnel and public being compromised due to negligence;
- The Contractor fails to comply with corrective or other instructions issued by the Engineer within a specific time;
- The Contractor fails to respond adequately to complaints from the public; and
- Payment of any fines in terms of the contract shall not absolve the offender from being liable from prosecution in terms of any law.

The PM will be responsible for a Report on the non-repairable damage and / or noncompliance with visual and other evidence as well as issuing the penalty to the contractor with the report attached. A copy must be handed to the Foreman.

The following penalties are suggested for transgressions:

- Actions leading to erosion: A penalty equivalent in value to the cost of rehabilitation plus 20%.
- Oil spills: A penalty equivalent in value to the cost of clean-up operation plus N$1,000.
- Damage to trees: A penalty to a maximum of N$5,000 shall be paid for each tree removed without prior permission, or a maximum of N$2,000 for damage to any tree, which is to be retained on site.
- Damage to indigenous vegetation: A penalty equivalent in value to the cost of restoration operation plus N$2,000.
- Damage to sensitive environment: A penalty equivalent in value to the cost of restoration operation plus 20%.
- Damage to cultural sites: A penalty to a maximum of N$100,000 shall be paid for any damage to any cultural historical site.
- Damage to natural fauna: A penalty to a maximum of N$2,000 for damages to any natural occurring animal.
- Accident due to safety negligence: A penalty to a maximum of N$50,000 for injuries to personnel or public.