

Bidding Documents for Works

Republic of Yemen

IFB No. *MK-01—YPC*

**FOR:- *RENEWAL OIL C.B.M TERMINAL - KHALLF OIL
INSTALLATION***

Employer: *YEMEN PETROLEUM COMPANY*

August-2007

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FORM OF BANK GUARANTEE FOR BIDDING.....

PERFORMANCE SECURITY.....**ERROR! BOOKMARK NOT DEFINED.**

BANK GUARANTEE FOR ADVANCE PAYMENT

NOTIFICATION OF AWARD

FORM OF CONTRACT

COMPLETION FORM.....

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Invitation
To Companies to submit their Technical and Financial Proposals
For Limited Tender No. (MK-01-YPC) of [2007]

Dear Mr./Mrs.,

We are pleased to invite you to participate in a limited tender for project of Renewal of Oil C.B.M Terminal -Khalf Oil Installation (MUKALLA).

You, or your authorized representative, have to receive Bid documents from *Procurement and Store Department* during the official working hours at Yemen Petroleum Com , SANAA,60 Road in front of Faj Attan street ,
Phone 00967-1-443434
Fax;-00967-1-447690
p.o. box 178 Sana'a.

The deadline for selling BDs will be on /09 /2007 .

Bids have to submitted in sealed envelopes addressed to the concerned Entity with, mentioning the project name, Tender number and name of bidder. The following documents must also be attached to the envelope:

1. Bid Security for a lump sum amount 20.000\$. Bank Guarantee has to be valid for 120 days from the date of bid opening. Bank Guarantee may be substituted for a payable check.
2. A valid Tax Card.
3. A valid Insurance Certificate.
4. A valid Registration and Classification Certificate.
5. All submitted BDs must be numbered serially, signed and sealed.

A foreign bidder may provide the equivalent documents indicated in 2, 3 and 4 from its country of registration as appropriate.

These documents have to be submitted to the Procurement and Stores Department not later than [11:00] on [/09/2007]. Bids received after this deadline will be returned unopened.

Bids which are not meeting the conditions mentioned above and in BDs will not be considered.

Bid Opening will take place at *Y.P.C Head Office* and at the same time mentioned above, in presence of bidders or their authorized representatives.

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SECTION II. INSTRUCTIONS TO BIDDERS

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Instructions to Bidders

Instructions that provides necessary information for bidders in regard to bid preparation, submissions, opening, evaluation criteria to be used by the Employer for evaluation.

- 1. Scope of Bid**
 - 1.1 The Employer as defined in the Bidding Data invites bids for the construction of Works, as described in the Bidding documents and summarized in Bidding Data according to BDS procedures and terms of the contract.
 - 1.2 The successful Bidder will be expected to complete the Works by the Intended Completion Date specified in the Contract Data.
 - 1.3 Implementation of works project (lump sum or measured work is given in the Bidding data.

- 2. Source of Funds**
 - 2.1 Details of any funding provided to cover eligible payments under the scope of bid clause (1-1) in addition to that provided are given in the Bidding Data.

- 3. Business Ethics**
 - 3.1 All suppliers have to take into consideration Ethical principles when implementing contracts:
 - 1- For the purpose of this clause the following terms are defined as the following:
 - a) "corruption" means proposing/granting/receiving or seeking to have something of value to influence the conduct of an official for the purpose of acquiring a contract or implementing a contract.
 - b) "fraudulent" means misleading facts to affect the procedures of awarding a contract or the execution of a contract. It means also the collusion among bidders (before or after bid submission) to make false and uncompetitive levels for prices and deny the Purchaser the benefits of open and free competition.

Examples of un-business Ethics:

 - § breaching honesty and uprightness standards in all transactions;
 - § disclosing internal information or revealing confidential information before or during Contract implementation;
 - § dealing with government employees in specific arrangements to prevent fair competition;
 - § making grants to government employees;
 - § inviting government employees to specific occasions;
 - § discussing procurement procedures with any employee outside the formal rules and procedures of procurement process;
 - § cancelling, damaging or hiding any formal document in

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improper way;

§ granting money or presents, giving travel chances, or making services or discounts to government employees; and

§ asking any employee to breach any of the public procurement rules or procedures.

3.2 the following penalties will be taken if it is proved that the contractor had conducted one of above un business ethics.

a) Rejecting any proposal of bid award if it is proved to the Purchaser that the awarded bidder has been involved in practices such as bribery or corruption during competition process.

b) If it is proved to the Purchaser, at any time, that the Supplier has practiced bribery or corruption during competition process, this Supplier will be declared as unqualified to participate in any tender either permanently or for a specific period and shall be penalized according to these Instructions and Tender Provisions. If required, the Supplier shall be reported to the concerned authority to put him black list.

4. Eligible Bidders

4.1 This Invitation for Bids is open to all bidders as defined below.

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

4.3 Bidders shall not be eligible if under a declaration of ineligibility for corrupt and fraudulent practices or blacklisting in accordance with sub-clause 3.

4.4 Israel is not an eligible supplier of goods, works or services.

5. Eligible materials, plant and services

5.1 For purposes of this contract, “origin” means the place where the materials, plant and equipment are mined, grown, produced, or manufactured and from which the services are supplied. All of which must be from sound sources. Life and condition of which (manufacturer/assembling agencies) must be in proper condition.

- 6. Conflict of Interest**
- 6.1 Bidders who have a conflict of interest with the Employer will have their Bids rejected.
- 6.2 If one or more of the following instances has occurred between Employer and contractor or sub contractor the situation shall be deemed of conflict of interest:-
- Ownership of form or joint management.
 - Received/being in receipt of direct or indirect support from the entity.
 - Joint legal presentation for the purpose of this Bid.
 - Direct/ indirect or through third party relationship that allow contractor or subcontractor to have accesses to related information or influence entity decision making.
 - The contractor or subcontractor has participated or worked as an adviser to prepare designs or technical specification of the Bid.

- 7. One Bid per Bidder**
- 7.1 Each Bidder shall submit only one Bid, either individually or as a partner in a joint venture. A Bidder who submits or participates in more than one Bid (other than as a subcontractor will cause all the proposals with the Bidder's participation to be disqualified.

Content of Bidding Documents

- 8. Content of Bidding Documents**
- 8.1 The set of bidding documents comprises the documents listed in the table below, and addenda issued:
- | | |
|-----------|--|
| Section I | Invitation to Bid |
| II | Instructions to Bidders |
| III | Bidding Data |
| IV | General Conditions of Contract |
| V | Special condition of contract. |
| VI | Forms of Bid and Qualification Information |
| VII | Specifications |
| VIII | Drawings |
| IX | Bill of Quantities |
| X | Forms of contract and form of Securities. |

8.2 The number of copies to be completed and returned with the Bid is specified in the Bidding Data.

- 9. Clarification of Bidding Documents**
- 9.1 A prospective Bidder requiring any clarification of the bidding documents may notify the Employer in writing at the Employer's address indicated in the invitation to bid during permitted period in BDS. The employer is not obliged to respond if the permitted period is elapsed unless the reason is deemed serious. Copies of the Employer's response will be forwarded to all purchasers of the bidding documents, including a description of the inquiry, but without identifying its source.
- 9.2 Employer has the right to extend timing for bid opening of his discretion.

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10.Site Visit 10.1 The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine the Site of Works and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.

11.Pre-Bid Meeting

11.1 Employer may send invitation letter to Bidder to attend pre-Bid meeting if it is decided to have a pre-bid meeting. Timing and location are given in Bidding Data.

11.2 The purpose of the meeting will be to clarify issues and answer questions on any matter that may be raised at stage.

11.3 The bidder is requested, as far as possible, to submit any questions in writing to reach the employer not later than one week before the meeting.

11.4 Minutes of the meeting, including the text of the questions raised and the responses given, together with any responses prepared after the meeting will be transmitted without delay to all purchasers of bidding documents. Any modifications of the bidding documents that may become necessary as a result of the pre-Bid meeting shall be made by the employer exclusively through the issue of an Addendum and not through the minutes of the pre-bid meeting.

11.5 Non-attendance at the pre-bid meeting will not be a cause for disqualification of a bidder.

12.Amendment of Bidding Documents

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

12.2 Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing to all purchasers of the bidding documents. Prospective bidders shall acknowledge receipt of each addendum in writing to the Employer.

12.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may extend, as necessary, the deadline for submission of bids, in accordance with Sub-Clause 25 below.

Preparation of Bid

13.Bid Prices

13.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the employer shall not be responsible or liable for those costs, regardless of the outcome of the bidding process.

13.2 The Bidder is required to review plans, specification and Bill of quantities and if ambiguities or uncertainty is raised on data mentioned in the documents, he must ask for clarification in writing from the

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employer before submitting his bid. Bidder is not allowed in any case to delete or amend any item from BOQ or technical specifications.

13.3 The Contract shall be for the whole Works, based on the priced Activity Schedule (if Lump Sum Contract is indicated in the Bid Data) submitted by the Bidder or the Priced Bills of Quantities (if Measured Works Contract is indicated in the Bid Data).

13.4 All duties, taxes, and other levies payable by the Contractor under the Contract, shall be included in the rates, prices, and total Bid price submitted by the Bidder.

13.5 The presented prices by a Bidder shall be fixed and shall not be subject to adjustment during the performance of the Contract the employer shall neglect any claim submitted by Bidder to amend the price, whatever the reason is.

13.6 Any deletion or amendment (whether in specification or terms stated by employer) to bid data is not allowed. If bidder intends to provide certain terms or amend offered terms, he shall submit separate written notice including intended amendments provided such notice is received by the Employer before bid opening.

13.7 Financial bids that are based solely on a discount to the lowest other bid presented shall be rejected as non-responsive.

14. Language of Bid

14.1 All documents relating to the Bid shall be in the Arabic language unless otherwise specified in the Bidding Data.

15. Documents Comprising the Bid

- 15.1 The Bid submitted by the Bidder shall comprise the following:
- (a) The Bid (in the format indicated BDs);
 - (b) Bid Security; (in the format indicated BDs)
 - (c) Priced B.Q.
 - (d) Qualification Information Form and Documents;
 - (e) Alternative offers where invited;
 - (f) And any other materials required to be completed and submitted by bidders, as specified in the Bidding Data.

16. Alternative Proposals by Bidders

16.1 Bidders shall submit offers that comply with the requirements of the bidding documents, including the basic technical design as indicated in the drawings and specifications. Alternatives will not be considered, unless specifically allowed in the Bidding Data.

16.2 If so allowed in the Bidding Data, bidders wishing to offer technical alternatives to the requirements of the bidding documents

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must also submit a Bid that complies with the requirements of the bidding documents, including the basic technical design as indicated in the drawings and specifications. In addition to submitting the basic Bid, the Bidder 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.

17. Bid prices and Discounts

17.1 Bidder's prices and discounts offered in his BOQ and bid letter format shall be subject to the following requirements.

- a) The price to be quoted in the bid submission sheet shall be the total price of the bid, excluding any discounts offered.
- b) The bidder shall quote any unconditional discounts and the methodology for their application in the bid submission sheet.

17.3. All duties, taxes, and other levies payable by the contractor under the contract shall be included in the rates and prices. Employer shall not consider any prices exclude duties, taxes and other levies.

17.4 Bidder shall quote its prices in BOQ, unit price will be as quoted in BOQ in metric square number, weight, size...etc. without changing the unit. Prices should be quoted to complete the works completely, including manufacture fees, labour wages, cost of raw materials, transportation and cost of all requirements to complete the works according to desired terms and specifications.

17.5 Where items are unpriced they will be assumed to be included in the total offer price.

18. Currencies of Bid and Payment

18.1 The unit price shall be quoted by the Bidder entirely in Yemeni Rials. Foreign currency requirements shall be indicated in BDS.

18.2 Employer shall pay 85% of the items amounts of completed works after off setting the advance payment, if the Contract allows for advance payment, and will keep the remaining % 15 as retention until initial take over during which %5 will be released and %10 will be retain until final take over unless the Bid Data Sheet states another schedule..

19. Documents Establishing the Conformity of the Technical Proposal

19.1 The Bidder shall furnish a technical proposal including a statement of work methods and schedule as clarified in BDS in sufficient detail to demonstrate the adequacy of the bidding proposal to meet the work requirements and the completion time.

20. Documents Establishing the Qualification of the Bidder

20.1 To establish its qualifications to perform the contract in accordance with section III, evaluation and qualification criteria, the Bidder shall provide the information requested in the corresponding information sheets included in section VI, Bidding forms.

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21. Bid Validity 21.1 Bids shall remain valid for the period 90 days unless the Bidding Data specify longer period.

21.2 The Employer may request that the bidders extend the period of validity for a specified additional period. The request and the bidders' responses shall be made in writing. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid, but will be required to extend the validity of Bid Security for the period of the extension, and in compliance with Clause 22 in all respects.

22. Bid Security 22.1 The Bidder shall furnish, as part of the Bid, a Bid Security in Yemeni Rials or in a freely convertible currency, in the amount specified in the Bidding Data.

22.2 The Bid Security shall, at the Bidder's option, be in the form of a certified banker's check or an unconditional bank guarantee from a reputable bank located in the Republic of Yemen and accredited by CBY. Bank guarantees issued by foreign banks shall be acceptable if endorsed by a correspondent bank in the Republic of Yemen. The format of the Bid Security should be in accordance with the form of Bid Security included in Section 10. Bid Security shall be valid for a minimum of 30 days beyond the validity of the Bid.

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

22.4 The Bid Security of unsuccessful bidders will be returned within 30 days of the end of the Bid validity period.

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

22.6 The Bid Security may be forfeited

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

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23.Format and Signing of Bid

23.1 The Bidder shall prepare one original of the documents comprising the Bid as described in Clause 8 of these Instructions to Bidders, bound with the volume containing the Form of Bid, and clearly marked “ORIGINAL.” In addition, the Bidder shall submit copies of the Bid, in the number specified in the Bidding Data, and clearly marked as “COPIES. In the event of discrepancy between them, the original shall prevail.

23.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorised to sign on behalf of the Bidder. All pages of the Bid where entries or amendments have been made shall be initialled by the person or persons signing the Bid.

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

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

All delectation, addition or other changes should be initialled by the bidder before submission.

Submission and Opening of Bids

24.Sealing and Marking of Bids

24.1 The Bidder shall seal the original and all copies of the Bid in two inner envelopes, and one outer envelope sealed with red wax, duly marking the inner envelopes as “ORIGINAL” and “COPIES”.

24.2 The inner and outer envelopes shall

- (a) be addressed to the Employer at the address provided in the Bidding Data; clause (25-1)
- (b) bear the name and procurement number of the Contract as defined in the Bidding Data.
- (c) provide a warning not to open before the specified time and date for Bid opening as defined in the Bidding Data clause (25-1).
- (d) In addition to the identification, the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late.
- (e) If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the Bid.

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- 25. Deadline for Submission of Bids**
- 25.1 Bids shall be delivered to the Employer at the address specified above no later than the time and date specified in the Bidding Data.
- 25.2 The Employer may extend the deadline for submission of bids by issuing an amendment in accordance with Clause 12.3, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will then be subject to the new deadline.
- 26. Late Bids**
- 26.1 Any Bid received by the Employer after the deadline will be returned unopened to the Bidder.
- 27. Modification and Withdrawal of Bids**
- 27.1 Bidders may modify or withdraw their bids by giving notice in writing before bid opening. Such notices are prohibited after the latest date and time for submission of Bids pursuant to BDS 25.1
- 27.2 Any modification or withdrawal notices shall be prepared, sealed, marked, and delivered in according with BDS, with the outer and inner envelopes additionally marked “MODIFICATION” or “WITHDRAWAL,” as appropriate and forward it before opening the first bid.
- 27.3 Withdrawal of a Bid between the deadline for submission of bids and the expiration of the period of Bid validity specified in the Bidding Data (clause 21) may result in the forfeiture of the Bid Security (clause 22.6 a)
- 27.4 Bidders may only offer discounts to, or otherwise modify the prices of their bids by inclusion in the original Bid submission or by submitting Bid modifications before the latest time and date for opening bids.
- 28. Bid Opening**
- 28.1 The Employer will open the bids, including modifications made pursuant to Clause 27, in the presence of the bidders’ representatives who choose to attend at the time and in the place specified in the Bidding Data.
- 28.2 Envelopes marked “WITHDRAWAL” shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause 27 shall not be opened.
- 28.3 The bidders’ names, the Bid prices, the total amount of each Bid and of any alternative Bid (if alternatives have been requested or permitted), any discounts, Bid modifications and withdrawals, the presence or absence of Bid Security, and such other details as the Employer may consider appropriate, will be announced by the Employer at the opening.
- 28.4 The Employer will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with Sub-Clause 28.3.

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28.5 Bidder's representatives are not allowed to interfere with committee work. If a bidder has complaint against bid opening procedures or decisions, he must submit his complaint in writing to the head of the competent tender committee.

Bids Evaluation and Comparison.

29.Process to Be Confidential

29.1 Information relating to the examination, clarification, evaluation, and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful Bidder has been announced.

29.2 Any effort by the Bidder to influence the Employer in the Employer's bid evaluation, bid comparison or contract award decisions may result in the rejection of the Bidders' bid.

30.Clarification of Bids

30.1 To assist in the examination, evaluation, and comparison of bids, the Employer may ask any Bidder for clarification of its Bid, including breakdowns of unit rates. Requests for clarification and the response shall be in writing or by cable, telex, or facsimile, but no change in the price or substance of the Bid shall be sought, offered, or permitted.

31. Qualification of Bidder

31.1 If pre-qualification process of firms has been conducted and qualified bidders were identified, the Employer shall issue invitation letters and bidding documents only to qualified contractors to participate.

31.2 The Employer, once again, shall confirm any previously inspected data or information during technical and financial proposals.

31.3 If no pre-qualification process taken place by the Employer for potential bidders, all bidders shall attach required information specified in the Bidding Data and in the qualification forms provided in this dossier including supporting documents to its bids such as:

- a) Copy of firm formation or its statutory situation, place of registration and headquarters premises.
- b) Original Power of attorney for authorized person to sign the bid in order to be binding on the bidder.
- c) Total value of firm's executed works during the Bidders last three full financial years (at least 70% complete). Evidence to be provided in the forms provided at section 5 Qualifications.
- d) Experience in similar works in terms of nature and size for each year of the Bidders last five financial years, detail of ongoing projects, current contractual obligations, names of Employers to be referred to for more information. This detail to be provided in

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forms provided at |Section 5 Qualifications.

- e) Main proposed equipments and plants to execute the works. This detail to be provided in forms provided at |Section 5 Qualifications.
 - f) Experience and qualification of key personnel responsible for managing the site and proposed technician to implement the contract. This detail to be provided in forms provided at |Section 5 Qualifications.
 - g) Reports on the bidder's financial position such as loss and profit account balance sheet statement, auditor's for the last five years.
 - h) Evidence for capital adequacy to execute the contract (evidence for capacity to obtain credit(s) and availability of other financial resources). To be provided in the form of a Letter from a Bank or appropriate audited accounts.
 - i) Any other information stated in the Bid Data Sheet
- 31.4 The Employer has the right to refer to bidder's banks to obtain any necessary information and or verify all information provided.
- 31.5 The bidder shall furnish with his bid an action plan to execute various works and determine the required time, execution method in terms of type, volume workmanship/ materials, equipments and planets to execute the works.
- 31.6 The Bidder shall provide proposals on parts of the contract to be undertaken by subcontractor. The maximum level of subcontracting shall be 10 per cent of the whole works value unless otherwise stated in Bid Data Sheet

31.7 The Bidder shall provide valid classification and registration certificate and;

Valid tax certificate (A foreign bidder who is not already doing business in Yemen may provide a copy of the appropriate VAT registration document from his home country.)

Valid Insurance Certificate. (Insurance certificate is required only from firms with employees in Yemen who are entitled to benefits from the Public Enterprise for Social Security in Yemen)

Valid registration and classification certificate. (In the event of an award of contract if the successful firm is not already registered it will be required to evidence registration with the concerned Entity in Yemen as a requirement for contract effectiveness.)

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A foreign bidder may the equivalent documents from its country of registration as appropriate. In the event of an award of contract it will still be required to evidence registration with the MOIT in Yemen.”

31.8 The Bidder shall provide information on any disputes current or during the bidders last five full financial years which the bidder is party indicating other party and dispute amount and current situation.

31.9 Bids offered by a joint venture composed of two or more firms shall meet the qualifications requirements for each member unless otherwise specified in Bidding Data Sheet.

The bid shall include all qualification data for each partner in a joint venture. Initial Joint venture agreement should be signed to be binding on all partners.

All partners shall be liable individually or jointly in executing the contract pursuant to the contract terms.

A partner shall be named to be in charge on behalf on behalf of all partners in bearing responsibility, receive instructions and full completion of the contract including payment.

In the event of an award of Contract the Initial Agreement shall be replaced with a Final Agreement binding all members of the Joint Venture.

31.10 For Contract Award qualification, all bidders shall provide the following minimum qualification criteria:

- a. Bidders shall demonstrate a level of annual turnover at least equivalent to that stated in the Bid Data Sheet
- b. Contractor experience in executing at least two projects in size and degree of complexity of its bid during the ten years (for reference, 70% of execution of these works should have taken place).
- c. Proposals on obtaining necessary equipments mentioned in BDs in the proper time (whether through purchasing or leasing).
- d. Project manager should have at least five years of experience in similar works in terms of size and nature – at least three years of which should be as project manager.

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- e. Liquid assets and/ or net credit facility other than any other contractual obligations excluding advance payments payable pursuant to the contract – sufficient to match or exceed the monthly cash flow of the subject project. This will be evidenced by a statement from a recognized Bank or demonstrated by provision of audited accounts.

31.11 Frequent disputes Arbitration decision against any bidder or partner in a joint venture may consider as a ground for rejecting the bid.

31.12 The qualifications of each partner in a joint venture shall be added and compiled to determine the responsiveness of a bidder to the minimum qualification criteria in sub-clause, However, to qualify a joint venture, each partner shall fulfill at least 25% of the minimum qualification criteria stated in 31.3 (a), (c to h) for each individual partner. Partner in charge should achieve at least 40% of such criteria. Failure to meet such requirements and sub-contractor may result in rejection.

32.Preliminary Examination of Bids and Determination of Responsiveness

32.1 Prior to the detailed evaluation of bids, the Employer will determine whether each Bid (a) meets the eligibility criteria defined in Clause 4; (b) has been properly signed; (c) is accompanied by the required Bid Security; and (d) is substantially responsive to the requirements of the bidding documents.

32.2 A substantially responsive bid is one which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation.

32.3 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.

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

33. Non Conformities

33.1 Provided that a bid is substantially responsive, the employer may request that the bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in bid related to documentations requirement such nonconformities shall not be related to any aspect of the price of the bid. Failure of the bidder to comply with the request may result in the rejection of its bid.

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34. Correction of Errors

34.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Errors will be corrected by the Employer as follows:

- (a) where there is a discrepancy between the amounts in figures and in words, the amount in words will govern;
- (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern, unless in the opinion of the Employer there is an obvious gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern, and the unit rate will be corrected.
- (c) Clarify any substantial correction error that may affect competitive ranking provided that such correction should not exceed 3% of bid price before correction.
- (d) The amount stated in the Bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors and shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security may be forfeited.

35. Currency for Bid Evaluation Currency Unification

35.1 Bids will be evaluated as quoted in Yemeni Rials based in selling rate determined by CBY in the selected date, unless a Bidder has used different exchange rates than those prescribed in BDs, in which case the Bid will be first converted into the amounts payable in different currencies using the rates quoted in the Bid and then reconverted to Yemeni Rials using the exchange rates determined by CBY.

35.2 Exchange rate will be that identified as the closing rate 28 days before bid opening.

36. Evaluation of Bids

36.1 The Employer will evaluate and compare only the bids determined to be substantially responsive to the requirement..

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

- (a) making any correction for errors;
- (b) Including Day work, where priced competitively;
- (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted;
- (e) making appropriate adjustments to reflect discounts or other price modifications offered.

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- (f) If the bid, which results in the lowest evaluated bid price, is seriously unbalanced or front loaded in comparison with cost estimation, prevail market prices or other bids, this unbalanced item(s) will be subject to analysis to demonstrate reasons of such deviation. The employer may require the bidder to provide necessary clarification to analyse and study such unbalanced item.
- (g) In the case of several lots, the Employer will determine in the financial evaluation the application of discounts so as to minimize the combined cost of all the lots.

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

36.4 Any claims by a bidder who has discovered errors in his bid will not be taken into account if presented after bid opening.

37.Comparison of Bids

37.1 The employer shall compare all substantially responsive bids to determining the lowest evaluated bid in accordance with ITB.

In case that the technical and financial evaluation resulted in minor comments which cause the suspect of the employer in bidder capacity to execute the works in this case the employer has the right to increase the percentage of the performance security in a way deemed proper to him and notify the contractor accordingly in the Notification of Award.

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

38.1 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 the affected bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Employer’s action.

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F. Award of Contract

39.Award Criteria

39.1 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, and (b) qualified in accordance with the requirements.

39.2 The employer has the right to add or delete parts of the works by up to 20% of contract value at the time of award. Bidder has no right to reject or amend its price. Unsuccessful bidders have the right to request clarification by the Employer for not begin accepted

40.Notification of Award

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

40.4 Upon the furnishing by the successful Bidder of the Performance Security, the Employer will promptly notify the other bidders that their bids have been unsuccessful and return their Bid securities.

41.Performance Security

41.1 Within 15 days after receipt of the Letter of Acceptance, the successful Bidder shall sign the contract and deliver to the Employer a Performance Security in the percentage of 10% of contract value to be valid from the date of signing the contract until after 28 days after the take over certificate is issued in accordance with security format attached to the document

The performance security shall be in one of the following forms:

- (a) an irrevocable, unconditional bank guarantee issued by a reputable bank located in Yemen or abroad licensed or accredited by CBY, acceptable to the Purchaser, in the form provided in the bidding documents; or
- (b) a cashier's or certified check issued by bank certified by CBY.
- (c) Failure of the successful Bidder to comply with the above requirements shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security.

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SECTION III. BIDDING DATA

Name of Employer :- Yemen Petroleum Company (Y.P.C) .

Project name :- Renewal of Oil C.B.M Terminal

Tender number :- MK-01-YPC

Address of Employer :- Republic of Yemen .

City :- Sana'a .

District :- AL-wahdah .

Street :- 60 Road in Front of Faj Attan Street .

Building:- Y.P.C Head Office .

Phone :- 00967-1-443434.

Fax :- 00967-1-447690 .

E-mail :-

P.O.Box :- 178 Sana'a

Engineer's Name and address:- Technical &-Project Department .
Y.P.C Head Office .

Introduction:-

One of oil product tanker-ship unloading system for Mukalla bulk plant it was performed by the old Oil C.B.M terminal , pipelines and C.B.M facility (Conventional Buoy Mooring) which consist of :-

- Two pipelines 8 inch dia pipelines each connected to string of flexible .
the end of lines are marked by marker buoy and pick up buoys . these lines are referred as :- old line (made by shell in1953)
- new line (made by comarco in 1973)
- the 8" pipelines begin at the multivalve manifold within the installation perimeter and run seawards supported by concrete blocks to the flexible hoses ,the lines descend via the riser to the sea bed and run across a rocky base
- East and west mooring buoy :- Two large mooring buoys (3 m dia) with trunking , risers, ground legs of 3 inch dia chain ,
- the pendant leads to a mooring ring of 9 " diameter anchored by 2 ton concret block from here the anchor groundlegs lead to shore to a permanent
- Anchorage :-anchorage consist of two sets of two concrete sinkers of 15 tons
- each along the ground leg, then there is the final 10 ton steel anchor into the reef . **for more information about old terminal facility refer to drawings no.D. 66055A and 66056A . - For site information refer to data attached .**

ITB clause (1) Scope of work The Yemen Petroleum Company (YPC) intend to renew its old oil Product terminal Pipeline and C.B.M facility at Mukalla (khalf) bulk plantI in order to re-used it for

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unloading and accommodate tankers up to 12000 DWT .For supply khalf oil product installation with Mogas an gas oil product , it is assumed that the other existing terminal can meet kerosene an fuel oil demand .

The Works to be carried out under the contract shall include , complete work including survey , designing , supply , construction ,connection ,painting ,testing and all works as defined in T.Ds.

The main works of the Project, consist of Two Sections :

- **Section A** consist of :-

- design , supply and erection 2 new 8 " pipelines for Mogas. and gas oil between storage tanks area and Tanker-ship unloading area in the depth(draft) required to accommodate tanker having 12000-15000 DWT , with distance of approx. 360 m , 60m shall be aboveground and 300m submarine steel pipeline for each product .
- The 8" pipelines begin at the multivalve manifold within the installation perimeter closer to tank no.7 and run seawards supported by concrete blocks to the PLEM (pipelines end manifold)
- submarine hoses which is temporarily stores on the seabed when a tanker is moored , connects each pipeline to the tanker manifold .
- End assembly component for each submarine hose .
- the contractor shall confirm the pipelines layout to accommodate the stability and all the required facilities and the arrangements for safe submarine hose handling and use .

- **Section B , Mooring Buoy**

- The main works of section b consist of :-
- designing ,supplying ,installation of new mooring anchorage system Similar existing system or other equivalent system suitable for anchorage tanker having 12000-15000 DWT.
- inspection ,maintenance , replace the damaged rubber washer , sand plasting and painting of the two existing mooring buoys .

- **Other works to be done by the contractor are :-**

- strip out and remove old redundant submarine pipelines and anchorage system ; anchor chain and concrete blocks .
- cathodic protection for pipelines and mooring buoys
- Painting of all piping layouts.
- Conduct the civil works related to installing process pipes. supports and anchors ,etc .- Testing , flashing

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and commissioning of all project facilities .
 -survey the pipeline route , concrete support position along pipeline route
 -design , prefabrication , installation concrete blocks in order to guarantee the stability of the pipeline .

- Contractor Working Drawings :

- The contractor shall prepare and submit working drawings of pipework and pipework support ,expansion mooring system , details and cathodic protection .

NOTE :- The drawings supplied with the tender document are only for general guidance only.

- Pipe hangers and supports.

- The contractor shall submit shop drawings for all types of supports showing construction details.
- Hangers and supports location shall be shown on shop drawings.
- Pipe hangers and supports shall properly carry weight of pipes and accessories without sagging as specified and required.
- Hangers and supports shall be designed to sustain a load 8 times more the actual supported load.

Hangers and supports could be galvanized steel with smooth flat bearing surfaces and shall allow free movement of pipes due to expansion and contraction without any deformation

- Quality of Materials :

All materials shall be new of good quality suitable for the specified purpose and in accordance with the specification .

- Health , Safety And Environment :

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The contractor shall with the health and safety requirements of YPC and PMAC and shall appoint a safety officer and shall provide , maintain at area of main operation on the site including first aid medical facilities , buoyant , floating plant and necessary live saving apparatus .

-Diving operations

- All diving operation shall be carried out in accordance with accepted international standard of safety .
- The contractor diving team shall have as a minimum requirement , a competent diving Supervisor , two qualified divers and a linesman in attendance at all times when underwater works requiring diving operation.
- the diving equipment used by the contractor shall conform to international diving standard for similar construction works.

- SAFETY AND ACCES TO SITE :

Throughout the duration of the Contract, the Contractor shall conform strictly to the requirements of Standard Construction Specification S-35 OR EQUIVALENT (Contractor Safety) and shall be responsible for ensuring that all Contractor's (and sub-contractor's) personnel maintain proper safety precautions and work according to the requirements of this document and any other supplementary requirements stipulated by the Company. The Contractor must carefully establish with the Company Representative which areas of the work require safety permits to work and the applicable Hazardous Area Classifications. He must then ensure that the necessary Permits are obtained before starting work according to the formal procedures laid down by the Company and that these are kept valid for the duration of the Works. Fire fighting equipment shall be held at the ready during the pipeline connection operations and such other precautions implemented as specified by the Company Representative. Relaxation of the requirements for fire fighting

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equipment will only occur when the line contents are non-inflammable (e.g. water, brine, etc.) and the work is being carried out in a non-hazardous area.

Prior to entry upon the Site the Contractor shall ensure that all requirements for entry have been complied with and that all necessary safety equipment is to hand.

The contractor shall provide all necessary access facilities and assistance to responsible Company Representative(s) for inspecting and checking all aspects and parts of the works.

- Progress Reports

The contractor shall submit to the engineer each week a report on progress of the work showing the cumulative progress to date of important section of the works and their status with regards to the time schedule works .

-Training YPC Staff

The contractor shall allow YPC operators access to the site work during the erection and commissioning of the system for instruction and training the trainees in such way that the operation , maintenance and if necessary repairs to the system in order to be handled competently by the respective personnel

- As-built drawings –vedeo record

within 30 days after completion of the relevant work item , the contractor shall prepare and submit a complete set of as – built drawings . ,all survey and inspection reports , construction design documents and procedures ,material quality document ,submarine facility position , inspection by vedeo record .

Accommodation for Owner:

-The Contractor shall provide One new cars 4 doors, 2 wheels drive, 1800 cc, mogas engine, (Japan made) to YPC Project and Technical Affairs at the commencement of the Work. The car will remain propriety of YPC Project and Technical Affairs.

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-The Contractor shall provide one suitable barrack office on site for inspector team.

ITB clause1-2 execution period 1-3Project execution	Eight (8) Mounths. The project will be executed in quantities contract as indicated in BOQ,s . Y.P.C Budget .
ITB (2) clause (1) Source of funds ITB clause 1-4 Eligible bidders	The invited bidder are only the allowed bidders for participate in the competition in this limited tender .
ITB clause 8-2 number of required copies of a bid Address for clarification request: Permitted period for clarification	Two Copies Name of the Entity:-Yemen Petroleum Company. Department:-Technical &projects department . Location:- Y.P.C Phone:- Fax----- P.O.Box:- 178 Sana'a
ITB clause 9.0Allowed period for clarification	30days starting from invitation day.
ITB clause 10-1site visit	Visit time is open and the bidder shall bear the responsibility for doing such. Site visit minutes can be prepared and making the proper arrangements by the Entity hour-----date-----day---
ITB clause 11-1 pre- bid opening meeting:	During site visit period.
ITB clause 14-1 a bid additional language ITB clause 15-1 Additional documents required from the	“ “English” Material specification and source of origin for moorings buoy elements ,pipes and flexible hoses .

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Bidder:-

ITB clause 16-1 16-2 bid alternatives	Applicable .
ITB clause 18-1 Bid currency:	USD\$.
ITB clause (21) bid validity	90 days.
ITB clause (22) bid Security:	lump sum required bid security amount of 20000 \$, bid validity is (90 days)
ITB Clause (28-1) address of Bid Submission	In BDS state the address where bids to be submitted Employer name: Yemen Petroleum Company Place of opening :- Y.P.C head office City :- Sana'a Street:- 60 road in front of faj attan street Building :-Y.P.C head office Floor:- Second floor Office :- procurement and store department . Date of opening Hour 11.00 AM 05-08-2007
ITB Clause (31.3c) Qualification Requirements	Total value of firm's executed works during the last three years (at least 70% complete).
ITB Clause (31.3.d) Qualification Requirements	The contractor shall list the details in the form attached to this Bidding document. Experience in similar works in terms of nature and size for each year of the last five years, detail of ongoing project, current contractual obligations, names and contact numbers of Employers to be referred to for more information
ITB Clause (31.3e) Qualification Requirements	To ensure the project progress, detailed construction equipment and tool utilizing and renting plan should be prepared ,according to principle of adjust measure according to local condition and actual progress , organize relating equipment and tool to entry worksite to ensure the construction work is carried out according to approved progress plan ,make maintenance to equipment to ensure the equipment and tools in good working and standby condition .

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Main proposed equipments and plants to execute the works. This detail to be provided in forms provided at |Section 5 Qualifications ,the bidder shall submit the specification ,quantities of Main equipment and tools including additional equipments and tools required

Equipment/Plant	Spec.	Quantity
generator		
Crawler crane	50 ton - 25 ton	
Anchor winch		
Welding and grinding machine		
X-RAY, ultrasonic NDT Testing machine		
Flat barge	300 ton	
Traffic boat	40HP	
Anchor boat	120 HP	
Tug boat	600 HP	
Diving machine		
Steel anchor	400 kg	

ITB Clause (31.3e) Qualification Requirements:- Bidder shall submit Experience and qualification of key personnel responsible for managing the site and proposed technician to implement the contract.

Specialization	Qualifications	Years of Experience
Project manger Site engineer construction Diver Surveyour NDT Engineer Welder Fitter Foreman		

**ITB Clause 31-7
Required classification
and registration level**

Valid tax certificate (*A foreign bidder who is not already doing business in Yemen may provide a copy of the appropriate VAT registration document from his home country.*)

Valid Insurance Certificate. (*Insurance certificate is*

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required only from firms with employees in Yemen who are entitled to benefits from the Public Enterprise for Social Security in Yemen

A foreign bidder may the equivalent documents from its country of registration as appropriate. In the event of an award of contract it will still be required to evidence registration with the MOIT in Yemen.”

ITB clause 31-9- joint venture

“applicable” - a joint venture company should provide its formation agreement. If a joint venture company is awarded the contract, such agreement should be registered in entity’s records to be as a legal agreement).

ITB clause 31-

For Contract Award qualification, all bidders shall provide the following minimum qualification criteria:

- f. Bidders shall demonstrate a level of annual turnover at least equivalent to that stated in the Bid Data Sheet
- g. Contractor experience in executing at least two projects in size and degree of complexity of its bid during the ten years (for reference, 70% of execution of these works should have taken place).
- h. Proposals on obtaining necessary equipments mentioned in BDs in the proper time (whether through purchasing or leasing).
- i. Project manager should have at least five years of experience in similar works in terms of size and nature – at least three years of which should be as project manager.

Liquid assets and/ or net credit facility other than any other contractual obligations excluding advance payments payable pursuant to the contract – sufficient to match or exceed the monthly cash flow of the subject project. This will be evidenced by a statement from a recognized Bank or demonstrated by provision of audited accounts.

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a. CONDITIONS OF CONTRACT

General Conditions of Contract (GCC)

General

1. Definitions

The following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires.

The Republic The Government Entity	Republic of Yemen The Government of the Republic of Yemen Each ministry, corporation, agency, authority, central organization, administrative unit or fully or partially owned public enterprise conducting procumbent or contracting activities.
Employer	Means the person named as first party of the contract with a contractor to execute works constructions or any other entity authorized by the employer to undertake his responsibilities and obligations.
Contractor	The Contractor is a person or corporate body whose Bid to carry out the Works has been accepted by the Employer and will be referred to as second party. This will include contractor's personal representatives and his legal successors.
Engineer	Means MOPW, employer's technical department, consultant/engineering office or any other technical body appointed by the employer to carry out supervision on implementing and maintenance of works of constructions.
Engineer's Representative	Means an engineer assistant or observer appointed from time to time by the engineer to carry out duties mentioned in this provisions.
The Works	The Works are what the Contract requires the Contractor to construct, install, and hand over to the Employer, including permanent or temporary works.
The Contract	Means agreed documents including but not limited to contract agreement, bids, GCC, SCC, specification, BOQ;s and any other exchanged

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The Contract	agreements before signing the contract.
Price	The Contract Price is the price stated in the Letter of Acceptance.
Equipment	Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
Temporary Works	Temporary Works are temporary works designed, constructed, installed, and removed by the contractor that are needed for construction or installation of the works.
Permanent works	Permanent works are works to be implemented and maintained in accordance with agreed contract.
Specification	Specification means the Specification of the Works included in the Bid and any modification or addition made by the engineer during implementation.
Drawings	Drawings means drawings referred to in the contract, specification or its modifications provided or approved by the Project Manager for the execution of the Contract.
Site	The Site is the area and other places where the permanent and temporary works will take place as specified in the Contract. The site will be provided by the employer to execute the contract it includes any other place mentioned by the contract..
The Cost	Means all expenditure properly incurred or to be incurred, whether on or off the site including materials, workers, manufactory, overhead or other charges properly allocable but it does not include any allowance for profit.
Days	Days are calendar days and not work days.; months are calendar months
Approval	Approval means authorised written approval.
Singular and plural	Singular and plural Words importing the singular only also include the plural and vice versa where the context requires.
Headings	Headings The headings in these conditions shall not be deemed part thereof or be taken into consideration in the interpretation.

Engineer and Engineer's Representative

2. **Engineer's Duties and Authority**
The Engineer shall carry out the duties specified in the Contract, or assigned by the Employer. He has the right to issue decision certificates or instructions for works according to the contract. The contractor shall adhere to that and shall respect and implement Engineer's instruction related to contract execution.
3. **Engineer's Representative**
The Engineer's Representative shall be appointed by and be responsible to the Engineer and shall carry out such duties and exercise such authority as may be delegated to him by the Engineer including supervision, monitoring and testing materials and plants related to the works..
The Engineer may from time to time delegate to the Engineer's Representative any of the duties and authorities vested in the Engineer and he may at any time revoke such delegation.
Any communication given by the Engineer's Representative to the Contractor in accordance with such delegation shall have the same effect as though it had been given by the Engineer both on Employer and

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contractor. Provided that:

- (a) If the Contractor questions any communication of the Engineer's Representative to disapprove any work, materials or Plant shall not prejudice the authority of the Engineer to disapprove such work, materials or Plant and to give instructions for the rectification thereof, and
- (b) If the Contractor questions any communication of the Engineer's Representative he may refer the matter to the Engineer who shall confirm, reverse or vary the contents of such communication.

Engineer shall obtain a written approval from the employer to implement the following procedures:-

- a. approving the assignment of any part of works.
- b. Approving additional amount of contract price.
- c. Amending any cost of any contract items.
- d. Approving additional period for work completion.
- e. Issuing variation order for works.

The Engineer shall conduct weekly meeting in the site with the contractor to review notices mentioned in site book and time schedule of execution. Minutes shall be prepared for such meetings to be signed by the Engineer and the contractor.

Assignment and Subcontracting

4. Assignment of Contract

The Contractor shall not assign the contract fully or any part thereof without prior consent of the Employer provided that such assignment shall not exceed %10 of contract value. Assigner and assignee shall be responsible fully on all mistakes or negligence or breach of contract by the assigns except for a charge in favour of the Contractor's bankers of any monies due or to become due under the Contract.

5. Subcontracting

The Contractor shall not subcontract the whole of the Works. The contractor shall not subcontract any part of the Works without the prior consent of the Engineer provided that such subcontracting shall not exceed 30% of contract value unless otherwise stated in the SCC.

Rejection with no reasonable justification is not allowed. Any such consent shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen.

Provided that the Contractor shall not be required to obtain such consent for:

- a) the provision of labour,
- b) the purchase of materials which are in accordance with the standards specified in the Contract, or
- c) the subcontracting of any part of the Works for which

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the Subcontractor is named in the Contract.

Contract Documents

6. Priority of Documents

The set of documents explain each other. In case of ambiguities engineer shall be asked to clarification upon which he shall instruct the contractor. In case of contradiction the documents shall be interpreted in the following order of priority:

- a. Contract Agreement,
- b. Letter of Acceptance,
- c. Contractor's Bid, Correspondences or documents accepted before signing the contract.
- d. SCC.
- e. GCC.
- f. any other document as forming part of the Contract.

7. Language and Law

The language of the Contract is Arabic which is the language of correspondence, payment certificate and submission of works unless otherwise specified in SCC.
Republic of Yemen laws govern the contract.

8. Custody of Drawings

The drawings shall remain in the sole custody of the Engineer, but two copies thereof shall be provided to the Contractor free of charge. The contractor shall make at his own cost any further copies required by him. The contractor shall return to the Engineer all Drawings, provided under the contract upon completion.

9. One Copy of Drawings to be Kept on Site

One copy of the drawings, provided to or supplied by the Contractor as aforesaid, shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Engineer and by any other person authorized by the Engineer in writing.

10. Disruption of Progress

The Contractor shall give notice to the Engineer, whenever planning or execution of the Works is likely to be delayed or disrupted to ask for any further drawing or instruction to avoid such delay or disruption.

11. Delays and Cost of Delay of Drawings

If, by reason of any failure or inability of the Engineer to issue, within a time reasonable in all the circumstances, any drawing or instruction for which notice has been given by the Contractor in accordance with above sub-Clause, the Contractor suffers delay and/or incurs costs then the Engineer shall into consideration this delay in determining any extension of time to which the Contractor is entitled.

13. Supplementary Drawings and Instructions

The Engineer shall have authority to issue to the Contractor, from time to time, such supplementary Drawings and instructions as shall be necessary for the purpose of the proper adequate execution and completion of the Works and the remedying of any defects therein. The Contractor shall carry out and be bound by the same.

The contractor, if it is required by contract to prepare any drawings or other documents, provide the Engineer with two copies of such drawings

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or documents before 15 days of works commencement or from the time of requiring such drawings. The contractor shall make any amendments or additions may required by Engineer to the prepared drawings or documents and provide them to the Engineer before works commencement. Three additional copies of approved drawings or documents will be submitted to the Engineer by the contractor.

Engineer revision of drawing or documents, contractor's provision of any drawings or documents or Engineer approval shall not relieve the contractor from his contractual obligations.

14. Permanent Works Designed by Contractor

Where the Contract expressly provides that part of the Permanent Works shall be designed by the Contractor, he shall submit to the Engineer, for approval, Such drawings, specifications, calculations and other information as shall be necessary to satisfy the Engineer as to the suitability and adequacy of that design.

Notices

15. Notice to Contractor

All certificates, notices or instructions to be given to the Contractor by the Employer or the Engineer under the terms of the Contract shall be sent by post, or left at the Contractor's principle place of business or agent in site or such other address as the Contractor shall nominate for that purpose in the contract.

16. Notice to Employer and Engineer

Any notice to be given to the Employer or to the Engineer under the terms of the Contract shall be sent by post, or left at the respective addresses of employer head quarters or Engineer office mentioned in the contract.

17. Change of Address

Either party may change a nominated address to another address in the country where the Works are being executed by prior notice to the other party, with a copy, to the Engineer and the Engineer may do so by prior notice to both parties.

General Obligations

18. Contractor's General responsibilities

The Contractor shall, with due care and diligence, design (to the extent provided for by the Contract), execute and complete the Works and remedy any defects therein in accordance with the provisions of the Contract. The Contractor shall provide all superintendence, labour materials, Plant, Contractor's Equipment and all other things, required in and for such design, execution, completion and remedying of any defects.

The contractor shall take full responsibility for the adequacy, stability and safety of all Site operations and methods of construction. Provided that the Contractor shall not be responsible for the design or specification of Permanent Works, or for the design or specification of any Temporary Works prepared by the Engineer.

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The contractor may not be allowed to execute or participate in executing defected buildings even if defects resulted from the Site land itself or after Employer permission which may lead to sever defects or general or part demolishing contractor did so, he will be responsible before any one else to the consequences of such acts and Employer and Engineer shall share with the contractor all responsibility if they permit or approve such arrangement.

The contractor shall be liable for all consequences of severe defects, partial or complete demolishing of his constructed buildings or other fixed buildings even if the defects resulted from the land and approved by the Engineer and the Employer (the defects will be considered serious if it jeopardize, the safety of the building).

19. Contract Agreement

The Contractor shall, if called upon so to do, enter into and execute the Contract Agreement, to be prepared and completed, in the form annexed to these Conditions with such modification as may be necessary.

20. Performance Security

The Contractor shall provide to the Employer a Performance Guarantee within 15 days after the receipt of the Letter of Acceptance, of not less than 10% of contract value with unconditional irrevocable bank security or payable cheque.

The performance security shall be valid from the signature of the contract until after 28 of initial take over date and the issuance of initial take over certificate without any restrictions.

21. Inspection of Site

The Employer shall have made available to the Contractor, before the submission by the Contractor of the Tender, such data on hydrological and sub-surface conditions as have been obtained by or on behalf of the Employer from investigations undertaken relevant to the Works but the Contractor shall be responsible for his own interpretation thereof.

The contractor shall be deemed to have inspected and examined the Site and its surroundings and information available in connection therewith and to have satisfied himself before submitting his Tender; as to:

- a. The form and nature thereof, including the sub-surface conditions,
- b. The hydrological and climatic conditions,
- c. The extent and nature of work and materials necessary for the execution and completion of the Works and the remedying of any defects therein, and
- d. The means of access to the Site and the accommodation he may require, and, in general, shall be deemed to have obtained all necessary information, subject as above mentioned, as to risks, contingencies and all other circumstances which may influence or affect his Tender. The Contractor shall be deemed to have based his Tender on the data made available by the Employer and on his own inspection and examination all as aforementioned.

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22. Sufficiency of Tender The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Tender and of the rates and prices stated in the Bill of Quantities, all of which shall cover all his obligations under the Contract and all matters and things necessary for the proper execution and completion of the Works and the remedying of any defects therein.

23. Work to be in Accordance with Contract Unless it is legally or physically impossible, the Contractor shall execute and complete the works and remedy ay defects therein in strict accordance with the contract to the satisfaction of the Engineer. The Contractor shall comply with and adhere strictly to the Engineer’s instructions on any matter, whether mentioned in the Contract or not, touching or concerning the Works. The Contractor shall take instructions only from the Engineer (or his delegate) based jurisdictions stated in clause (2).

24. Programme to be Submitted - The Contractor shall within the time stated in SCC, submit to the Engineer for his consent a programme, and timing for completion, its various stages for the execution of the Works. The Contractor shall also provide in writing for his information a general description of the arrangements of materials, equipments and temporary works and methods which the Contractor proposes to adopt for the execution of the works. The program must be approved by the Engineer and the Contractor will not be allowed to amend the program without the Engineers consent. If at any time it should appear to the Engineer that the actual progress of the Works does not conform to the programme to which consent has been given the Contractor shall produce, at the request of the Engineer, a revised programme showing the modifications to such programme necessary to ensure completion of the Works within the Time for Completion and obtaining Engineer consent. Providing such approved program or its detail by the engineer will not relieve the contractor from any of his contractual duties and responsibilities.

The Contractor shall notify government agencies which may have its building/facilities affected by such program for coordination for the safety of public buildings.

The contractor shall during two weeks after signing the contract, provide the Engineer with detail program of his excution plan to be approved by the Engineer. The program must be realistic and consistence with procurement plan of the materials and equipments. The Engineer shall approve or ask for amendments in one week.

After obtaining Engineer’s approval on the program, the Contractor shall adhere and comply strictly to the arrangements and program tools. The Contractor has no right in any case to amend such program without written consent of the Engineer (Engineer approval must be given unless there is a reasonable justification) except in contingencies when live and buildings safety is under risk then the Contractor may execute the works-as necessary –without prior approval. At the same time, the Engineer may-when deems necessary-ask for amending arrangement order for

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which the contractor should adhere and comply. The Contractor, in addition to the mentioned program- from time to time notify Engineer's representatives with detail of works to be executed in next phase and when required by the Engineer.

25. Contractor's Staff

The Contractor shall provide all necessary Staff during the execution of the Works. The Contractor, or his authorised representative approved by the Engineer, which approval may at any time be withdrawn without contractor rejection, shall give his whole time to the supervision of the Works. Such authorised representative shall receive, on behalf of the Contractor, instructions from the Engineer.

The contractor shall provide all technical and administrative team to execute the works according to his bid and signed contract.

26. Contractor's Employees

The Contractor shall provide on the Site in connection with the execution and completion of the Works and the Remediating of any defects therein the following:-

- a. Such technical assistants as are skilled and experienced in their respective callings and such foremen and leading hands as are competent to give proper superintendence of the Works, and
- b. Such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely fulfilling of the Contractor's obligations under the Contract.

The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the Works any person provided by the Contractor who, in the opinion of the Engineer, misconducts himself, or is incompetent or negligent in the proper performance of his duties, and such person shall not be again allowed upon the Works without the consent of the Engineer.

27. Setting-out

The Contractor shall be responsible for:

- a. The accurate setting-out of the Works in relation to original points, lines and levels of reference given by the Engineer in writing.
- b. The correctness, subject as above mentioned, of the position, levels, dimensions and alignment of all parts of the Works, and
- c. The provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities.

If, at any time during the execution of the Works, any error appears in the position, levels, dimensions or alignment of any part of the Works, the Contractor, on being required so to do by the Engineer, shall at his own cost, rectify such error to the satisfaction of the Engineer or his delegate, unless such error is based on incorrect data supplied in writing by the Engineer or his delegate, in which case the Engineer shall determine an addition to the Contract Price and shall notify the Contractor accordingly after obtaining employer approval.

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The checking of any setting-out or of any line or level by the Engineer shall not in any way relieve the Contractor of his responsibility for the accuracy thereof and the Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things used in setting-out the Works. Original points, lines and levels of reference must be reserved and not to be removed or move without Engineer written approval.

If there are certain levels under water or above water by any measurement for any part thereon, the contractor shall record such levels before commencement of works in this part. These levels shall be recorded according to Engineer's instruction and with his presence.

Two copies of these revised approved levels shall be submitted, after being signed by Engineer's representative and Contractor, to the Engineer and shall be considered as grounds for measurement.

**28. Boreholes and
Exploratory
Excavation**

If, at any time during the execution of the Works, the Engineer requires the Contractor to make boreholes or to carry out exploratory excavation, such requirement shall be the subject of an instruction in accordance with Clause 76, unless in item or a Provisional Sum in respect of such work is included in the Bill of Quantities.

**29. Safety,
Security and
Protection of
the
Environment**

The Contractor shall, throughout the execution and completion of the Works and the remedying of any defects therein:

- a. Have full regard for the safety of all persons entitled to be upon the Site and keep the Site (so far as the same is under his control and the Works (so far as the same are not completed or occupied by the Employer) in an orderly state appropriate to the avoidance of danger to such persons,
- b. Provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, when and where necessary and required by the Engineer or by and duly constituted authority, for the protection of the Works or for the safety and convenience of the public or others, and
- c. Take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of his methods of operation.

The contractor shall adhere to Entity publications in regard to protection of the Environment and shall conform to laws and norms currently in force in the Republic of Yemen.

30. Public Services:

The Contractor may utilize, on his own account, the available public services such as electricity, water, phone, telex in the site or in the neighbourhood after obtaining competent entities approval for works execution. The Contractor, , if he want to utilize such services, shall on

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his own account, arrange for cabling and necessary equipments and the shall adhere strictly to all instructions and guidelines issued by authorities in this regard. If the Contractor failed to utilize such public services, he may, on his own account, arrange for alternative procedures approved by the Engineer to prepare utilizing such services.

31. Care of Works The Contractor shall take full responsibility for the care of the Works and materials and Plant for incorporation therein from the Commencement Date until the date of issue of the initial Taking-Over under clause 67, when the responsibility for the said care shall pass to the Employer, provided that:

If the Engineer issues a Taking-Over Certificate for any Section or part of the Permanent. Works the Contractor shall cease to be liable for the care of that Section or part from the date of issue of the Taking-Over Certificate, then the responsibility for the care of that Section or part shall pass to the Employer, and

The Contractor shall take full responsibility for the care of any outstanding Works and materials and Plant for incorporation therein which he undertakes to finish during the Defects Liability Period until such outstanding Works have been completed.

32. Force Majeure

The Force majeure include the following events:

- a) war, hostilities (whether war be declared or not), invasion, act of foreign enemy for which the contractor or subcontractor has no interest.
- b) Ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof. Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- c) Any operation of the forces of nature against which an experienced Contractor could not reasonably have been expected to take precautions.

33. Insurance of Works and Contractor's Equipment

The Contractor shall, without limiting his or the Employer's obligations and responsibilities, insure:

- a) the Works, together with materials and Plant for incorporation therein, to the full replacement cost (the term "cost" in this context shall include margin profit),
- b) an additional sum of 15 per cent of such replacement cost, to cover any additional costs of incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature, and
- c) the Contractor's Equipments and other things brought onto the Site by the Contractor, for a, sum sufficient to provide for their replacement at the Site.

In case of partial or full damages in Works, in materials or equipments as a result of insured risks, the Contractor shall, as promptly as

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possible, repair such damages. Any recovered amount from insurance will be paid to the Employer who will pay the contractor in trenches according to Engineer recommendation. If insurance amount exceed the cost of repairing defects, the Contractor will receive the balance but vise-versa if insurance recovered amount is less than the cost of repairing the defects in such case the Contractor will bear in his own cost such deficit.

34. Scope of Cover The insurance shall be in the joint names of the Contractor and the Employer and shall cover:

- a. The Employer and the Contractor against all loss or damage from whatsoever cause arising, other than force Majeure from the start of work at the Site until the date of issue of the initial Taking-Over Certificate in respect of the Works or any Section or part thereof as the case may be, and
- b. The Contractor for his liability(Contractors liability Insurance): during the Defects Liability Period for loss or damage arising from a cause occurring prior to the commencement of the Defects Liability Period, and for loss or damage occasioned by the Contractor in the course of any operations carried out by him for the purpose of complying with his obligations.

35. Damage to Persons and Property The Contractor shall, except if and so far as the Contract provides otherwise, indemnify the Employer against all losses and claims in respect of death of or injury to any person, or loss of or damage to any property (other than the Works), which may arise out of or in consequence of the execution and completion of the Works and the remedying of any defects therein, and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, subject to the exceptions defined:

- a. The permanent use or occupation of land by the Works, or any part thereof,
- b. The right of the Employer to execute the Works, or any part thereof, on, over, under, in or through any land,
- c. Damages of or injury to persons or loss of or damage to property resulting from any act or neglect of the Employer, his agents, servants or other contractors, not being employed by the Contractor,

The contractor shall undertake all necessary precautionary arrangements such as illuminating the site, guards, safety arrangements to secure works and public, lights, signs in closed areas, and lighting at night.

36. Third Party Insurance The Contractor shall, before commencement date, insure against liabilities for death of or injury to any person or loss of or damage to any property arising out of the performance of the Contract.

37. Minimum amount of Insurance contract must be signed with insurance company in terms agreed by the Employer and in the joints names of the Employer and the

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insurance Contractor. Insurance amount should not be less than identified amount in SCC. The contractor shall, when required by the Engineer or his representative provide insurance certificate and payment certificate of insurance claim.

Insurance coverage must be comprehensive to include construction equipment, vehicles, used by the contractor or his subcontractors to execute the project. Insurance shall remain valid until the end of Defects Liability Period.

38. Accident or Injury to Workmen The Employer shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the Contractor or any Subcontractor except for damages or losses resulted from any act or refrain to act by the Employer, agents or personnel. . The Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation and against all claims, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereof.

39. Accidental or injury to workmen The Employer shall not be liable for or in respect to any damages or compensation payable to any workman or other person in the Employment of the Contractor or subcontractor, and the Contracts shall compensate the Employer in such cases against all damages, claims, fees or incurred expenditures.

40. Damages to works and monies The contractor shall indemnify for all damages or loss and compensate for all compensation claims, proceedings cost, penalties and other related cost whatever without prejudice of any obligations of applicable laws. The Contractor shall compensate the Employer against all losses, claims, proceedings, fees, compensation whatever its nature resulted from any loss or damage of persons, money in connection to execution of works or repairing defects excluding hired persons. However, the contractor, under this clause, is not liable for compensating the Employer against any damage or losses resulted from:-

- (a) permanent usage of land for works or part thereof, defects of surface, crops,
- (b) Employer's right to execute the works or part thereof, in, on, beneath, through any land.
- (c) Permanent or time utilizing of illumination, vacuum, traffic, water or any other rights to execute the works.
- (d) Damages, losses to persons, monies as a result of any act negligence conducted during execution of works by the Employer, his agents, personnel or subcontractors (other than hired by the contractor) or any claims for compensation, proceeding, fines and all insures costs.
- (e) For the purpose of this clause, site means the area mentioned in the contract and built on plans affected by works execution. The Employer shall indemnify the contractor for all proceedings, compensation incurred cost resulted from events mentioned in this clause.

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- 41. Insurance Against Accident to Workmen** The Contractor shall insure against such liability and shall continue such insurance during the whole of the time that any persons are employed by him on the Works. Provided that, in respect of any persons employed by any Subcontractor, the Contractor's obligations to insure as aforesaid under this Sub-Clause shall be satisfied if the Subcontractor shall have insured against the liability in respect of such persons in such manner that the Employer is indemnified under the policy, but the Contractor shall require such Subcontractor to produce to the Employer, when required, such policy of insurance and the receipt for the payment of the current premium.
- 42. Remedy on Contractor's Failure to Insure** If the Contractor fails to effect and keep in force any of the insurances required under the Contract, then and in any such case the Employer may effect and keep in force any such insurances and in any such case the Employer may effect and keep in force any such insurances and pay any premium as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or to become due to the Contractor or forfeit performance security, or recover the same as a debt due from the Contractor.
- Contractor implementation of insurance's terms, or not covering all risks, shall not relieve the contractor from any of his duties and responsibilities according to the contract.
- The contractor shall notify the Employer and Insurance company about any events or circumstances that required by insurance documents to be notified when occur. The contractor shall be liable for any damages, losses, claims, proceeding, costs incurred as a result of contractor's negligence to respond to above mentioned requirements.
- During insurance documents validity, any received money incurred from such documents shall be paid to the Employer who shall pay it to the contractor according to recommendation of Engineer's representative depending on progress made by the Contractor in repairing any defects or damages as far as such damages, according to Engineer opinion, are necessary to be repaired for adequate and proper execution of works or repairing defects and when recovered money from insurance company is insufficient for above mentioned purposes then the Employer shall be liable for the deficit.
- 43. Notices and fees Payment** The contractor shall carry out communications, sending notices and pay any required fees and taxes to execute the works under applicable laws and based on requests by involved government body which properties or rights may affected by works of the concerned contract.
- 44. Compliance with Statutes, and** The Contractor shall conform in all respects, including by the giving of all notices and the paying of all fees, with the provision of any National or State Statute, Ordinance, or other Law, or any regulation, or bye-law of

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- Regulations** any local or other duly constituted authority in relation to the execution and completion of the Works and the contractor shall protect the Employer against any damages or fines incurred for non-compliance by the contractor to such laws instructions....etc. and if a Government body request the contractor to pay any unforeseeable fees, the contractor shall notify the Engineer to be paid by the Employer.
- 45. Fossils** All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the site shall, be deemed to be the absolute property of the State. The Contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall, immediately upon discovery thereof notify the Engineer.
- 46. Patent Rights** The Contractor shall hold harmless and indemnify the Employer from and against all claims and proceedings for or on account of infringement of any patent rights, design trademark or name or other protected rights in respect of any Contractor's Equipment, materials or Plant used for or in connection with or for incorporation in the Works and from and against all damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, except where such infringement results from compliance with the design or Specification provided by the Engineer. The contractor shall pay all freight fees, confessionnal proceedings, renting fees or compensation if any getting for sands, stones, mud or any other item necessary for the work.
- The Contractor and the Employer shall comply to the confidentiality of all information related to the contract and the works and not to expose such information to any third party. The contractor, subcontractor, material producers, and any other party, may participate in works execution, shall not expose or distribute any bulletin, films, photos, lecturing, or prepare information related to works or neighbour's buildings of the site.
- 47. Interference with Traffic** All operations necessary for the Execution and completion of the Works and the remedying of any defects therein shall, so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with:
- § the convenience of the public, or
 - § the access to, use and occupation of public or private roads and footpaths to or of properties whether in the possession of the Employer or of any other person.
- 48. Avoidance of Damage to Roads** The Contractor shall use every reasonable means to prevent any of the roads or bridge communicating with or on the routes to the Site from being damaged or injured by any traffic of the Contractor or any of his Subcontractors and in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of materials, Plant, Contractor's Equipment or Temporary Works from and to the Site shall be limited, as far as reasonably possible, and so that no unnecessary

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damage or injury may be occasioned to such roads and bridges.

- 49. Heavy Loads** The Contractor shall obtain the consent of competent agency if he wants to transport heavy loads of plants, equipments, materials on public road or bridge and it is likely that such transportation will cause damages in the road or bridge. Transportation process shall be taken place according to applicable laws related to transportation, contractor shall take all precautionary arrangements and notify the Engineer or his representative of load weight, dimension and all details
- 50. Traffic Right and Facilities** The Contractor shall be responsible for all costs and fees related to special and temporary traffic license required to access the Site. The contractor shall prepare on his own cost any additional preparation outside the site necessary for works execution.
- 51. Affecting the Traffic and Neighbour's Property** All procedures required for works execution shall be carried out to the extent required for execution only and avoid harming the safety and comfort ability of the public or hinder access to private property whether in Employer possession or any other person. The contractor shall protect and indemnify the Employer against all claims, proceedings, charges, compensation incurred to contractor responsibility extents.
- 52. Opportunities for Other Contractors** The Contractor shall, in accordance with the requirements of the Engineer, afford all reasonable opportunities for carrying out their work to:
- (a) any other contractors employed by the Employer and their workmen.
 - (b) The workmen of any duly constituted authorities who may be employed in the execution on or near the Site of any work not included in the Contract or of any contract which the Employer may enter into in connection with or ancillary to the Works.
- 53. Contractor to Keep Site Clear** During the execution of the Works the Contractor shall keep the Site reasonably free from all unnecessary obstruction and shall store or dispose of any Contractor's Equipment and surplus materials and clear away and remove from the Site any wreckage, rubbish or Temporary Works no longer required.
- 54. Clearance of Site on Completion** Upon completion, Contractor shall clear away and remove from that part of the Site all Contractor's Equipment, surplus material, rubbish and Temporary Works of every kind, and leave such part of the Site and Works clean.
- Materials and Workmanship**
- 55. Quality of Materials and Workmanship** All materials and workmanship shall be:
- a. of the respective kinds described in the Contract and in accordance with the Engineer's instructions, and
 - b. subjected from time to time to such tests as the Engineer may require at the place of manufacture, fabrication or preparation, or on the Site or at such other place or places as may be specified in the Contract, or at all or any of such places.
- The Contractor shall provide such assistance, labour, facilities, fuels, stores, apparatus and instruments as are normally required for examining, measuring and testing any materials or Plant and shall supply samples of materials, before incorporation in the Works, for testing as may be

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- selected and required by the Engineer.
- 56. Cost of Samples and tests** All samples shall be supplied by the Contractor at his own cost. The cost of making any test shall be borne by the Contractor.
- 57. Cost of Samples** The Contractor shall prepare all samples at his own cost.
- 58. Inspection of Works** The Engineer, and any person authorised by him, shall at all reasonable times have access to the Site and to all workshops and places where materials or Plant are being manufactured, fabricated or prepared for the Works and the Contractor shall afford every facility for and every assistance in obtaining the right to such access.
- 59. Examination of Work before Covering up** No part of the Works shall be covered up or put out of view without the approval of the Engineer and the Contractor shall afford full opportunity for the Engineer to examine and measure any such part of the Works which is about to be covered up or put out of view and to examine foundations before any part of the Works is placed thereon. The Contractor shall give notice to the Engineer whenever any such part of the Works of foundations is or are ready or about to be ready for examination and the Engineer shall, without unreasonable delay, attend for the purpose of examining and measuring such part of the Works or of examining such foundations.
If any such part has been covered up or put out of view, without Engineer consent, the Engineer may ask the contractor to uncover such part for examination and the contractor shall bear all costs incurred.
- 60. Removal of Improper Work, Materials or Plant** The Engineer shall have authority to issue instructions from time to time, for:
(a) The removal from the Site, within such time or times as may be specified in the instruction, of any materials or Plant. Not conform to the contract.
(b) The substitution of proper and suitable materials or Plant, and
(c) The removal and proper re-execution notwithstanding any previous test thereof or in term payment therefore, of any work which, in respect of materials, plant or workmanship.
- 61. Default of Contractor in Compliance** In case of default on the part of the Contractor in carrying out such instruction within the time specified therein or, if none, within a reasonable time, identified by the Employer (if the Engineer have not identify such time), the Employer shall be entitled to employ and pay other persons to carry out the same and all costs consequent thereon or incidental thereto shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.
- 62. Suspension of Work** The Contractor shall, in the written instructions of the Engineer, suspend the progress of the Works or any part thereof for such time and in such manner as the Engineer may consider necessary and shall, during such

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suspension, properly protect and secure the Works or such part thereof so far as is necessary in the opinion of the Engineer. Unless such suspension is:

- a. Otherwise provided in the Contract,
- b. Necessary by reason of some default of or breach of contract by the Contractor or for which he is responsible,
- c. Necessary by reason of climatic conditions on the Site, or
- d. Necessary for the proper execution of the Works or for the Safety of the Works or any part thereof (save to the extent that such necessity arises from any act or default by the Engineer shall apply).

63. Suspension lasting more than 90 Days

If the progress of the Works or any part thereof is suspended on the written instructions of the Engineer and if permission to resume work is not given by the Engineer within a period of 90 days from the date of suspension then, unless such suspension is within paragraph (a), (b), (c) or (d) of above Sub-Clause, the Contractor may give notice to the Engineer requiring permission, within 28 days from the receipt thereof, to proceed with the Works or that part thereof in regard to which progress is suspended. If, within the said time, such permission is not granted, the Contractor may, but is not bound to, elect to treat the suspension, where it affects part only of the Works, as an omission of such part or, where it affects the whole of the Works, treat the suspension as an event of default by the Employer and terminate his employment.

Commencement and Delays

64. Possession of Site

Access as, in accordance with the Contract, is to be provided by the Employer as may be required to enable the Contractor to commence and proceed with the execution of the Works in accordance with the programme and otherwise in accordance with such reasonable proposal as the Contractor shall, by notice to the Engineer with a copy to the Employer, make.

If the Contractor suffers delay and/or incurs costs from failure on the part of the Employer to give possession, the Engineer shall, after due consultation with the Employer and the Contractor, determine any extension of time to which the Contractor is entitled.

65. Time for Completion

The whole of the Works and, if applicable, any Section required to be completed within a particular time as stated in the Appendix to Tender, shall be completed, within the time stated in the Appendix to Tender for the whole of the Works or the Section (as the case may be), calculated from the Commencement date, or such extended time as may be allowed under Clause 66.

66. Extension of Time for Completion

In the event of the amount or nature of extra or additional work, any case of delay referred to in these Conditions, exceptionally adverse climatic conditions, any delay, impediment or prevention by the Employer, or other special circumstances which may occur, other than through a default

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of or breach of contract by the Contractor or for which he is responsible, being such as fairly to entitle the Contractor to an extension of the Time for Completion of the Works. The contractor shall notify the Engineer in writing indicating reasons for extension request within 28 days after such event has first arisen and provide details of any extension he deems necessary. The engineer shall investigate the situation and determine the extension period and forward it to the employer for approval.

67. Restriction on Working Hours

None of the Works shall, save as hereinafter provided, be carried on during the night or on locally recognised days of rest without the consent of the Engineer, except when work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer. Provided that the provisions of this Clause shall not be applicable in the case of any work which it is customary to carry out by multiple shifts.

68. Rate of Progress

If for any reason, the rate of progress of the Works or any Section is at any time, in the opinion of the Engineer, too slow to comply with the Time for Completion, the Engineer shall so notify the Contractor who shall thereupon take such steps as are necessary, subject to the consent of the Engineer, to expedite progress so as to comply with the Time for Completion. The Contractor shall not be entitled to any additional payment for taking such steps. If, as a result of any notice given by the Engineer under this Clause, the Contractor considers that it is necessary to do any work at night or on locally recognised days of rest, he shall not refuse such request without any reasonable justification. Provided that if any steps taken by the Contractor in meeting his obligations under this Clause, involve the Employer in additional supervision costs, such costs shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

69. Liquidated Damages

If the Contractor fails to comply with the Time of Completion in accordance with Clause 65, then the Contractor shall pay to the Employer for such default for every day or part of a day which shall elapse between the relevant Time of Completion and the date stated in clause 63. The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due or to become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract.

If the contractor delay in performing his obligation within the set time in the contract, a liquidated damages will be calculated as the following:

- 1% of items subject to liquidated damages in first week or part of it.
- 1.5% of items subject to liquidated damages in second week or part of it.
- 2% of items subject to liquidated damages in the third week or part of it.

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3% of items subject to liquidated damages in the fourth week or part of it.

If the Contractor delays beyond the fourth week liquidated damages of 4% for each month or part of it will be calculated taking into consideration that total of liquidated damages should not exceed 15% of contract cost and delay period should not exceed three months as a maximum.

70. Reduction of Liquidated Damages

If, before the Time for Completion of the whole of the Works or, any Section, and approved according to clause 72, and used by the Employer the liquidated damages for delay in completion of the remainder of the Works or of that Section shall, for any period of delay after the date stated in such Taking-Over Certificate, be reduced in the proportion which the value of the part so certified bears to the value of the whole of the Works or Section, as applicable.

71. Initial Taking-Over Certificate

When the whole of the Works have been substantially completed and have satisfactorily passed any Tests on Completion prescribed by the Contract, the Contractor may give a notice to that effect to the Engineer to request for initial take over certificate, with a copy to the Employer.

The Engineer shall within 14 days do the following:

Ensure that the works has been completed according to agreed specifications, drawings and then notify the Employer to create the inspection committee before the end of the specified period.

If discovered that the works are not complete, give instructions in writing to the Contractor specifying all the work which, in the Engineer's opinion, is required to be done by the Contractor before issue of such Certificate.

Following the satisfactory completion of the required works procedures in clauses (1) The Contractor shall be entitled to receive Taking Over Certificate during 28 days after satisfactory completion of works.

72. Taking Over of Sections or Parts

Similarly, in accordance with the procedure set out in Sub-Clause 71, the Contractor may request and the taking over committee shall issue a Taking-Over Certificate in respect of:

- a) any Section in respect of which a separate Time for Completion is provided in the contract.
- b) any substantial part of the Permanent Works which has been both completed to the satisfaction of the Engineer and, otherwise than as provided for in the Contract, occupied or used by the Employer, or
- c) If any part of the Permanent Works has been substantially completed and has satisfactory passed the Tests on Completion prescribed by the Contract, the Taking Over Committee may issue a Taking-Over Certificate in respect of that part of the Permanent Works before completion of the whole of the Works.
- d) Provided that a Taking-Over Certificate given in respect of any Section or part of the Permanent Works before completion of the whole of the Works shall not be deemed to certify completion of any ground or surfaces requiring reinstatement, unless such Taking-Over Certificate shall expressly so state.

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Defects Liability

- 73. Defects Liability Period** In these Conditions the expression “Defects Liability Period” shall mean the defects liability period named in the contract which is a calendar year calculated from taking over date for works accepted by taking over committee without any reservations unless otherwise SCC stated longer period. If taking over committee issue more than one certificate, defect liability period shall be calculated starting from issuing taking over certificate for each part thereof.
- 74, Completion of Outstanding Work and Remedying Defects** To the Intent that the Works shall, at or as soon as practicable after the expiration of the Defects Liability Period, be delivered to the Employer in the condition required by the Contract, fair wear and tear excepted, to the Satisfaction of the Engineer, the Contractor shall:
(a) execute all such work of amendment, reconstruction, and remedying defects shrinkages or other faults as the Engineer may, during the Defects Liability Period or within 14 days after its expiration, as a result of an inspection made by or on behalf of the Engineer prior to its expiration clause, instruct the Contractor to execute. Taking Over Committee issue final Take Over Certificate without reservations.
- 75. Cost of Remedying Defects** All work referred to in (above sub-clause) shall be executed by the Contractor at his own cost if the necessity thereof is, in the opinion of the Engineer, due to:
- the use of materials, Plant or workmanship not in accordance with the Contract,
 - where the Contractor is responsible for the design of part of the Permanent works, any fault in such design, or the neglect or failure on the part of the Contractor to comply with any obligation, expressed or implied, on the Contractor’s part under the Contract.
- 76. Contractor’s Failure to Carry Out Instructions** In case of default on the part of the Contractor in carrying out such instruction within a reasonable time, the Employer shall be entitled to employ and pay other persons to carry out the same and all costs consequent thereon recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor in the concerned Entity or other Entity or Administrative unit.
- 77. Other Obligations** The Contractor shall carry out the Following:
- (a) Supervising, inspecting, following up and controlling all works stages including that works which has to be carried out by the subcontractors.
 - (b) Obtaining all necessary licences and approval in regard to executing the works.
 - (c) Clean up all surplus materials, equipments and plant upon finalizing site works after obtaining Employer approval and necessary licenses to clear up such surplus materials, equipments and plant in side Yemen.
 - (d) Comply to regulations and instruction for protecting the environment, and containing pollution during execution of works.

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78. Contractor to Search If any defect, shrinkage or other fault in the Works appears at any time prior to the end of the Defects Liability Period, the Engineer may instruct the Contractor, with copy to the Employer, to search under the directions of the Engineer for the cause thereof. If such defect, shrinkage or other fault is one for which the Contractor is liable, the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and he shall in such case remedy such defect, shrinkage or other fault at his own cost in accordance with the provisions of Clause 75.

Alterations, Additions and Omissions

79. Variations The Engineer shall make any variation of the form, quality or quantity of the Works or any part thereof that may, in his opinion, be necessary and for that purpose, or if for any other reason it shall, in his opinion, be appropriate, he shall have the authority to instruct the Contractor to do and the Contractor shall do any of the following:

- (a) Change the levels, lines, position and dimensions of any part of the Works,
- (b) Omit any such work.
- (c) Execute additional work of any kind necessary for the completion of the Works,
- (d) Executing any of above mentioned works shall not effect contract effectiveness provided that such variations shall not exceed %10 of item quantity, similar to contracted items with the same prices after obtaining Tender Committee approval.

Variation shall be carried out by the Contractor after receipt of the written instruction of the Engineer. Variations cost shall be approved by the Employer and competent Tender Committee before being executed.

80. Variations Orders must be in Writing The Contractor may not be allowed to carry out any variations without written instruction of the Engineer thereof.

81. Day work The Engineer may, if in his opinion it is necessary or desirable, issue an instruction that any varied work shall be executed on a day work basis. The Contractor shall then be paid for such varied work under the terms set out in the day work schedule included in the Contract and at the rates and prices affixed thereto by him in the Contract.

The Contractor shall furnish to the Engineer such receipts or other vouchers as may be necessary to prove the amounts paid and, before ordering materials, shall submit to the Engineer quotations for the same for his approval.

In respect of such of the Works executed on a day work basis, the Contractor shall, during the continuance of such work, deliver each day to the Engineer an exact list in duplicate of the names, occupation and time of all workmen employed on such work and a statement, also in duplicate, showing the description and quantity of all materials and contractor's Equipment used thereon or therefore. One copy of each list and statement will, if correct, or when agreed, be signed by the Engineer and returned to

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the Contractor.

At the end of each month the Contractor shall deliver to the Engineer a priced statement of the labour, materials and Contractor's Equipment, except as aforesaid, used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered.

Equipment, Temporary Work and Materials.

- 82. Equipment, Exclusive Use for the Works** All Equipment, Temporary Works and materials provided by the Contractor shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Works and the Contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the Site to another, without the consent of the Engineer, Rejection is not allowed unless there is reasonable justification. Providing equipments, and materials, or other things mentioned above to the site does not mean that it is acceptable or approved by the Engineer to be used in Permanent Works or prejudice the right of the Engineer to reject any materials or equipments at any time pursuant to the contract.
- 83. Removal of Equipment after Works Completion** The contractor shall remove all equipments, materials, plant, temporary works and all surplus materials from the site after the approval of the Engineer.
- 84. Employer not Liable for Damage** The Employer shall not at any time be liable, for the loss of or damage to any of the said Contractor's Equipment, Materials or Temporary Works.

Measurement

- 85. Quantities** The quantities set out in the Bill of Quantities are the estimated quantities for the Works, and they are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfilment of his obligations under the Contract. In case of lump sum contract such quantities will be deemed actual and final.
- 86. Work to be Measured** The Engineer, shall except as otherwise stated, ascertain and determine by measurement the value of the Works in accordance with the Contract. The Engineer shall, when he requires any part of the Works to be measured, give reasonable notice to the Contractor's authorised agent, who shall attend and supply all particulars required by the Engineer. Should the Contractor not attend, or neglect or omit to send such representative, then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of such part of the Works. For the purpose of measuring such Permanent Works as are to be measured by records and drawings, the Engineer shall prepare records and drawings as the work proceeds on monthly basis and the Contractor, as

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and when called upon to do so in writing, shall, within 14 days, attend to examine and agree such records and drawings with the Engineer and shall sign the same when to agreed. If the Contractor does not attend to examine and agree such records and drawings, they shall be taken to be correct. If, after examination of such records and drawings, the Contractor does not agree the same or does not sign the same as agreed, they shall nevertheless be taken to be correct, unless the Contractor, within 14 days of such examination, lodges with the Engineer notice of the respects in which such records and drawings are claimed by him to be incorrect. In case of dispute between Engineer representative and the contractor on above measurement Engineer opinion will be taken and his decision will be final.

87. Method of Measurement The Works shall be measured net, notwithstanding any general or local custom.

Subcontractors

88. Definition of Subcontractors All specialists, merchants, tradesmen and others executing any work or supplying any goods, materials, plant or services, who may have been or be nominated or selected or approved by the Employer or the Engineer.

Any subcontractor/s shall be responsible together with the contractor for all contractual obligations and responsibilities for works provided, execution of the services and other contractual obligation.

89. Subcontractors Objection The Contractor shall not be required by the Employer or the Engineer, or be deemed to be under any obligation, to employ and Subcontractor nominated by them.

90. Design Requirements to be Expressly Stated If in connection with any Provisional Sum the services to be provided include any matter of design or specification of any part of the Permanent Works or of any Contract such commitment shall be included in any nominated Subcontract. The nominated Subcontract shall specify that the nominated Subcontractor providing such services will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities.

Certificates and Payment

91. Payment Certificate If the purchaser has the capacity to pay advance payment, state advance payment rate which shall not exceed 20% of contract value according to unconditional bank guarantee at the same rate and according to the attached format in section 10 (Contract forms) of this SBD provided that the advance payment should be off-set before 80% of contract validity is elapsed.

For Measured works Unless the contract states other provisions, the certificate of payment shall be paid in monthly basis pursuant to SCC.

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Certificate of payment shall not be less than 5% of the total contract value..

The contractor shall submit to the Engineer at the end of each month a statement in such a form approved by the Employer which include reference number, necessary information.

The statement shall be typed, and state estimated value of works stated in the contract and part completed at the end of said month if the value of completed work justify issuing the certificate of payment-and when the value match the value stated in SCC. Certificate of payment shall be made in accumulative basis for quantities and monies for the contractor based on issued certificate by the Engineer identifying due monies to the contractor based on estimated cost for completed works until the end of the month. Advance payment shall be off-set completely before the elapse of 80% of contract period. 15% of contract value shall be deducted as retention money pursuant to contract provisions.

92. Payment of Retention Money

15% of the value of completed works shall be deducted by the Employer and used as retention money. Upon initial Taking Over 10% of the value of completed works shall be retained until the end of defect liability period.

93. Correction of Certificates

The Engineer may by any Interim Payment Certificate make any correction or modification in any previous Interim payment Certificate which shall have been issued by him and shall have authority, if any work is not being carried out to his satisfaction, to omit or reduce the value of such work in any Interim Payment Certificate.

The Engineer shall calculate an interest on delayed payments for the account of the contractor in the following cases :

- § lack of legal justification for delay in payment.
- § No shortages in documents or data that could lead to the delay in payment.

Calculating an interest on delayed payments as a result of events in clauses (a) – (b) above after 90 days of receiving payment certificate and satisfactory completion report to the Engineer after the issuance of take over decree by the committee provided that the contractor hasn't in any way interfered directly or indirectly in the process.

The Employer shall calculate an interest on delayed payments using the following formula:

Cost of delayed items X % 15 X delay period

365 days

94. Approval only by Defects Liability Certificate

Only the Defects Liability Certificate to be mentioned thereafter shall be deemed to constitute approval of the Works according to the contract.

95. Defects

The Contract shall not be considered as completed until a Defects

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**Liability
Certificate**

Liability Certificate shall have been signed by the Taking Over Committee and delivered to the Employer, with a copy to the Contractor, stating the date on which the Contractor shall have completed his obligations to execute and complete the Works and remedy any defects therein to the Engineer's satisfaction. The Defects Liability Certificate shall be given by the Taking Over Committee within 28 days after the expiration of the Defects Liability Period, or other defects liability periods not less than one year unless otherwise SCC stated longer period for different section or part if submitted in stages or expiration of works completion period. Regardless of any delivery of any part or complete or part usage of the Employer to the completed part.

**96. Expiration of
Employer
responsibility**

The Employer shall not be deemed responsible against the contractor for any consequence of the contract or related to the execution of work unless the contractor submits a written request before the issuance of defect liability certificate.

Procedures and Authorities

**97 Default of
Contractor**

If the Contractor is deemed by law unable to pay his debts as they fall due, or enters into voluntary or involuntary bankruptcy, liquidation or dissolution (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or becomes insolvent, or makes an arrangement with, or assignment in favour of, his creditors, or agrees to carry out the Contract under a committee of inspection of his creditors or court verity to seize his property or if the Engineer certifies to the Employer, with a copy to the Contractor, that, in his opinion, the Contractor:

- (a) has repudiated the Contract,
- (b) without reasonable excuse has failed to proceed with the Works, or any Section thereof, within 28 days after receiving written notice.
- (c) Has failed to comply with a notice issued by the Engineer to clear the site from material or demolish or reconstructing any part rejected by the Engineer with in 28 days after having received it.
- (d) Despite previous warning from the Engineer, in writing, is otherwise persistently or flagrantly neglecting to comply with any of his obligations under the Contract.
- (e) Despite Engineer rejection the contractor assigned any part of the contract to subcontractors which harm the works.

Then the employer may, after giving 14 days' notice to the Contractor, enter upon the site and the Works and terminate the employment of the contractor without thereby recourse to court or releasing the Contractor from any of his obligations or liabilities under the Contract.; or affecting the rights and authorities conferred on the Employer or the Engineer by the Contract, or may employ any other contractor to complete the Works. The Employer or such other contractor may use for such completion so much of the Contractor's Equipment, Temporary Works and Materials as he or they may think proper.

98. Valuation at

The Engineer shall, as soon as may be practicable after any such entry

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Date of Termination and termination by the Employer and fix and determine exparte certify and identify completed works deemed by any method proper by the Engineer for revision to certify due money to the contractor for completed works by the contract and value of remaining materials site.

99.Payment after Termination The Employer shall not be liable to pay to the Contractor any further amount (including damages) in respect of the Contract until the expiration of the Defects Liability Period and there after until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any) and all other expenses incurred by the Employer have been ascertained and the amount thereof certified by the Engineer. The Contractor shall then be entitled to receive only such sum (if any) as the Engineer may certify would have been payable to him upon due completion by him after deducting the said amount. If such amount exceeds the sum which would have been payable to the Contractor on due completion by him, then the Contractor shall, upon demand, pay to the Employer the amount of such excess and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly. The Employer has the right to recover such sum from due money to the contractor at Entity or at any other Government or administrative entity.

100. Urgent Remedial Work If, by reason of any accident, or failure, or other event occurring to, in, or in connection with the Works, or any part thereof, either during the execution of the Works, or during the Defects Liability Period, any remedial or other work is, in the opinion of the Engineer, urgently necessary for the safety of the Works and the Contractor is unable or unwilling at once to do such work, the Employer shall be entitled to employ and pay other persons to carry out such work as the Engineer may consider necessary. If the work or repair so done by the Employer is work which, in the opinion of the Engineer, the Contractor was liable to do at his own cost under the Contract, then all costs consequent thereon or incidental thereto shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Provided that the Engineer shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof.

Force Majeure

101. No Liability for War and Special Risks The Contractor shall not be subject to have his performance security forfeited, pay compensation or terminating the contract because of default to the extend that such delay in execution or failure to fulfil his obligations are because of force majeure. “Force Majeure” means any unforeseeable events out of contractor control and not resulted from his neglect or mistake, such as war, revolution, epidemic, quarantine...etc. in case of occurrence of force majeure events, the contractor shall notify the Employer in writing of such events and causes. The contractor shall

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continue in executing his obligations to the practical extent unless, otherwise the Employer instructed him. The contractor shall pay all his efforts to use any reasonable alternatives for execution to avoid considering the situation as Force Majeure.

**102.Damage to
Works Force
Majeure**

If the Works or any materials or Plant on or near or in transit to the Site, or any of the Contractor's Equipment, sustain destruction or damage by reason of Force Majeure, the Contractor shall be entitled to payment in accordance with the contract for:

- a) any permanent Works duly executed and for any materials or Plant so destroyed or damaged, or as may be necessary for the completion of the Works, its actual cost.
- b) Replacing or rectifying such materials or Contractor's Equipment, the Engineer shall determine an addition to the Contract Price.
- c) Due amount estimated by the Engineer to meet actual expenses paid by the contractor to execute the works completely provided that such costs were not covered under previous payments from the Employer or compensated to the contractor from any other source.
- d) Any due compensations to the contractor pursuant to above clauses. The Employer has the right to recover any due payments to him from the contractor paid in advance.

**103.Payment if
Contract
Terminated**

If the Contract is terminated as aforesaid, the Contractor shall be paid by the Employer, insofar as such amounts or items have not already been covered by payments on account made to the Contractor, for all work executed prior to the date of termination at the rates and prices provided in the Contract and in addition:-

- (a) the amounts payable in respect of any preliminary items referred to in the Bill of Quantities, so far as the work or service comprised therein has been carried out or performed, and a proper proportion of any such items which have been partially carried out or performed;
- (b) the cost of materials, Plant or goods reasonably ordered for the Works which have been delivered to the Contractor.
- (c) Any additional sum payable under the provisions of Sub-Clause 99.
- (d) The reasonable cost of repatriation of all the Contractor's staff and workmen employed on or in connection with the Works at the time of such termination. Provided that against any payment due from the Employer under this Sub-Clause, the Employer shall be entitled to be credited with any outstanding balances due from the Contractor for advances in respect of Contractor's Equipment, materials and Plant and any other sums which, at the date of termination, were recoverable by the Employer from the Contractor under the terms of the Contract. Any sums payable under this Sub-Clause shall, after due consultation with the Employer and the Contractor, be determined by the Engineer who shall notify the Contractor accordingly, with a copy to the Employer.

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Frustration

104. Payment in Event of Frustration

If war or any circumstance outside the control of both parties arises after the signature of the contract which renders it impossible or unlawful for either or both parties to fulfil his or their contractual obligations, or under the law governing the Contract the parties are released from further performance, then the parties shall be discharged from the Contract, and the Employer shall pay the contractor his due sums against completed works.

Settlement of Disputes

105. Amicable Solution and Arbitration

If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of, the Contractor or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after repudiation or other termination of the Contract, the matter in dispute shall, in the first place, be referred in writing to the Engineer, with a copy to the other party. No later than the 90 days after the day on which he received such reference the Engineer shall give notice of his decision to the Employer and the Contractor. Such decision shall be final and binding upon the Employer and the contractors.

The contractor shall continue in executing his obligations with due diligences even if he or the Employer has intention to refer the case to the Arbitration mentioned below.

If either the Employer or the Contractor be dissatisfied with any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the 90 day after the day on which received the reference, then either the Employer or the Contractor may, on or before the 90 day refer the case to Arbitration.

If the Engineer has given notice of his decision as to a matter in dispute to the Employer and the Contractor and no notice of intention to commence arbitration as to such dispute has been given by either the Employer or the Contractor on or before the 90 day after the day on which the parties received notice as to such decision from the Engineer, the said decision shall become final and binding upon the Employer and the Contractor.

The contractor shall be invited to conduct official meeting during six days of receiving the complaint to discuss the issues of disputes and attempt to reach amicable solution acceptable to both parties.

If no amicable solution is reached and discussion held under the chairmanship of head of entity, either party may consider referring the case to arbitration by using arbitration and conciliation services pursuant to the contract after obtaining Tender Committee approval.

All disputes for which Engineer's decision was not final and binding, shall be eventually settled according to arbitration regulations. Arbitration

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procedures shall take place by one or more arbitrator to be employed for the case. The said arbitrator(s) shall have the full power to open up, review, the Engineer decisions and valuations. The arbitrator has the right to conduct hearing session with witnesses including the Engineer. Arbitrators decision shall be final and binding upon both parties.

Default of Employer

106. Default of Employer

In the event of the Employer:

- (a) failing to pay to the Contractor the amount due under any certificate of the Engineer within 90 days after being over due, subject to any deduction that the Employer is entitled to make under the Contract.
- (b) Interfering with or obstructing or refusing any required approval to the issue of any such certificate approved by the Engineer.
- (c) Becoming bankrupt or, being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation, or
- (d) Giving notice to the Contractor that for unforeseen economic reasons it is impossible for him to continue to meet his contractual obligations, the Contractor shall be entitled to terminate his employment under the Contract by giving notice to the Employer, with a copy to the Engineer. Such termination shall take effect 90 days after the giving of the notice.

Upon the expiry of the 90 days notice referred to, the contractor shall, notwithstanding the provisions of Clause 74, with all reasonable despatch, remove from the Site all Contractor's Equipment brought by him thereon.

107 Payment on Termination

In the event of such termination the Employer shall be under the same obligations to the Contractor in regard to payment as if the Contract had been terminated under the provision of Clause 98.

Changes in Cost as a result of amending Legislation

108. Amendments in Legislation

If after the expires of date submission of tenders for the Contract there occur in the country

And In case if the Government is responsible for increasing or decreasing materials or services prices related to construction of works such of taxes, fees, petroleum products for local consumption, the remaining part of the contract shall be amended from the date of impact provided that such changes shall not exceed or be less than 20% of contract value. There amendments shall not include any delay works.

General Rules

109. Project Construction Guarantee

The Contractor, shall guarantee the employer against any defects, partial or full demolish of constructed buildings under the contract if even such defects or demolish is resulted from

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a defect in the land itself. Such defect shall be deemed severe when it threaten the safety and solidity of the building. The guarantee shall last for more than 10 years a period during which the building safety will be reviewed. If there is no agreement upon which building safety period shall be applied, 10 years shall be applicable starting from works delivery to the employer according to issued final Take Over minutes with no reservations.

110. Using Explosives

The contractor shall comply with all precautionary arrangements, Engineer's instructions and all laws issued by competent entity in relation to using, transporting and storing explosives in executing the contract. This provision is applied on all inflammable materials which may accompanied by dangerous consequences during usage, transport and storage thereof.

The contractor shall seek all necessary licenses, carry out all communication with various relevant authorities before conducting explosive works. The Contractor shall comply with all official instructions issued in this regard. The contractor shall notify the Engineer or his representative by all arrangements and procedures in regard to storing, transporting and conducting explosive works, and such notification shall not relieve the Contractor from any of his responsibility and liability pursuant to laws, regulations, rules related to explosives.

111. Income Tax and Fees

The contractor and his subcontractor (s) shall be liable to all tax laws, regulations and instructions in regard to levied taxes on their activities and personnel during project execution and shall pay such taxes to tax authority or its branches.

112. Bribery and Corruption

Without prejudice Employer right to impose liquidated damages pursuant to the contract or any other right against the contractor, the appointed committee has the right to terminate the contract and forfeit performance security, if it is proved that the Contractor practiced any fraudulent, corruption action, offer by himself or other person directly or indirectly a bribe to induce any official staff to collude with the Contractor, in this case the Employer shall carry out the following:-

- Release the Contractor from the work.
- Review the completed works, issue completion report and resulted defects.
- Determine the cost of completed, supplied works and outstanding/unfinished works, identify cost of damages, suspension cost, cost of executing unfinished works and make complete calculation there upon.

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- Calculate all costs including damages and deduct such sum from monies due or to become due to the Contractor with the entity or other government entity/ administrative unit.
- Report to MOPW and MOF thereon.
- Relevant entity shall review all executed works by the same Contractor in the Entity or other Administrative Unit.

Cease dealing with contractor for one year if such default is repeated by the Contractor. MOPW shall suspend all contractor's activities, and withdraw his professional license.

113.Israli Boycott

The Contractor and all his personnel, shall refrain from dealing with Israeli including importing directly or indirectly of construction materials. If the Employer discover at any time during contract validity that the Contractor is breaching the provision of this clause, then the Employer has the right to terminate the contract and claim any compensation for losses may incurs as a result of such termination or breach. In such case, the Employer has the right to forfeit all contractor's due sums, assets, Materials and Temporary Works to execute, through any other appointed person, the unfinished works and make the final settlement upon completion.

114. Confidentiality of Information

Potential bidders upon purchasing bidding documents and Contractors during execution shall maintain the principle of confidentiality of information and prevent publishing any bidding document in any technical or commercial bulletin without prior written consent of the Employer. The contractor/ bidder has no right to use bidding documents for any other project or other purpose. The Contractor has no right to expose, without Employer consent, or unless otherwise stated in the SCC the context of the contract, its provisions, specifications, draws, plans or information provided by the Employer or his representative in this regard to any person other than contractor's staff during executing the works. The Contractor has no right, without prior written approval of the Employer, to use any document or information mentioned in bidding document to purposes other than executing the contract.

115. Termination of Contract for the Interest of Employer

If the Employer discover that , before completing the contracted works, uncontrolled events for both parties or circumstances raised with which the Employer believe that contract execution is not serving public interest, the Employer has the right, upon notification to the Contractor, to terminate the contract partially or completely. Upon receiving such notification, the Contractor shall suspend the work according to Employer order. Contractor due monies shall be settled for completed works or losses incurred by termination pursuant to the contract.

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**- SPECIAL CONDITITIN OF CONTRACT
Special Conditions of Contract (SCC)**

Name of Employer :- Yemen Petroleum Company (Y.P.C) .
Project name :- Renewal of Oil C.B.M Terminal
Tender number :- MK-01-YPC
Address of Employer :- Republic of Yemen .
City :- Sana'a .
District :- AL-wahdah .
Street :- 60 Road in Front of Faj Attan Street .
Building:- Y.P.C Head Office .
Phone :- 00967-1-443434.
Fax :- 00967-1-447690 .
E-mail :-
P.O.Box :-178 Sana'a

1 - Project Site :- Arabian see –Khalf oil installation –Muckalla -Hadramout.

GCC Clause 2 – Engineers name , responsibilities and Jurisdiction

Y.P.C Technical staff nominated by Technical &-Projects Department .

The Engineer shall carry out the supervision of all work activity and duties specified in the Contract, . He has the right to verification material ,work and worker quality certificates works designed by the Contractor, he shall submit to the Engineer, for approval, Such drawings, specifications, calculations and other information as shall be necessary to satisfy the Engineer as to the suitability and adequacy of that design or instructions for works according to the contract. The contractor shall adhere to that and shall respect and implement Engineer's instruction related to contract execution

GCC Clause 5-Sub-Contractor the contract shall not be assigned completed to sub-Contractor and it is allowed to subcontract only part thereof provided that the sub-Contractor has met all qualification terms and approved by the purchaser

GCC Clause 7 Language and law
contract language is "English"

GCC Clause 14 Notices of contractors :- all written notices (correspondences) should be addressed to addresses mentioned for the Contractor which will be filled before signing the contract. The correctness of such data will be the responsibility of the contractor.

Name:.
Location:.....
PhoneMobile.....
Fax:.....
P.O.Box.....

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GCC Clause 15 Notices of the employer /Engineer :-all written notices (correspondences) should be addressed to addresses mentioned for the employer which will be filled before signing the contract. The correctness of such data will be the responsibility of the employer

Notices to the Employer/Engineer

Name: Technical & projects department

Location: Y.P.C head office

Phone 00967-1-447698.....Mobile 00967-711933500

Fax:00967-1-443426. 777778046

P.O.Box...178 Sana'a.

GCC clause 23-1 Programme :- The Contractor shall within the time stated in SCC, submit to the Engineer for his consent a programme, and timing for completion, its various stages for the execution of the Works. The Contractor shall also provide in writing for his information a general description of the arrangements of materials, equipments and temporary works and methods which the Contractor proposes to adopt for the execution of the works.

-Completion period time:- eight(8) months

GCC clause 37 - Insurance values.....

GCC clause 64- Possession Period of site:- Access as, in accordance with the Contract, is to be provided by the Employer as may be required to enable the Contractor to commence and proceed with the execution of the Works in accordance with the programme and otherwise in accordance with such reasonable proposal as the Contractor shall, by notice to the Engineer with a copy to the Employer, make.

If the Contractor suffers delay and/or incurs costs from failure on the part of the Employer to give possession, the Engineer shall, after due consultation with the Employer and the Contractor, determine any extension of time to which the Contractor is entitled.

GCC clause 73. Defects Liability Period :- one year calculated from taking over date for works accepted by taking over committee without any reservations .

GCC clause 91 Advance payment :- % 20

Payment certificate shall be paid in monthly according of work executed .BOQs. Certificate of payment shall not be less than 5% of the total contract value..

The contractor shall submit to the Engineer at the end of each month a statement in such a form approved by the Employer which include reference number, necessary information.

The statement shall be typed, and state estimated value of works stated in the contract and part completed at the end of said month if the value of completed work justify issuing the certificate of payment-. Certificate of payment shall be made in accumulative basis for quantities and monies for the contractor based on issued certificate by the Engineer identifying due monies to the contractor based on estimated cost for completed works until the end of the month. Advance payment shall be off-set completely before the elapse of 80% of contract period. 15% of contract value shall be deducted as retention money pursuant to contract provisions

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GCC clause 95 Defects Liability Period :-The Contract shall not be considered as completed until a Defects Liability Certificate shall have been signed by the Taking Over Committee and delivered to the Employer, with a copy to the Contractor, stating the date on which the Contractor shall have completed his obligations to execute and complete the Works and remedy any defects therein to the Engineer’s satisfaction. The Defects Liability Certificate shall be given by the Taking Over Committee within 28 days after the expiration of the Defects Liability Period, or other defects liability periods not less than one year .

GCC clause 114 Employer consent regarding confidential information:- Potential bidders upon purchasing bidding documents and Contractors during execution shall maintain the principle of confidentiality of information and prevent publishing any bidding document in any technical or commercial bulletin without prior written consent of the Employer. The contractor/ bidder has no right to use bidding documents for any other project or other purpose. The Contractor has no right to expose, without Employer consent,

Address: (Data below shall be filled by successful bidder before contract signature).

SCC: Name and Address of Employer

Purchaser Name: -----
Governorate: -----
City: -----
Street: -----
Building Number:-----
Phone: -----
Fax: -----
E-Mail: -----
Postal Box: -----

SCC: Name and Address of Contractor

Contractor Name:-----
Governorate: -----
City: -----
Street: -----
Building Number:-----
Phone: -----
Fax: -----
E-Mail: -----
Postal Box: -----

Signature of Employer

Signature of Contractor

Date

Date

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QUALIFICATION DATA

Bidder's Capacity to execute the works

31.3 (c) Total Value of executed works during the last three full financial years
.(Contracts must be at least 70% complete)

The contractor shall list the details of executed projects during the last 3 (three)
full financial years

Name of project	Employer	Consultant supervising	Contract value	Execution period	Date of take Over

We, hereby, the undersigned, confirmed that aforesaid information is true, and we bear responsibility for wrong or misleading data mentioned above for which the Employer has the right to reject our bid (the Contractor shall attach all financial statement along with Certificated Public Accountant report for the last five years).

Contractors Name.....

Signature:.....

Date: / /2007.

Stamp

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Qualification Data
Bidder's Experience in Similar Works

31.3 (d) Experience of similar works in terms of nature and size for each of the last 5 full financial years together with details of ongoing projects, current contractual obligations, names and contact detail of Employers to refer for verifying information.

Name of project	Employer details	Type of Work	Contract value	Execution period	Date of take Over

We, hereby, the undersigned, confirmed that aforesaid information is true, and we bear responsibility for wrong or misleading data mentioned above for which the Employer has the right to reject our bid (the Contractor shall attach all financial statement along with Certificated Public Accountant report for the last five years).

Contractors Name.....

Signature:.....

Date: / /2007.

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Qualification Data

Equipment and Plant

31.3 e) Equipment and plant to be provided by the contractor to execute the works

Equipment/Plant	Trade mark	Manufacture years	Loading	Quantity	Current situation

We hereby, the undersigned, undertake, in case of awarding the contract, to carry out the following:-

- a) provide the above mentioned equipment and plant to excute the work and provide proper maintenance for adequate effective works.
- b) Maintain the equipment and the plant in the site, and will not be moved or taken out from the site or be used for other works without prior written approval of the Engineer.

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Contractor Name:

Signature:

Date: / /2007

Qualification Data

Contractor's Technical and Administrative Teams to Carry Out the Work

31.3 (f) Experience and qualification of key personnel responsible for managing the site and proposed technician (Project Manager) to implement the contract

Name	Position /specialization	Qualification	Years of experience

We hereby, the undersigned, undertake, in case the contract is awarded to us, to carry out the following:-

- a) provide technical and administrative team with above mentioned qualifications and specialization to execute the project.
- b) The technical and administrative team shall work full time and they are prohibited to carry out any other work during the execution of this project and the team shall be ready to work starting from effective date of the work.
- c) We will remove and replace any personnel for negligence or if the Engineer notifies us that any of the personnel have proved negligent or breached the contract terms.
- d) Contractor's Engineer experience shall not be less than three years and five years for the Contractor's Supervisor".

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Contractor Name:

Signature:

Date:

Qualification Data

31.3 h) Evidence for required liquidity to execute the works.

Describe Liquidities: financial facilities indicating sources and attaching supporting documents.

Names, addresses and numbers of phones, faxes of banks that the Employer could refer to

Qualification Data

31.8 Data on judgment disputes for which the contractor is a party.

Please state in writing if there is no dispute..

No	Dispute Parties	Employer	Reason	Disputed Cost	Remarks showing the current situation
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