

# **Tender Document for Procurement of Plant and Related Works**

## **Procurement of:**

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***Energy Efficiency renovation of Central Archive and Kindergarten #32 in Rustavi and Public School #1 of village Kvemo Bolnisi***

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*Georgian version of the document is provided separately for facilitation only (in case of discrepancies English version prevails).*

**Issued on: August 26, 2019**

**Tender No: NEFCO/DB-G-6-2019**

**Employer: Municipal Development Fund of Georgia**

**Country: Georgia**

**Tender Document**

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# PART 1 – TENDERING PROCEDURES

## Section I. Instructions to Tenderers

### A. General

1. **Scope of Tender**
  - 1.1. The Employer, *Municipal Development Fund of Georgia (hereinafter called “MDF”)*, issues this Tender Document for the procurement of *Energy Efficiency renovation of Central Archive and Kindergarten #32 in Rustavi and Public School #1 of village Kvemo Bolnisi*, as specified in Section V. Employer’s Requirements.

The indicated Plant and Related Works will be financed by: **Nordic Environment Finance Corporation (hereinafter “NEFCO”) and Government of Georgia (hereinafter “GOG”)**
  - 1.2. Unless otherwise stated, throughout this Tender Document definitions and interpretations shall be as prescribed in Section VI, General Conditions of Contract.
2. **Source of Funds**
  - 2.1 The Recipient of the E5P grant funds, the MDF, intends to apply a portion of the funds to eligible payments under the contract for which this Tender Document is issued.
  - 2.2 Payments by the NEFCO will be made only at the request of the Recipient of the Grant and upon approval by the NEFCO in accordance with the terms and conditions of the financing agreement between the Ministry of Finance of Georgia and the NEFCO (hereinafter called the “Grant Agreement”), and will be subject in all respects to the terms and conditions of that agreement.
3. **Prohibited Practices**
  - 3.1. The NEFCO requires that Recipient, as well as Tenderers, suppliers, sub-suppliers, contractors, subcontractors, concessionaires, consultants and sub-consultants under NEFCO financed contracts; observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the NEFCO:
    - (a) defines, for the purposes of this provision, Prohibited Practices as one or more of the following:
      - (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
      - (ii) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
      - (iii) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or

the property of the party to influence improperly the actions of a party;

(iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party; and

(v) “theft” means the misappropriation of property belonging to another party.

(b) will reject a proposal for award if it determines that the Tenderer, supplier, sub-supplier, contractor, subcontractor, concessionaire, consultant or sub-consultant recommended for award has engaged in Prohibited Practices in competing for the contract in question;

(c) will cancel the portion of the NEFCO financing allocated to a contract for Plant and Related Works, works, services or concessions if it at any time determines that Prohibited Practices were engaged in by representatives of the Recipient or of a beneficiary of the NEFCO financing during the procurement or the execution of that contract, without the Recipient having taken timely and appropriate action satisfactory to the NEFCO to remedy the situation;

(d) may declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a NEFCO-financed contract if it at any time determines that the firm has engaged in Prohibited Practices in competing for, or in executing, a NEFCO-financed contract; and

(e) reserves the right, where a Recipient or a firm has been found by the final judgement of a judicial process in its country or a finding by the enforcement (or similar) mechanism of another international organisation, including Mutual Enforcement Institutions, to have engaged in Prohibited Practices.

(i) to cancel all or part of the NEFCO financing for such Recipient; and

(ii) to declare that such a firm is ineligible, either indefinitely or for a stated period of time, to be awarded a NEFCO-financed contract; and

f) will have the right to require that, in contracts financed by the NEFCO, a provision be included requiring suppliers, sub-suppliers, contractors, subcontractors, concessionaires, consultants and sub-consultants to permit the NEFCO to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the NEFCO.

3.2. Furthermore, Tenderers shall be aware of the provisions stated in Section VI and VII, General and Particular Conditions of Contract.

**4. Eligibility** 4.1 This invitation for tender is open to contractors from any country.

**5. Joint Venture or As-** 5.1. In the case where a Tenderer is, or proposes to be, a joint venture or other association (a) all members of the joint venture or association must satisfy

## sociation

the legal, financial, litigation and other requirements set out in this Tender Document; (b) all members of the joint venture or association will be jointly and severally liable for the execution of the Contract; and (c) the joint venture or association will nominate a representative who will have the authority to conduct all business for and on behalf of any and all the members of the joint venture or the association during the Tender process and, in the event the joint venture or association is awarded the Contract, during Contract performance.

### **B. Preparation of Tenders**

#### **6. Cost of Tendering**

- 6.1. The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 6.2. The Tenderer may visit and examine the project site and obtain for itself all information that may be necessary for preparing the tender and entering into a contract. The costs of visiting the site shall be at the Tenderer's own expense. A Tenderer wishing to visit the project site must coordinate its visit with the Employer beforehand.

#### **7. Language of Tender**

- 7.1. Tenders should be prepared in English language. Supporting documents originally issued in Georgian Language by a local authorities or entities may not be translated to English Language and may be submitted in local language.
- 7.2. To support Tenderer in preparation of the Tender Documents the Employer may issue Georgian version of tender documentation or its parts. In case of the discrepancy between the English and Georgian versions of the Tender Document the wording in English Tender Document will prevail.

#### **8. Documents Comprising the Tender**

- 8.1 A prospective Tenderer requiring any clarification of the Tender Document shall contact the Employer in writing by sending his written request to the address:

Municipal Development Fund of Georgia  
Attn: Mr. George Shengelia, Executive Director  
E-mail: [procurement@mdf.org.ge](mailto:procurement@mdf.org.ge)

Requests for clarification should be submitted through the Georgian E-Government Procurement System.

The Employer should receive requests for clarification no later than: **14 days** prior to the deadline for submission of Tenders.

The Employer will promptly publish its response at the Georgian E-Government Procurement System.

- 8.2 Where applicable, the Tenderer is advised to visit and examine the project site and obtain for itself on its own responsibility all information that may be necessary for preparing the tender and entering into a contract for the provision of the Employer's Requirements.

8.3 The Tender shall comprise the following:

- (a) letter of Tender in a form furnished in Section III, Tender Forms;
- (b) completed Price Schedules as provided in Section III, Tender Forms; written confirmation authorising the signatory of the Tender to commit the Tenderer;
- (c) documentary evidence establishing the eligibility of the Plant and Related Works offered by the tenderer;
- (d) documentary evidence establishing the Tenderer's qualifications in accordance with the requirements of Section II, Evaluation and Qualification Criteria, using the relevant forms furnished in Section III, Tender Forms;
- (e) documentary evidence, establishing the conformity of the Plant and Relevant Works offered by the Tenderer with the Tender Document, using the relevant forms furnished in Section III, Tender Forms;
- (f) in the case of a tender submitted by a joint venture, consortium or association (JVCA), JVCA agreement, indicating at least the parts of the Employer's Requirements to be executed by the respective partners;
- (g) letter of Covenant of Integrity in a form furnished in Section III, Tender Forms;
- (h) Form of Tender-Securing Declaration as provided in Section III, Tender Forms.

8.4 The potential Tenderer's designated representative(s) is(are) encouraged to visit the project sites. The addresses of the sites are:

- *Rustavi Central Archive, address: People Friendship Ave., #6, Rustavi City, Georgia*
- *Kindergarten #32 in Rustavi, address: #21 district, Rustavi City, Georgia;*
- *Public School #1 of village Kvemo Bolnisi: village Kvemo Bolnisi, Bolnisi Municipality, Georgia*

A Tenderer wishing to visit the project site must coordinate its visit with the Employer beforehand.

All expenses related to the site-visits are on the tenderers.

The purpose of the site visits will be for Tenderers to get acquainted with the project objects for better understanding and assessment of related scopes and costs by the Tenderers. Visiting the site is strongly advised for all tenderers or their representatives but is not mandatory

8.5 The Tenderer's designated representative is invited to attend a Pre-Tender conference. The pre-tender conference will take place at **15:00 pm** Georgia Time (GMT+4) on **September 9, 2019** at the following address:

Municipal Development Fund of Georgia  
3rd floor, Conference Room, #150 D. Aghmashenebeli Ave.,

The purpose of the conference will be to clarify issues and to answer questions on any matter that may be raised at that stage. Attendance is strongly advised for all tenderers or their representatives but is not mandatory.

- 8.6 Minutes of the Pre-Tender conference, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the conference, will be uploaded electronically through Georgian E-Government Procurement System. Any modification to this Tender Document that may become necessary as a result of the Pre-Tender conference shall be made by the Employer exclusively through the issue of an Addendum and not through the minutes of the Pre-Tender conference.
- 8.7 Nonattendance at the Pre-Tender conference or the Site visit will not be a cause for disqualification of a Tenderer and will not be taken into consideration during review of its Tender.

**9 No Alternative Tenders**

- 9.1 Alternative Tenders shall not be considered

**10 Tender Prices and Discounts**

- 10.1 The prices quoted by the Tenderer in the Letter of Tender and in the Price Schedules shall be fixed.
- 10.2 Notwithstanding with any other provision in this tender documentation the Plant to be supplied from outside Georgia shall be delivered DDP at Site, Incoterms 2010 and the Plant to be supplied from Georgia shall be delivered at Site.
- 10.3 The Tenderer shall fill in rates and prices for all items of the Design, Plants and Related Works described in the Price Schedule. Items against which no rate or price is entered by the Tenderer will not be paid for by the Employer, and shall be deemed covered by the rates for other items and prices in the Price Schedule
- 10.4 Tenderers shall quote for the Design, Plants and entire scope of the Works on a “single responsibility” basis such that the total Tender price covers all the Contractor’s obligations mentioned in or to be reasonably inferred from the Tender Document in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the Works. This includes all requirements under the Contractor’s responsibilities for testing, pre-commissioning and commissioning of the Works and, where so required by the Tender Document, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training services and such other items and services as may be specified in the Tender Document, all in accordance with the requirements of the General Conditions. Items against which no price is entered by the Tenderer will not be paid for by the Employer when executed and shall be deemed to be covered by the prices for other items.

- 10.5 Tenderers shall give a breakdown of the prices in the manner and detail called for in the Price Schedules included in Section III, Tender Forms
- 11 Documents Comprising the Tenders**
- 11.1 The Tenderer shall furnish a Letter of Tender including equipment, personnel, schedule, and any other information as stipulated in the Section III, in sufficient detail to demonstrate the adequacy of the Tenderer's Tender to meet the design and construction of the Employer's Requirements and the completion time.
- 12 Withdrawal, Substitution, and Modification of Tenders**
- 12.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted, as allowed by the Georgian E-Government Procurement System.
- 12.2 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Letter of Tender or any extension thereof
- 13 Related Works**
- 13.1 The Related Works are:
- Site Works, including, preparation of installation drawings, arrival inspection, installation, decommissioning of the equipment to be replaced, putting installed equipment into operation, commissioning of Plant to the Employer, and other works required by the Employers Requirements and Price Schedules
- Related Works shall include rates or prices for local transportation to named place of final destination as specified in the Tender Document, insurance and other services incidental to delivery of the Works, all labor, Contractor's equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, including operations and maintenance services, the provision of operations and maintenance manuals, training, etc., where identified in the Tender Document, as necessary for the proper execution of the installation and other services, taxes, duties, not exempt levies and charges, payable in the Employer's country as of twenty-eight (28) days prior to the deadline for submission of Tenders.
- 14 Currencies of Tender**
- 14.1 All prices quoted by tenderers shall be in Georgian Lari (GEL).
- 15 Documents Establishing the Qualifications of the Tenderer**
- 15.1 To establish its qualifications to perform the Contract, the Tenderer shall provide the information requested in Section III, Tender Forms.
- 15.2 The documentary evidence of the Tenderer's qualifications to perform the Contract if its tender is accepted shall establish to the Employer's satisfaction that
- a) the Tenderer, has the financial, technical and production capability and capacity necessary to perform the Contract, and Tenderer's average annual revenue in the previous five years was at least **GEL 2,300,000**; Submitted Forms of Turnover must be confirmed by the certified Auditors/Audit firms registered on Service for Accounting, Reporting and Auditing Supervision web-page. In case the tender is submitted by JVCA, at least one partner should demonstrate 100% compliance with the requirement;
- b) the Tenderer has satisfactorily carried out the works and supplied similar



plant to other employers and the minimum number of similar contracts indicated below that have been successfully and substantially completed in the role of a JV member, contractor, subcontractor, or management contractor in the recent **five** years:

- i. at least one (1) contract for Rehabilitation/Reconstruction/Construction of building/s including installation or reconstruction of building technical systems with a value of at least **GEL 1,530,000**

or, up to 5 (five) contracts, out of which at least ones' minimum value shall be (half of Tender Price) **GEL 765,000** for Rehabilitation/Reconstruction/Construction of building/s and installation or reconstruction of building technical systems, but with total value of all contracts shall be not less than (Tender Price) **GEL 1,530,000**.

- ii. at least one (1) contract for detailed design services including structural design for building/s and building technical systems design, or rehabilitation contracts including the mentioned design services, with consultancy fee value of at least **GEL 46,000**.

or, up to 5 (five) contracts for detailed design services including structural design for building/s and building technical systems design, out of which at least ones' minimum value shall be **GEL 23,000** but with total value of all contracts shall be not less than **GEL 46,000**.

In case the tender is submitted by JVCA, all partners' qualifications combined should demonstrate 100% compliance with the requirement.

- c) the Tenderer is not bankrupt or under bankruptcy procedures according to the national legislation or regulations. This should be supported by the Extract from the State Registry of Legal Entities and Individual Entrepreneurs indicating that the Tenderer is not ruled to be bankrupt according to the national legislation and it is not being liquidated

## 16 Documents Establishing the Eligibility of Plant and Related Works

- 16.1 To establish the eligibility of the Plant and Related Works, Tenderers shall complete the forms, included in Section III, Tender Forms.

- 16.2 The Tenderer must provide the following documentary evidence to establish the conformity of the Plant and Related Works:

- (a) a detailed description of the essential technical and performance characteristics of the Plant and Related Works;
- (b) a list giving full particulars, including available sources and current prices, of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Plant for a period of 3 years, following commencement of the use of the Plant by the Employer; and
- (c) Documentation required in the Employer's Requirements, demonstrating substantial responsiveness of the Plant and Related Works to those specifications or a statement of deviations and exceptions to the provisions of the Employer's Requirements.

- (d) the Tenderer or its agent will be able to carry out warranty obligations;
- (e) in the case of a Tenderer offering to supply plant under the Contract which the Tenderer does not manufacture or otherwise produce, the Tenderer has been duly authorized by the plant's manufacturer or producer to supply the plant in the Purchaser's country.

The documentary evidence of the Plant's and Related Works' conformity to the tender documents may be in the form of literature, drawings, and other data.

## 17 Validity of Tenders

- 17.1 Tenders shall remain valid **ninety (90)** days after the tender submission deadline date. A tender valid for a shorter period shall be rejected as non-responsive.

## 18 Format and Signing of Tender

The tender shall be signed by a person duly authorised to sign on behalf of the Tenderer. This authorisation shall be confirmed by the Tenderer's statutory documents attached to the tender. All pages of the Tender shall be initialled by the person signing the Tender.

A Tender submitted by a JVCA shall comply with the following requirements:

- a) It shall be signed so as to be legally binding on all partners; and
- b) Include the Representative's authorization, consisting of a power of attorney signed by those legally authorized to sign on behalf of the JVCA.
- c) In addition to the requirements above, Tender submitted by a JV or other association shall include a copy of the JV/Association agreement entered into by all members. Alternatively, a letter of intent to execute a JV/Association agreement shall be signed by all members and submitted with the Tender, together with a copy of the proposed agreement.

## C. Submission and Opening of Tenders

## 19 Submission of Tenders

- 19.1 Tenderers shall submit their bids electronically through Georgian E-Government Procurement System.
- 19.2 Tenderers shall indicate their Price in the relevant field at Georgian E-Government Procurement System. Failure to indicate Price as required above will form the ground for Tender rejection.
- 19.3 Tendering will be conducted through the national competitive Tendering procedures following the requirements of the Nordic Environment Finance Corporation's (NEFCO) Procurement Guidelines, using the Georgian E-Government Procurement System. Government procurement procedures SHALL NOT apply for this procurement. Tender submission and tender opening will take place electronically using Georgian E-Government Procurement System. The estimated cost of the contract is disclosed in the E-Procurement system and tenderers can submit a tender price, which could be below or equal the estimated cost, however pricing the tender is the responsibility of the tenderer, which shall be based on the current market prices and

any other factors, which may influence the pricing of the proposed works. A tender with the price above the estimated cost may be rejected.

**20 Deadline for Submission of Tenders**

20.1 Tenderers shall submit their tenders electronically through Georgian E-Government Procurement System, before the deadline for submission of tenders, indicated in Georgian E-Government Procurement System.

20.2 The Employer shall not consider any Tender that is uploaded through E-Government procurement system after the deadline for submission of Tenders.

**21 Tender Opening**

21.1 Tender opening will take place electronically using Georgian E-Government Procurement System.

21.2 The Minutes of the Tender Opening will be uploaded in the E-Procurement System following the tender opening.

**D. Examination of Tenders**

**22 Confidentiality**

22.1 Information relating to the evaluation of Tenders shall not be disclosed to Tenderers or any other persons not officially concerned with such process until information on Contract award is communicated to all Tenderers.

22.2 Any attempt by a Tenderer to influence improperly the Employer in the evaluation of the Tenders or Contract award decisions may result in the rejection of its Tender.

22.3 From the time of Tender opening to the time of Contract award, if any Tenderer wishes to contact the Employer on any matter related to the Tendering process, it should do so in writing.

**23 Clarification of Tenders**

23.1 The Employer may, at its discretion, ask any Tenderer for a clarification of its Tender, to be provided within three (3) days. The Employer's request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Tenders.

23.2 If a Tenderer does not provide clarifications of its Tender by the date and time set in the Employer's request for clarification, its Tender may be rejected.

**E. Tender Evaluation and Comparison**

**24 Evaluation and Correction of Mathematical Errors**

24.1 The Employer shall use the criteria and methodologies indicated in Section II, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted.

24.2 Tender evaluation and comparison and a subsequent contract award shall be carried out in line with Tender Evaluation Guidelines

24.3 The Employer's review of the Tenders is to be based on the contents of

the Tender itself and will involve the following processes as detailed further in Section II, Evaluation and Qualification Criteria.

- (a) **Administrative review** is conducted to determine that the Tender is complete, including all required documents and forms. The Tenderer may be requested to submit additional information or documentation and/or to correct nonmaterial nonconformities in the Tender related to documentation requirements. Failure of the Tenderer to comply with the request to respond to a request within the deadline stated in the request may result in the rejection of its Tender.
- (b) **Responsiveness determination** is conducted to determine responsiveness to the Tender. This process will include a detailed technical review. The Employer may request any Tenderer to clarify its Tender. The Employer reserves the right at its sole discretion to conduct this responsiveness determination in sequence, beginning with the lowest tender. If a Tender is not substantially responsive to the requirements of this Tender Document, it shall be rejected and may not subsequently be made responsive by correction of a material deviation.
- (c) **Qualification review** shall be conducted to determine if the Tenderer satisfies the qualification requirements as described in Section II, Evaluation and Qualification Criteria, and Tenderer Qualification Requirements. The determination shall be based upon and examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, the Tenderer's record of past performance, a review of references, and any other source at the Employer's discretion. An affirmative determination of qualification shall be a prerequisite for award of the Contract to the Tenderer.
- (d) **Price review** is conducted to review the price forms for arithmetical errors, omissions or clarifications and to rank the Tenders from lowest to highest price. The procedures for correcting arithmetical errors are set out Section II – Evaluation and Qualification Criteria. If the Tenderer does not accept the correction of errors, its Tender shall be rejected.
- (e) **Sequence of review:** The Employer reserves the right to carry out the review process in any sequence and the right not to review higher priced Tenders unless a lower price Tender is rejected

<b>25 Award Criteria</b>	25.1	The Employer will award the Contract to the Tenderer whose offer has been determined to be the lowest evaluated Tender and is substantially responsive to the Tender Document, provided further that the Tenderer is determined to be qualified to perform the Contract satisfactorily.
<b>26 Notification of Award and Signing of Agreement</b>	26.1	Prior to the expiration of the period of validity of the tender, the Employer shall upload the Notice of Intent to Award through e-Government Procurement system. The Notice of Intent to Award shall include a statement that the Employer shall issue a formal Letter of Acceptance and draft Contract Agreement after expiration of the five (5) days period for any claims and challenges that are submitted by the not successful Ten-

derers. Delivery of the Notice of Intent to Award **shall not constitute the formation of a contract** between the Employer and the successful Tenderer and no legal or equitable rights will be created through the delivery of the Notice of Intent to Award.

- 26.2 After issuing the Notice of Intent to Award, the Employer shall promptly respond in writing to any unsuccessful Tenderer who, after receiving notification of the tendering results, makes a written request for a debriefing.
- 26.3 Upon expiration of the five (5) days period for submission of any claims and challenges, the Employer shall send the Letter of Acceptance to the successful Tenderer.

**27 Employer's right to accept or reject any or all Tenders**

The Employer reserves the right to accept or reject any Tender, and to annul the Tendering process and reject all Tenders at any time prior to contract award, without thereby incurring any liability to Tenderers.

**28 Variation of quantities at time of award**

The Employer reserves the right at the time of award of the contract to increase or decrease the scope of supply specified in the schedule of requirements up to **20%** percent, without any change in the unit rates or prices for goods or services or other terms and conditions.

**29 Debriefing and Complaints**

If a Tenderer wishes to ascertain the grounds on which its proposal was not selected, it should address its request to the Employer. If the Tenderer is not satisfied with the written explanation given and/or debriefing by the Employer, Tenderers are invited to send to NEFCO copies of correspondence with the employer on issues, questions and complaints relating to the tendering process. Tenderer may write to NEFCO directly when the employer does not respond promptly or when tenderers wish to complain about the employer's handling of the procurement process. All such communications shall be addressed to the Managing Director of NEFCO.

More detailed information can be found in NEFCO Procurement Guidelines (we-site: <https://www.nefco.org/work-us/our-services/procurement>)

## Section II. Evaluation and Qualification Criteria

### Evaluation Criteria and Methodology

#### Correction of Mathematical Errors

- a) Where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the former shall prevail and the latter will be corrected accordingly;
- b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

#### Conversion to a Single Currency

For evaluation and comparison purpose, the currency (ies) of the Tenders shall be converted into a single currency – Georgian Lari. The basis for conversion shall be National Bank of Georgia ([www.nbg.gov.ge](http://www.nbg.gov.ge)). The date for the exchange rate shall be the day of the Tenders Submission.

### Qualification Criteria

To be qualified for contract award, the Tenderer must demonstrate to the Employer that it substantially satisfies the requirements regarding eligibility, experience, equipment, financial position and litigation history, specified below:

- (a) the Tenderer, has the financial, technical and production capability and capacity necessary to perform the Contract, and Tenderer's average annual revenue in the previous **five years** was at least **GEL 2,300,000**; Submitted Forms of Turnover must be confirmed by the certified Auditors/Audit firms registered on Service for Accounting, Reporting and Auditing Supervision web-page. In case the tender is submitted by JVCA, at least one partner should demonstrate 100% compliance with the requirement.
- (b) the Tenderer has satisfactorily carried out the works and supplied similar plant to other employers and the minimum number of similar contracts indicated below that have been successfully and substantially completed in the role of a JV member, contractor, subcontractor, or management contractor in the recent five years:
  - i. at least one (1) contract for Rehabilitation/Reconstruction/Construction of building/s including installation or reconstruction of building technical systems with a value of at least **GEL 1,530,000**  
or, up to 5 (five) contracts, out of which at least ones' minimum value shall be **GEL 765,000** for Rehabilitation/Reconstruction/Construction of building/s and installation or reconstruction of building technical systems, but with total value of all contracts shall be not less than **GEL 1,530,000**.
  - ii. at least one (1) contract for detailed design services including structural design for building/s and building technical systems design, or rehabilitation contracts including the mentioned design services, with consultancy fee value of at least **GEL 46,000**

or, up to 5 (five) contracts for detailed design services including structural design for building/s and building technical systems design, out of which at least ones' minimum value shall be **GEL 23,000** but with total value of all contracts shall be not less than **GEL 46,000**.

In case the tender is submitted by JVCA, all partners' qualifications combined should demonstrate 100% compliance with the requirement.

- (c) the Tenderer or its agent will be able to carry out warranty obligations;
- (d) the Tenderer is not bankrupt or under bankruptcy procedures according to the national legislation or regulations;

Engagement of sub-contractors is permitted for specialised works. Experience of subcontractors shall be proven in addition to the requirement 31(b). Annual income of sub-contractors shall not be added to prove Tenderer's qualification compliance to 31(a).

## Section III. Tender Forms

### Form 1: Letter of Tender

**Note for Tenderers:** *The Tenderer must prepare the Letter of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and address. All text within square brackets [ ] is for guidance in preparing this form and shall be deleted by the Tenderer from the final document.*

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

To: \_\_\_\_\_

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Tender Document, including Addenda issued in accordance with Instructions to Tenderers;
- (b) We offer to supply, in conformity with the Tender Document, the following Plant and Related Works:.....
- (c) The total price of our Tender, excluding any discounts offered in item (d) below is:  
.....
- (d) The discounts offered and the methodology for their application are:  
.....  
.....  
.....
- (e) Our tender shall be valid for the period .....[insert validity period as specified in ITT] days from the date fixed for the Tender submission deadline in accordance with the Tender Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) If our tender is accepted, we commit to furnish a performance security in accordance with the Tender Document;
- (g) Our firm, including any subcontractors or suppliers and subsuppliers for any part of the Contract, have nationalities from eligible countries
- (h) We, including any subcontractors or suppliers and subsuppliers for any part of the Contract have no conflict of interest;
- (i) We are not participating, as a Tenderer or as a subcontractor, in more than one Tender in this Tendering process;
- (j) Our firm, its affiliates or subsidiaries—including any subcontractors or suppliers and subsuppliers for any part of the contract—have not been declared ineligible by the NEFCO, under the Purchaser's country laws or official regulations or by an act of compliance with a decision of the United Nations Security Council;
- (k) We are not a government-owned entity;
- (l) We understand that this tender, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed.
- (m) We understand that you are not bound to accept the lowest evaluated tender or any other tender that you may receive.

**Name:**

**In the capacity of:**

**Signed:**

**Duly authorized to sign the Tender  
for and on behalf of:**

**Date:**



## Form 2: Covenant of Integrity

to [Name of Employer] ]  
from [Name of Tenderer] ]

“We declare and covenant that neither we nor anyone, including any of our directors, employees, agents, joint venture partners or sub-contractors (“the **Parties**”), where these exist, acting on our behalf with due authority or with our knowledge or consent, or facilitated by us, has engaged, or will engage, in any Prohibited Practices (as defined below) in connection with the tendering process or in the execution or supply of any works, goods or services for [specify the contract or tender invitation] (the “**Contract**”) and covenant to so inform you if any instance of any such Prohibited Practices shall come to the attention of any person in our organisation having responsibility for ensuring compliance with this Covenant.

We shall, for the duration of the tender process and, if we are successful in our tender, for the duration of the Contract, appoint and maintain in office an officer, to whom you shall have full and immediate access, having the duty, and the necessary powers, to ensure compliance with this Covenant.

If any of the Parties, where these exist and as applicable, (i) have been convicted in any court of any offence involving Prohibited Practices in connection with any tendering process or provision of works, goods or services during the five (5) years immediately preceding the date of this Covenant, or (ii) have been dismissed or resigned from any employment on the grounds of being implicated in any Prohibited Practices, or (iii) have been excluded from participation in a tendering procedure on the grounds of Prohibited Practices by Nordic Environment Finance Corporation (NEFCO) or by any national or EU Institutions or any international financial institution, we shall give details of any event in (i)-(iii) above together with details of the measures that we have taken, or shall take, to ensure that no Party will commit any Prohibited Practices in connection with the Contract [give details if necessary].

In the event that we are awarded the Contract, we grant the Purchaser/Client/Employer/NEFCO and auditors appointed by either of them, as well as any authority or body having competence under relevant legislation, the right of inspection of our records and those of all our sub-contractors under the Contract. We accept to preserve these records generally in accordance with applicable law but in any case for at least six (6) years from the date of performance of the Contract.”

For the purpose of this Covenant, “Prohibited Practices” includes:

- **Corrupt Practice** is the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
- **Fraudulent Practice** is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
- **Coercive Practice** is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party to influence improperly the actions of a party.
- **Collusive Practice** is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
- **Obstructive Practice** is (a) deliberately destroying, falsifying, altering or concealing of evidence material to an investigation related to the Contract; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to such investigation or from pursuing the investigation, or (b) acts intended to materially impede the exercise of NEFCO’s contractual rights of audit or access to information or the rights that any relevant authority has in accordance with any law, regulation or treaty.
- **Money Laundering** is (i) the conversion or transfer of property, knowing that such property is derived from criminal activity or participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such activity to evade the legal consequences of his action;

(ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from participation in such activity;

(iii) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from participation in such activity;

(iv) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling any of the actions mentioned in the foregoing points.

• **Financing of terrorism** is the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of the Council of the European Union Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism.

Date:

Signature:

[Name and position]

for and on behalf of

[Name of the firm or joint venture]

### Form 3. Price Schedule #1: Design Services

Date:

Tender: \_\_\_\_\_

Name of the Tenderer: \_\_\_\_\_

Item	Description	Total price excl. VAT (GEL)
1	2	3
	<b>Rustavi Central Archive</b>	
1	Development of package of required design documentation.	
2	Development of as-built documentation and getting approval with the Employer	
3	Other designing works necessary to fulfil Employers requirements	
4	Obtaining of approvals and expertise from relevant authorities	
	<b>Kindergarten # 32 in Rustavi</b>	
5	Development of package of required design documentation	
6	Development of as-built documentation and getting approval with the Employer	
7	Other designing works necessary to fulfil Employers requirements	
8	Obtaining of approvals and expertise from relevant authorities	
	<b>Public School # 1 in the village of Kvemo Bolnisi</b>	
9	Development of package of required design documentation.	
10	Development of as-built documentation and getting approval with the Employer	
11	Other designing works necessary to fulfil Employers requirements	
12	Obtaining of approvals and expertise from relevant authorities	
	<b>Total Amount (to be carried to Price Schedule No. 4: Grand Summary)</b>	
	<b>VAT (GEL)</b>	
	<b>Grand Total Amount (incl. VAT), GEL</b>	
	Name of Tenderer:	
	Signature of Tenderer:	

Note:

1. Prices and currencies to be in accordance with the Instructions to Tenderers.
2. All items identified in the Section V – Employer’s Requirements – must be entered and priced in the appropriate Price Schedule. Items not priced will be deemed to have been included in price of the priced items.
3. Data of the Price Schedule should be entered into a spreadsheet of XLS type (included in tender documentation as a separate file) and submitted in both hard and digital copies together with the tender

## Form 4. Price Schedule #2 :Plant, Goods and Equipment

Date:

Tender: \_\_\_\_\_

Name of the Tenderer: \_\_\_\_\_

Item	Description	Total price: DDP place of final destination or at site excl. VAT (GEL)
1	2	3
	<b>Rustavi Central Archive</b>	
1	All materials, equipment and automatic controls for reversing the chillers MIDEA to heat pump mode for heating and remodel the heating system in accordance with Employer's Requirements	
2	Materials, equipment and automatic controls, in accordance with Employer's Requirements, for Optimization of pumps for space heating and DHW	
3	All materials, equipment and automatic controls, in accordance with Employer's Requirements, for improvement in Air handling unit 1 and 2 and ventilation systems	
4	Materials, equipment and automatic controls, in accordance with Employer's Requirements, for installation of thermal solar collectors system for Domestic Hot Water, including all needed supporting materials.	
5	New efficient lighting with LED lamps, including open or semi-open plafond with base E27 and all materials, equipment and automatic controls, including occupancy sensors, for occupancy detection for lighting system in accordance with Employer's Requirements	
6	All materials and equipment, in accordance with Employer's Requirements, for installation of new automation control system for HVAC system and training the personnel and O&M routines	
7	<i>Other materials and equipment not specified by the Price Schedule, if any</i>	
	<b>Kindergarten # 32 in Rustavi</b>	
8	All materials and components, in accordance with Employer's Requirements, for walls thermal insulation, including insulation of outer slopes of windows as well as insulation of walls below the ground level, including materials for related works, such as mineral wool, plastic mesh, primer layer, mortar layer, top coat etc. and all other layers and materials. All supporting materials for proper water drainage from the roof and windows	
9	All materials and components in accordance with Employer's Requirements, for insulation of the flat roof floor, including all needed supporting materials	
10	Windows and doors in accordance with Employer's Requirements, including all needed supporting materials, i.e. thermal and hydro insulation materials, as well as vapor insulation materials, indoor window sills, outer window gutters, materials for repair of indoor window slopes after installation, etc. Type of windows: energy efficient with max total thermal transmittance $U \leq 1.8 \text{ W/m}^2\text{K}$	
11	All materials, components and equipment, in accordance with Employer's Requirements, for installation of new central heating and DHW system including i.e. radiators, valves, piping, thermal insulation of pipes, boiler/s, boiler room, sets of automatic controls and all supporting materials needed for installation, test and commissioning	
12	All materials and equipment, in accordance with Employer's Requirements, for installation of individual ventilation units with heat recovery, including sealing and hydro insulation material including all materials needed for test and commissioning.	

13	All materials, components and equipment, in accordance with Employer's Requirements, for installation of new 124 LED lamp units with plafond, wiring, 15 new switches and 30 new sockets in including all supporting materials needed for installation, test and commissioning	
15	<i>Other materials and equipment not specified by the Price Schedule, if any</i>	
<b>Public School #1 in the village of Kvemo Bolnisi</b>		
16	All materials and components, in accordance with Employer's Requirements, for walls thermal insulation, including insulation of outer slopes of windows as well as insulation of walls below the ground level, including materials for related works, such as mineral wool, plastic mesh, primer layer, mortar layer, top coat and all other layers and materials. All supporting materials for proper water drainage from the roof and windows	
17	All materials and components in accordance with Employer's Requirements, for insulation of attic floor, including all needed supporting materials, i.e. for wooden passage floor (bridge, 600 mm width), fire protection coating of wooden structures (in accordance with the Resolution of the Government of Georgia Nr. 41 dated 28 January	
18	All materials and equipment, in accordance with Employer's Requirements, for installation of individual ventilation units with heat recovery, including sealing and hydro insulation materials	
19	All materials and equipment, in accordance with Employer's Requirements, for installation thermostatic valves on existing radiators, automatic controls, heat insulation of pipes and all supporting materials needed for installation	
20	New LED lamps, including open or semi-open plafond with base E27, and needed wiring, and all materials and components in accordance with Employer's Requirements	
21	<i>Other materials and equipment not specified by the Price Schedule, if any</i>	
<b>Total Amount (to be carried to Price Schedule No. 4: Grand Summary)</b>		
<b>VAT (GEL)</b>		
<b>Grand Total Amount (incl. VAT), GEL</b>		
Name of Tenderer:		
Signature of Tenderer:		

Note:

- Prices and currencies to be in accordance with the Instructions to Tenderers.
- All items identified in the Section V – Employer's Requirements – must be entered and priced in the appropriate Price Schedule. Items not priced will be deemed to have been included in price of the priced items.
- Data of the Price Schedule should be entered into a spreadsheet of XLS type (included in tender documentation as a separate file) and submitted in both hard and digital copies together with the tender
- \* Quantity of a materials and equipment are preliminary and will be adjusted at design stage

**Form 5: Price Schedule #3: Related Works and Other Costs**

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

Tender: \_\_\_\_\_

Name of the Tenderer: \_\_\_\_\_

Item	Description	Total price excl. VAT (GEL)
1	2	3
	<b>Rustavi Central Archive</b>	
<b>1</b>	<b>1. Reversing the chillers MIDEA to heat pump mode for heating</b>	
1.1	All works related with reversing chillers MIDEA to heat pump mode for heating, including test, adjustment and commissioning, training of building personnel in accordance with the Employer's Requirements	
<b>2</b>	<b>2. Optimization of pumps for space heating and DHW</b>	
2.1	All works related to Optimization of pumps for space heating and DHW, including test, adjustment and commissioning, training of building personnel in accordance with the Employer's Requirements	
<b>3</b>	<b>3. Ventilation system improvement</b>	
3.1	All necessary works for improvement in Air handling units 1 and 2, ventilation system, including test, adjustment and commissioning, training of building personnel in accordance with the Employer's Requirements.	
<b>4</b>	<b>4. Installation of small thermal solar collectors system for Domestic Hot Water</b>	
4.1	All works necessary for installation of small thermal solar collectors system for Domestic Hot Water, including test, adjustment and commissioning, training of building personnel in accordance with Employer's Requirements	
<b>5</b>	<b>5. Installation of the new efficient lighting and occupancy sensors on lighting system</b>	
5.1	All related works for dismantling and installation works for new LED lamps and installation works for occupancy sensors, in accordance with the Employer's Requirements.	
5.2	Test, adjustment and commissioning, training of building personnel for new lighting system	
<b>6</b>	<b>6. Installation of new automation control system for HVAC system, training the personnel and O&amp;M routines</b>	
6.1	All necessary works for installation of automatic control system for HVAC, including test, adjustment and commissioning in accordance with the Employer's Requirements.	
6.2	Development of Operation and Maintenance Manual and conducting training for technical personnel of the building	
<b>7</b>	<b>Removal and utilisation of construction debris</b>	
<b>8</b>	<b>Other necessary works not specified in this Price Schedule, if any</b>	
	<b>Kindergarten # 32 in Rustavi</b>	
<b>9</b>	<b>9. Thermal insulation of walls</b>	

9.1	Necessary dismantling works for thermal insulation of walls in accordance with Employer's Requirements	
9.2	Installation, in accordance with Employer's Requirements, of thermal insulation of walls above and below the ground level, restoration of blind area along the building including all the supporting works for providing quality junctions and waterproofing of the installed thermal insulation system. Repair of the porch, overhangs, ramps, arranging of drainage from the roof and windows and all related works in accordance with the Employer's Requirements	
<b>10</b>	<b>10. Thermal insulation of the flat roof</b>	
10.1	Dismantling of all existing layers of the flat roof until the reinforced concrete slab	
10.2	Installation of insulation system on the flat roof, in accordance with the Employer's Requirements	
<b>11</b>	<b>11. Replacement of windows and doors (partial installation of new energy efficient)</b>	
11.1	Dismantling of the existing old windows and doors, including inner window sills and outer window gutters, in accordance with the Employer's Requirements.	
11.2	Installation of new windows and doors, including inner window sills and outer window gutters, as well as repair of indoor window slopes after installation works, and all related works in accordance with the Employer's Requirements.	
<b>12</b>	<b>12. Installation of new heating system with interconnection with DHW</b>	
12.1	Dismantle of the old heating system	
12.2	Installation of radiators with thermostatic valves, necessary piping, including all needed supporting materials for installation, installation of the insulation for pipelines etc. in accordance with the Employer's Requirements.	
12.3	Installation of a gas boilers and boiler room, with needed components and automatic control system, including all needed supporting materials for installation, in accordance with the Employer's Requirements.	
12.4	Test, adjustment and commissioning, development of operation and maintenance manuals and training of building personnel for new heating system	
<b>13</b>	<b>13. Installation of individual ventilation units with heat recovery</b>	
13.1	All necessary installation works for installation of individual ventilation units with heat recovery, including drilling through walls and arrangement of sealing and hydro insulation of outdoor sections of the ventilation units, grooving of inner walls and floors, wiring, finishing of grooving, etc., and all related works in accordance with the Employer's Requirements.	
13.2	Adjustment, test and commissioning of individual ventilation units with heat recovery	
<b>14</b>	<b>14. Installation of LED lamps</b>	
14.1	Installation of new 124 units of the E27 LED lamps with plafond, grooving, wiring, finishing of grooving, 15 new switches and 30 new sockets, test, adjustment and commissioning in accordance with the Employer's Requirements.	
<b>15</b>	<b>Removal and utilisation of construction debris</b>	
<b>16</b>	<b>Other necessary works not specified in this Price Schedule, if any</b>	
	<b>Public School #1 in the village of Kvemo Bolnisi</b>	
<b>17</b>	<b>17. Thermal insulation of walls</b>	
17.1	Necessary dismantling works for thermal insulation of walls in accordance with Employer's Requirements	

17.2	Installation, in accordance with Employer's Requirements, of thermal insulation of walls above and below the ground level, restoration of blind area along the building including all the supporting works for providing quality junctions and water-proofing of the installed thermal insulation system. Repair of the porch, overhangs, ramps, arranging of drainage from the roof and windows and all related works in accordance with the Employer's Requirements.	
<b>18</b>	<b>18. Thermal insulation of attic floor/unheated attic</b>	
18.1	Dismantling of all existing layers of the floor of unheated attic until the reinforced concrete slab	
18.2	Installation of insulation system for floor of the unheated attic, including installation of wooden passage bridges and works related to fire protection coating of wooden structures, etc., in accordance with the Employer's Requirements.	
<b>19</b>	<b>19. Installation of individual ventilation units with heat recovery</b>	
19.1	All necessary installation works for individual ventilation units with heat recovery, including drilling through insulated walls and arrangement of sealing and hydro insulation of outdoor sections of the ventilation units, grooving of inner walls and floors, wiring, finishing of grooving, etc., and all related works in accordance with the Employer's Requirements.	
19.2	Adjustment, test and commissioning of individual ventilation units with heat recovery	
<b>20</b>	<b>20. Modernisation of heating system - installation of thermostatic valves, insulation of pipes in boiler house, automatic control with temperature set-back</b>	
20.1	Installation of thermostatic regulation valves, insulation of pipes, automatic control system, including all needed supporting materials for installation, in accordance with the Employer's Requirements	
20.2	Test, adjustment and commissioning, development of Operation and Maintenance Manuals and training of technical personnel for modernized heating system	
<b>21</b>	<b>21. Installation of LED lamps</b>	
21.1	Dismantling of existing incandescent lamps and lamp holders, including repair of wiring in accordance with the Employer's Requirements.	
21.2	Installation of 50 new E27 LED lamps with plafond, 26 new switches, 26 sockets and new wiring (570 m), grooving and finishing in accordance with the Employer's Requirements.	
<b>22</b>	<b><i>Removal and utilisation of construction debris</i></b>	
<b>23</b>	<b><i>Other necessary works not specified in this Price Schedule, if any</i></b>	
<b>24</b>	<b>Needed insurances, bank guarantees, etc.</b>	
	<b>Total Amount (to be carried to Price Schedule No. 4: Grand Summary)</b>	
	<b>VAT (GEL)</b>	
	<b>Grand Total Amount (incl. VAT), GEL</b>	
	Name of Tenderer:	
	Signature of Tenderer:	

Note:

- Prices and currencies to be in accordance with the Instructions to Tenderers.



2. All items identified in the Section V – Employer’s Requirements – must be entered and priced in the appropriate Price Schedule. Items not priced will be deemed to have been included in price of the priced items.
3. Data of the Price Schedule should be entered into a spreadsheet of XLS type (included in tender documentation as a separate file) and submitted in both hard and digital copies together with the tender
4. \* Scope of works are preliminary and will be adjusted at design stage

## Form 6: Price Schedule #4: Grand Summary

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

Tender: \_\_\_\_\_

Name of the Tenderer: \_\_\_\_\_

№	Description	Total price: (GEL)
1	Price Schedule #1: Design Services	
2	Price Schedule #2: Plant, Goods and Equipment	
3	Price Schedule #3: Related Works	
<b>Grand Summary</b>		
<b>VAT (GEL)</b>		
<b>Grant Total summary (incl. VAT, to be carried to Tender Form), GEL</b>		
Name of Tenderer		
Signature of Tenderer		

Note:

1. Prices and currencies to be in accordance with the Instructions to Tenderers.
2. All items identified in the Section V – Employer's Requirements – must be entered and priced in the appropriate Price Schedule. Items not priced will be deemed to have been included in price of the priced items.
3. Data of the Price Schedule should be entered into a spreadsheet of XLS type (included in tender documentation as a separate file) and submitted in both hard and digital copies together with the tender

## Form 7: Form of Tender-Securing Declaration

Date: \_\_\_\_\_  
Tender No.: \_\_\_\_\_  
Alternative No.: \_\_\_\_\_

To:

We, the undersigned, declare that:

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

We accept that we will automatically be suspended from being eligible for tendering in any contract financed wholly or in part by NEFCO for the period of time of three years starting on the date when we have breached our obligation(s) under the tender conditions, because we:

- (a) have withdrawn our Tender during the period of tender validity specified in the Letter of Tender; or
- (b) having been notified of the acceptance of our Tender by the Employer during the period of tender validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITT.

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

Name of the Tenderer\* \_\_\_\_\_

Name of the person duly authorized to sign the Tender on behalf of the Tenderer\*\* \_\_\_\_\_

Title of the person signing the Tender \_\_\_\_\_

Signature of the person named above \_\_\_\_\_

Date signed \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\*: In the case of the Tender submitted by joint venture specify the name of the Joint Venture as Tenderer

\*\*: Person signing the Tender shall have the power of attorney given by the Tenderer attached to the Tender

*[Note: In case of a Joint Venture, the Tender-Securing Declaration must be in the name of all members to the Joint Venture that submits the tender.]*

## Form 8: Manufacturer's Authorization

**Note for Tenderer:** *The Tenderer shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorization should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. The Tenderer shall include it in its Tender, if so indicated in the TDS. All text within square brackets [ ] is for use in preparing this form and shall be deleted from the final document.*

Date: [insert date (as day, month and year) of Tender Submission]

Tender No.: [insert number of Tendering process]

To: [insert complete name of Purchaser]

### WHEREAS

We [insert complete name of Manufacturer], who are official manufacturers of [insert type of Plant & Equipment manufactured], having factories at [insert full address of Manufacturer's factories], do hereby authorise [insert complete name of Tenderer] to submit a Tender the purpose of which is to provide the following Plant & Equipment, [insert name and or brief description of the Plant & Equipment], manufactured by us and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with the General Conditions, with respect to the Plan & Equipment offered by the above firm.

Signed: [insert signature(s) of authorised representative(s) of the Manufacturer]

Name: [insert complete name(s) of authorised representative(s) of the Manufacturer]

Title: [insert title]

Duly authorised to sign this Authorisation on behalf of: [insert complete name of Manufacturer]

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ [insert date of signing]

## **Section IV. Eligible Countries**

The NEFCO permits firms and individuals from all countries to offer Plant, Goods, Equipment and Related Works and services for NEFCO-financed projects.

Consistent with international law, the proceeds of the NEFCO's financing shall not be used for payment to persons or entities or for any import of Plant & Equipment, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. Persons or entities, or suppliers offering Plant & Equipment and services, covered by such prohibition should therefore not be eligible for the award of NEFCO-financed contracts.

# **Tenderer's Qualification**

To establish its qualifications to perform the contract in accordance with Section II (Evaluation and Qualification Criteria) the Tenderer shall provide the information requested in the corresponding Information Sheets included hereunder.

## **Eligibility Form ELI 1.1**

### **Tenderer Information Sheet**

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

Tender No.: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Tenderer's Legal Name
2. In the case of a JVCA, the legal name of each partner:
3. Tenderer's actual or intended Country of Constitution, Incorporation, or Registration:
4. Tenderer's Year of Constitution, Incorporation, or Registration:
5. Tenderer's Legal Address in Country of Constitution, Incorporation, or Registration:
6. Tenderer's Authorised Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: <input type="checkbox"/> Articles of Incorporation or Registration of firm named in 1, above.

**Form ELI 1.2**  
**Partner/Subcontractor to JVCA Information Sheet**

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

Tender No.: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Tenderer's Legal Name:
2. JVCA Partner's/Subcontractor's Legal Name:
3. JVCA Partner's/Subcontractor's Country of Constitution, Incorporation, or Registration:
4. JVCA Partner's Year of Constitution into a legally-enforceable JVCA:
5. JVCA Partner's/Subcontractor's Legal Address in Country of Constitution, Incorporation, or Registration:
6. JVCA Partner's/Subcontractor's Authorised Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Articles of Constitution, Incorporation or Registration of firm named in 1, above.

# Historical Contract Non-Performance

## Form CON – 2

Tenderer's Legal Name: \_\_\_\_\_

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

JVCA Partner's/Subcontractor's Legal Name: \_\_\_\_\_

\_\_\_\_\_

Tender No.: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

Non-Performing Contracts in accordance with Section II, Evaluation and Qualification Criteria			
<input type="checkbox"/> Contract non-performance did not occur during the stipulated period			
<input type="checkbox"/> Contract non-performance occurred			
Year	Non-performed portion of contract	Contract identification	Total Contract amount (current value, Euro equivalent)
Pending Litigation			
<input type="checkbox"/> No pending litigation			
<input type="checkbox"/> Pending litigation as indicated below			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, Euro equivalent)
		Contract Identification: Name of Purchaser: Address of Purchaser: Matter in dispute:	
		Contract Identification: Name of Purchaser: Address of Purchaser: Matter in dispute:	



# Financial Situation

Form FIN – 3.1

## Historical Financial Performance

Tenderer's Legal Name: \_\_\_\_\_

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

JVCA Partner Legal Name: \_\_\_\_\_

Tender No.: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

To be completed by the Tenderer and, if JVCA, by each partner

Financial information	Historic information for previous <u>5</u> (five) years (GEL in 000s)						
	20..	20..	20..	20..	20..	Avg.	Avg Ratio
<b>Information from Balance Sheet</b>							
<b>Total Assets (TA)</b>							
<b>Total Liabilities (TL)</b>							
<b>Net Worth (NW)</b>							
<b>Current Assets (CA)</b>							
<b>Current Liabilities (CL)</b>							
<b>Information from Income Statement</b>							
<b>Total Revenue (TR)</b>							
<b>Profits Before Taxes (PBT)</b>							

☐ Attached are copies of financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following conditions:

- (a) Must reflect the financial situation of the Tenderer or partner to a JVCA, and not sister or parent companies
- (b) Historic financial statements must be audited by a certified accountant, or, if not required by the law of the Tenderer's country, supported by the documents issued by tax authorities of the tenderer's country of origin
- (c) Historic financial statements must be complete, including all notes to the financial statements
- (d) Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted)

- (e) Conversion from other currencies to GEL must be calculated by using annual average exchange rate, as published by the National Bank of Georgia ( <https://www.nbg.gov.ge/index.php?m=582&lng=eng>)

. . . . . ***Stamped and Signed by an Auditor\**** . . . . .

\*Please, indicate the registration number on [www.saras.gov.ge](http://www.saras.gov.ge)

## Form FIN – 3.2

### Average Annual Revenue

Tenderer's Legal Name: \_\_\_\_\_

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

JVCA Partner Legal Name: \_\_\_\_\_

Tender No.: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

Annual revenue data		
Year	Amount and Currency	GEL**
20..		
20..		
20..		
20..		
20..		
*Average Annual Revenue		

\*Average annual turnover calculated as total certified payments received for supply in progress or completed, divided by the number of years specified in Section II, Evaluation and Qualification Criteria.

\*\* Conversion from other currencies to GEL must be calculated by using annual average exchange rate, as published by the National Bank of Georgia (<https://www.nbg.gov.ge/index.php?m=582&lng=eng>)

. . . . . *Stamped and Signed by an Auditor\** . . . . .

\*Please, indicate the registration number on [www.saras.gov.ge](http://www.saras.gov.ge)

## Form EXP – 2.4.1

### Experience

Tenderer's Legal Name: \_\_\_\_\_

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

JVCA Partner's/Subcontractor's Legal Name: \_\_\_\_\_ Tender No.: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

Similar Contract* No. <i>[insert specific number]</i> of <i>[total number of contracts]</i> required	Information	
Contract Identification		
Award date Completion date		
Role in Contract		
Total Contract amount		GEL / Euro
If a partner in a JVCA, specify participation in total contract amount	_____ %	GEL/ Euro _____
Client's Name:		
Actual Client's contact data: Address:  Telephone/fax number: E-mail: Contract person:		

**\*Tenderers should submit copies of all contracts indicated in this form and acts of performed works.**

## Form EXP – 2.4.1 (cont.)

### Experience (cont.)

Tenderer's Legal Name: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

JVCA Partner's/Subcontractor's Legal Name: \_\_\_\_\_

<b>Similar Contract No. <i>[insert specific number]</i> of <i>[total number of contracts]</i> required</b>	<b>Information</b>
Description of the similarity:	
Amount	
Physical size	
Complexity	
Technology	

## **PART 2 – Employer’s Requirements**

### **Section V. Employer’s Requirements**

Provided in separate document in English.

Georgian version of the document is provided for facilitation only (in case of discrepancies English version prevails).

## **PART 3 – Contract Forms**

# **Section VI. General Conditions of Contract**

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## Section VI. General Conditions of Contract

These General Conditions of Contract (GCC), read in conjunction with the Particular Conditions of Contract (PCC) and other documents listed therein, constitute a complete document expressing the rights and obligations of the parties.

### General Provisions

#### 1.1. Definitions

In the Conditions of Contract (“these Conditions”), which include the Particular Conditions and these General Conditions, the following words and expressions shall have the following stated meanings. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

##### 1.1.1. The Contract

“Contract” means the Contract Agreement, the Letter of Acceptance, the Letter of Tender, these Conditions, the Specification, the Schedules, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.

“Contract Agreement” means the contract agreement referred to in Sub-Clause 1.6 [Contract Agreement].

“Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto.

“Contract Price” means the price payable to the Contractor as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.

“Completion” means the fulfillment of the Related Works by the Contractor in accordance with the terms and conditions set forth in the Contract.

“Letter of Acceptance” means the letter of formal acceptance, signed by the Employer, of the Letter of Tender, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression “Letter of Acceptance” means the Contract Agreement and the date of issuing or receiving of the Letter of Acceptance means the date of signing the Contract Agreement.

“Letter of Tender” means the document entitled Letter of Tender, which was completed by the Contractor and includes the signed offer to the Employer for the Plant and Works.

“Specification” means the document entitled specification, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the Plant and Works.

“Drawings” means the drawings of the Plant, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract.

“Schedules” means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document(s) may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.

“Tender” means the Letter of Tender and all other documents which the Contractor submitted with the Letter of Tender, as included in the Contract.

“GCC” means the General Conditions of Contract.

“PCC” means the Particular Conditions of Contract.

#### **1.1.2. Parties and Persons**

“Party” means the Employer or the Contractor, as the context requires.

“Employer” means the person named as Employer in the PCC and the legal successors in title to this person.

“Contractor” means the person(s) named as Contractor in the Letter of Tender accepted by the Employer and the legal successors in title to this person(s).

“Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Plant or the Related Works; and the legal successors in title to each of these persons.

“NEFCO” means the financing institution (if any) named in the PCC.

“Recipient” means the person (if any) named as the Recipient in the PCC.

“Eligible Countries” means the countries and territories eligible in accordance with NEFCO Procurement Guidelines

#### **1.1.3. Dates, Tests, Periods and Completion**

“Acceptance Test” means the tests (if any) which are specified in the Contract and which are carried out in accordance with the Specification for the purpose of issuing the “Acceptance Certificate”.

“day” means a calendar day and “year” means 365 days.

“Start Date” means the date specified in the PCC as the date when the Contractor may commence execution of the Works

“Defects Liability Certificate” means the certificate issued by the Employer upon correction of Defects by the Contractor.

“Defects Liability Period” means the period specified in PCC Sub-Clause 19.9 and calculated from the Completion Date.

#### **1.1.4. Money and Payments**

“Contract Price” means the price defined in Sub-Clause 10, The Contract Price, and includes adjustments in accordance with the Contract.

#### **1.1.5. Plant and Related Works**

“Plant” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Contractor is required to supply to the Employer under the Contract.

“Related Works” means the works supplementary to the supply of the Plant, such as installation or supervision of installation, commissioning, training and initial maintenance and other such obligations of the Contractor under the Contract.

#### **1.1.6. Other Definitions**

“Employer’s Country” is the country specified in the PCC.

“Force Majeure” is defined in Clause 25, Force Majeure.

“Laws” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.

“Performance Security” means the security (or securities, if any) under Sub-Clause 13, Performance Security.

“Project Site,” where applicable, means the place named in the PCC.

“Unforeseeable” or “Unforeseen” means not reasonably foreseeable by an experienced Contractor by the Base Date.

“Change Order” or “Change” is defined in Sub-clause 26, Change Orders and

## Contract Amendments

“Health and Safety Management Plan” or “HSMP” means the plan the Contractor shall develop, deliver, and implement in accordance with GCC Clause 28.7.

“Contractor’s site-specific Environmental & Social Management Plans” or “SESMPs” means the plan the Contractor shall develop, deliver, and implement in accordance with GCC Clause 28.8.

### 1.2. Interpretation

Interpretation of the Contract, except where the context requires otherwise:

- (a) Words indicating one gender include all genders;
- (b) Words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) Provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
- (d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (e) The word “tender” is synonymous with “bid” and “tenderer” with “bidder” and the words “tender documents” with “bidding documents”.
- (f) The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

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

### 1.3. Incoterms

- (a) Unless inconsistent with any provisions in the Contract, the meaning of any trade term and the rights and obligations of Parties thereunder shall be as prescribed by Incoterms.
- (b) The Incoterms, when used, shall be governed by the rules prescribed in the current edition of Incoterms, specified in the **PCC**, and published by the International Chamber of Commerce, Paris, France

### 1.4. Entire Agreement

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

### 1.5. Amendment

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

### 1.6. Non-waiver

- (a) Subject to GCC 1.6.(b) below, no relaxation, forbearance, delay, or indulgence by either Party in enforcing any of the terms and conditions of the Contract or the granting of time by either Party to the other shall prejudice, affect, or restrict the rights of that Party under the Contract, neither shall any waiver by either Party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) Any waiver of a Party’s rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the Party granting such waiver, and must specify the right and the extent to which it is being waived.

### **1.7. Severability**

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

### **1.8 Communications**

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

- (a) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the **PCC**; and
- (b) delivered, sent or transmitted to the address for the Recipient's communications as stated in the **PCC**. However:
  - (i) if the Recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
  - (ii) if the Recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party.

### **1.9 Law and Language**

The Contract shall be governed by the law of the country or other jurisdiction stated in the **PCC**.

The ruling language of the Contract shall be that stated in the **PCC**.

The language for communications shall be that stated in the **PCC**. If no language is stated there, the language for communications shall be the ruling language of the Contract.

Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for the purposes of interpretation of the Contract, this translation shall govern.

The Contractor shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Contractor.

### **1.10 Priority of Documents**

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- (a) the Contract Agreement (if any),
- (b) the Letter of Acceptance,
- (c) the Letter of Tender,
- (d) the Particular Conditions
- (e) these General Conditions,
- (f) the Specification,
- (g) the Drawings, and
- (h) the Schedules and any other documents forming part of the Contract.

If an ambiguity or discrepancy is found in the documents, the Employer shall issue any necessary clarification or instruction.

#### **1.11 Contract Agreement**

The Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance, unless the Particular Conditions establish otherwise. The Contract Agreement shall be based upon the form annexed to the Particular Conditions. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.

#### **1.12**

##### **Assignment**

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:

- (a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and
- (b) may, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.

#### **1.13 Copyright**

- 1.13.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor, or, if they are furnished to the Employer directly or through the Contractor by any third Party, including suppliers of materials, the copyright in such materials shall remain vested in such third Party.

#### **1.14 Confidential Details**

The Contractor's and the Employer's Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify the Contractor's compliance with the Contract and allow its proper implementation.

Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Plant & Equipment prepared by the other Party without the prior agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.

Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this Clause.

#### **1.15 Access to the Site**

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

#### **1.16 Conflict of Interest**

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

#### **1.17 Compliance with Laws**

The Contractor shall, in performing the Contract, comply with applicable Laws.

Unless otherwise stated in the Particular Conditions:

- (a) the Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the Employer's Country which (i) such authorities or undertakings require the Employer to obtain in the Employer's name, and (ii) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract;
- (b) the Contractor shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the Employer's Country which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Employer under GC Sub-Clause 1.10(a) hereof and that are necessary for the performance of the Contract. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GC Sub-Clause 10.1 hereof.

#### **1.18 Joint and Several Liability**

If the Contractor is a joint venture, consortium, or association (JVCA) of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfillment of the provisions of the Contract, unless otherwise specified in the **PCC**, and shall designate one of such persons to act as a leader with authority to bind the JVCA. The composition or the constitution of the JVCA shall not be altered without the prior consent of the Employer.

#### **1.19 Inspections and Audit by the NEFCO**

The Contractor shall permit the NEFCO and/or persons appointed by the NEFCO to inspect the Site and/or the Contractor's (including its subsuppliers, contractors, subcontractors, consultants or subconsultants) accounts and records relating to the performance of the Contract and to have such accounts and records audited by auditors appointed by the NEFCO if required by the NEFCO.

The Contractor shall maintain all documents and records related to the Contract in accordance with applicable law but in any case for at least six years from the date of substantial performance of the Contract.

The Contractor shall provide any documents necessary for the investigation of allegations of Prohibited Practices and require its employees or agents with knowledge of the Contract to respond to questions from the NEFCO.

#### **1.20 Personnel**

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

## **2. Contract Documents**

Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

## **3. Prohibited Practices**

3.1 The NEFCO requires that Recipients (including beneficiaries of NEFCO grants), as well as tenderers, suppliers, subsuppliers, contractors, subcontractors, concessionaires, consultants and subconsultants under NEFCO financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the NEFCO:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
  - (ii) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
  - (iii) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - (iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party; and
  - (v) “theft” means the misappropriation of property belonging to another party.
- (b) will cancel the portion of the NEFCO financing allocated to a contract for Plant & Equipment, works, services or concessions if it at any time determines that Prohibited Practices were engaged in by representatives of the Recipient or of a beneficiary of the NEFCO financing during the procurement or the execution of that contract, without the Recipient having taken timely and appropriate action satisfactory to the NEFCO to remedy the situation;
- (c) may declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a NEFCO-financed contract if it at any time determines that the firm has engaged in Prohibited Practices in competing for, or in executing, a NEFCO-financed contract; and
- (d) reserves the right, where a Recipient or a firm has been found by the final judgement of a judicial process in a member country of the NEFCO or a finding by the enforcement (or similar) mechanism of another international organisation, including Mutual Enforcement Institutions, to have engaged in Prohibited Practices
  - i) to cancel all or part of the NEFCO financing for such Recipient; and
  - ii) to declare that such a firm is ineligible, either indefinitely or for a stated period of time, to be awarded a NEFCO-financed contract.

## **4. Eligibility**

4.1 The Contractor and its Subcontractors shall have the nationality of an Eligible Country. A Contractor or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or is constituted, incorporated, or registered, and operates



in conformity with the provisions of the laws of that country.

- 4.2 All Plant & Equipment and Related Services to be supplied under the Contract and financed by the NEFCO shall have their origin in Eligible Countries. For the purpose of this Clause, origin means the country where the Plant & Equipment have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

## **5 Notices**

- 5.1 Any notice given by one Party to the other, pursuant to the Contract shall be in writing to the address specified in the **PCC**. The term “in writing” means communicated in written form with proof of receipt.
- 5.2 A notice shall be effective when delivered or on the notice’s effective date, whichever is later.

## **6. Settlement of Disputes**

- 6.1 The Employer and the Contractor shall make every effort to resolve amicably by direct informal negotiation any dispute arising between them under or in connection with the Contract.
- 6.2 If, after twenty-eight (28) days from the commencement of such consultation, the Parties have failed to resolve their dispute by such mutual consultation, then either Party may give notice to the other Party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the **PCC**.
- 6.3. Notwithstanding any reference to arbitration herein,
- (a) the Parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
  - (b) the Employer shall pay the Contractor any monies due the Contractor.

## **7 Scope of Works**

- 7.1 The Plant & Equipment and Related Works to be supplied shall be as specified in Section V, Employer’s Requirements.

## **8. Delivery**

- 8.1 Subject to GCC 27.1, the Delivery of the Plant & Equipment and Completion of the Related Works shall be in accordance with the Delivery and Completion Schedule specified in Section VI, Employer’s Requirements. The shipping and other documents to be furnished by the Contractor are specified in the **PCC**. The documents specified therein shall be received by the Employer before arrival of the Plant & Equipment and, if not received, the Contractor shall be responsible for any consequent expenses.

## **9. Contractor’s Responsibilities**

- 9.1 The Contractor shall supply all the Plant & Equipment and Related Works included in the Scope of Works in accordance with GCC 7, and the Delivery and Completion Schedule, as per GCC 8.

## **10. Contract Price**

- 10.1 Unless otherwise prescribed in the **PCC**, the Contract price shall be fixed throughout the duration of Contract performance.

## **11. Terms of Payment**

- 11.1 The Contract Price shall be paid as specified in the **PCC**.  
The Contractor's request for payment shall be made to the Employer in writing, accompanied by invoices describing, as appropriate, the Plant & Equipment delivered and Related Works performed, and by the documents submitted pursuant to GCC 8 and upon fulfillment of all other obligations stipulated in the Contract.  
The Payment shall be made in accordance with the schedule specified in the **PCC**
- 11.2 Payments shall be made promptly by the Employer, no later than thirty (30) days after the Employer has accepted an invoice or request for payment submitted by the Contractor.
- 11.3 The currencies in which payments shall be made to the Contractor under this Contract shall be those in which the Tender price is expressed.
- 11.4 Advance Payment: The Employer shall make an advance payment to the Contractor of the amounts **and by the date stated in the PCC**, against provision by the Contractor of an **unconditional bank guarantee** in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment.  
The Contractor is to use the advance payment only to pay for Design Services, Equipment, Plant, Materials and Related Works required specifically for execution of this Contract. The Contractor shall demonstrate that the advance payment has been used in this way by supplying copies of invoices or other documents to the Employer in form and substance acceptable to the Employer

## **12. Taxes and Duties**

- 12.1 For Plant & Equipment manufactured outside the Employer's country the Contractor shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Employer's country.
- 12.2 For Plant & Equipment manufactured within the Employer's country the Contractor shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Plant & Equipment to the Employer.
- 12.3 If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the Employer's Country, the Employer shall use its best efforts to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.

## **13. Performance Security**

- 13.1 If so required in the **PCC**, the Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a Performance Security for the performance of the Contract of the amount specified in the **PCC**.  
If the Performance Security is issued by a financial institution located outside the Employer's country, the Performance Security must be confirmed by a correspondent financial institution located in the Employer's country, satisfactory to the Employer, to make the Performance Security enforceable.
- 13.2 If so required, pursuant to GCC 13.1, the performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Employer, and shall be in one of the forms stipulated by the Employer in the **PCC**, or in another form acceptable to the Employer.
- 13.3 The proceeds of the performance security shall be payable to the Employer as compensation for any loss resulting from the Contractor's failure to complete its obligations under the Contract.
- 13.4 The performance security shall be discharged by the Employer and returned to the Contractor not later than twenty-eight (28) days following the date of completion

of the Contractor's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the **PCC**.

#### **14. Subcontracting**

14.1 The Contractor shall notify the Employer in writing of all subcontracts awarded under the Contract if not already specified in the Tender. Such notification, in the original Tender or later, shall not relieve the Contractor from any of its obligations, duties, responsibilities, or liability under the Contract.

14.2 Subcontracts shall comply with the provisions of GCCs 3 and 4.

#### **15. Specifications and Standards**

15.1 (a) The Contractor shall ensure that the Plant & Equipment and Related Services comply with technical requirements, as specified in Section V, Employer's Requirements.

(b) The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Employer, by giving a notice of such disclaimer to the Employer

(c) Wherever references are made in the Contract to codes and standards, in accordance with which it shall be executed, the addition or the revised version of such codes and standards shall be those specified in Section V, Employer's Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Employer and shall be treated in accordance with GCC 26.

#### **16. Packing and Documents**

16.1 The Contractor shall provide such packing of the Plant & Equipment as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Plant & Equipment' final destination and the absence of heavy handling facilities at all points in transit.

16.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the **PCC**, and in any other instructions ordered by the Employer.

#### **17. Insurance**

17.1 Unless otherwise specified in the **PCC**, the Plant & Equipment supplied under the Contract shall be fully insured, in a freely convertible currency from an eligible country, against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the **PCC**.

#### **18. Transportation**

18.1 Unless otherwise specified in the **PCC**, responsibility for arranging transportation of the Plant & Equipment shall be in accordance with the specified Incoterms.

#### **19. Inspections and Tests**

19.1 The Contractor shall at its own expense and at no cost to the Employer carry out all such tests and/or inspections of the Plant & Equipment and Related Services as specified in the **PCC**.

19.2 The inspections and tests may be conducted on the premises of the Contractor or its Subcontractor, at point of delivery, and/or at the Plant & Equipment' final des-

tion, or in another place in the Employer's country as specified in the **PCC**. Subject to GCC 19.3, if conducted on the premises of the Contractor or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Employer.

- 19.3 The Employer or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC 19.2, provided that the Employer bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 19.4 Whenever the Contractor is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Employer. The Contractor shall obtain from any relevant third Party or manufacturer any necessary permission or consent to enable the Employer or its designated representative to attend the test and/or inspection.
- 19.5 The Employer may require the Contractor to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Plant & Equipment comply with the technical specifications codes and standards under the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 19.6 The Contractor shall provide the Employer with a report of the results of any such test and/or inspection.
- 19.7 The Employer may reject any Plant & Equipment or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Contractor shall either rectify or replace such rejected Plant & Equipment or parts thereof or make alterations necessary to meet the specifications at no cost to the Employer, and shall repeat the test and/or inspection, at no cost to the Employer, upon giving a notice pursuant to this Contract.
- 19.8 The Contractor agrees that neither the execution of a test and/or inspection of the Plant & Equipment or any part thereof, nor the attendance by the Employer or its representative, nor the issue of any report pursuant to GCC 19.6, shall release the Contractor from any warranties or other obligations under the Contract.
- 19.9 The Employer shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion Date, and is **defined in the PCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 19.10 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Employer's notice of Defect.

## **20. Liquidated Damages**

- 20.1 Except as provided under GCC 27, if the Contractor fails to deliver any or all of the Plant & Equipment, by the date(s) of delivery, or perform the Related Services within the period specified in the Contract, the Employer may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the **PCC** of the Contract Price for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the **PCC**. Once the maximum is reached, the Employer may terminate the Contract pursuant

to GCC 28.

## **21 Warranty**

- 21.1 The Contractor warrants that all the Plant & Equipment are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 21.2 Subject to GCC 15.1(b), the Contractor further warrants that the Plant & Equipment shall be free from defects arising from any act or omission of the Contractor or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 21.3 Unless otherwise specified in the **PCC**, the warranty shall remain valid for twenty four (24) months after the Plant & Equipment, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the **PCC**.
- 21.4 The Employer shall give notice to the Contractor stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Employer shall afford all reasonable opportunity for the Contractor to inspect such defects.
- 21.5 Upon receipt of such notice, the Contractor shall, within the period specified in the **PCC**, expeditiously repair or replace the defective Plant & Equipment or parts thereof, at no cost to the Employer.
- If having been notified, the Contractor fails to remedy the defect within the period specified in the **PCC**, the Employer may proceed to take within a reasonable period such remedial action as may be necessary, at the Contractor's risk and expense and without prejudice to any other rights which the Employer may have against the Contractor under the Contract.

## **22. Patent Indemnity**

- 22.1 The Contractor shall, subject to the Employer's compliance with GCC 22.2, indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Employer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:
- (a) the installation of the Plant & Equipment by the Contractor or the use of the Plant & Equipment in the country where the Site is located; and
  - (b) the sale in any country of the products produced by the Plant & Equipment.
- Such indemnity shall not cover any use of the Plant & Equipment or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Plant & Equipment or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Contractor, pursuant to the Contract.
- 22.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in GCC 22.1, the Employer shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 22.3 If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim,

then the Employer shall be free to conduct the same on its own behalf.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

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

## **23. Limitation of Liability**

23.1 Except in cases of gross negligence or willful misconduct:

- (a) the Contractor shall not be liable to the Employer, whether in contract, in tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer; and
- (b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort, or otherwise, shall not exceed the Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

## **24. Change in Laws and Regulations**

24.1 If, within less than twenty-eight (28) days prior to the date of Tender Submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Employer's country where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC 10.

## **25. Force Majeure**

25.1 The Contractor shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

25.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Contractor that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Contractor. Such events may include, but are not limited to, acts of the Employer in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

If a Force Majeure situation arises, the Contractor shall promptly notify the Employer in writing of such condition and the cause thereof. Unless otherwise di-

rected by the Employer in writing, the Contractor shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

## **26 Change Orders and Contract Amendments**

- 26.1 The Employer may at any time order the Contractor through notice in accordance with GCC 5, to make changes within the general scope of the Contract in any one or more of the following:
- (a) drawings, designs, or specifications, where Plant & Equipment to be furnished under the Contract are to be specifically manufactured for the Employer;
  - (b) the method of shipment or packing;
  - (c) the place of delivery; and
  - (d) the Related Works to be provided by the Contractor.
- 26.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Contractor's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Contractor for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Contractor's receipt of the Employer's change order.
- 26.3 Prices to be charged by the Contractor for any Related Works that might be needed but which were not included in the Contract shall be agreed upon in advance by the Parties and shall not exceed the prevailing rates charged to other Parties by the Contractor for similar services.
- 26.4 Subject to the above, no variation in, or modification of, the terms of the Contract shall be made except by written agreement signed by the Parties.

## **27 Extensions of Time**

- 27.1 If at any time during performance of the Contract, the Contractor or its subcontractors should encounter conditions impeding timely delivery of the Plant & Equipment or completion of Related Works pursuant to GCC 8, the Contractor shall promptly notify the Employer in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Contractor's notice, the Employer shall evaluate the situation and may at its discretion extend the Contractor's time for performance, in which case the extension shall be ratified by the Parties by amendment of the Contract.
- 27.2 Except in case of Force Majeure, as provided under GCC 25, a delay by the Contractor in the performance of its Delivery and Completion obligations shall render the Contractor liable to the imposition of liquidated damages pursuant to GCC 20, unless an extension of time is agreed upon, pursuant to GCC 27.1.

## **28. Termination**

- 28.1 Termination for Default
- (a) The Employer, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Contractor, may terminate the Contract in whole or in part:
- 28.2
- (i) if the Contractor fails to deliver any or all of the Plant & Equipment and Related Works within the period specified in the Contract, or within any extension thereof granted by the Employer pursuant to GCC 27;

- (ii) if the Contractor fails to perform any other obligation under the Contract; or
  - (iii) if the Contractor, in the judgment of the Employer, has engaged in Prohibited Practices, as defined in GCC 3, in competing for, or in executing the Contract.
- 28.3 (b) In the event the Employer terminates the Contract in whole or in part, pursuant to GCC 28.1(a), the Employer may procure, upon such terms and in such manner as it deems appropriate, Plant & Equipment or Related Works similar to those undelivered or not performed, and the Contractor shall be liable to the Employer for any additional costs for such similar Plant & Equipment or Related Works. However, the Contractor shall continue performance of the Contract to the extent not terminated.
- 28.4 **Termination for Insolvency**  
The Employer may at any time terminate the Contract by giving notice to the Contractor if the Contractor becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Contractor, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Employer.
- 28.5 **Termination for Convenience**  
(a) The Employer, by notice sent to the Contractor, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Employer's convenience, the extent to which performance of the Contractor under the Contract is terminated, and the date upon which such termination becomes effective.
- 28.6 (b) The Plant & Equipment that are complete and ready for shipment within twenty-eight (28) days after the Contractor's receipt of the notice of termination shall be accepted by the Employer at the Contract terms and prices. For the remaining Plant & Equipment, the Employer may elect:
  - (i) to have any portion completed and delivered at the Contract terms and prices; and/or
  - (ii) to cancel the remainder and pay to the Contractor an agreed amount for partially completed Plant & Equipment and Related Services and for materials and parts previously procured by the Contractor.
- 29 Specific Plans and Reporting**
- 29.1 The Contractor shall submit a detailed, site-specific Health and Safety Management Plan (or "HSMP") based on all relevant health and safety provisions in accordance with the Applicable Laws to the Employer within twenty-eight (28) days after the Start Date. The HSMP must be approved by the Employer prior to commencement of the execution of the Contract.
- 29.2 The Contractor shall submit a detailed, site-specific Contractor's site-specific Environmental & Social Management Plans (or "SESMPs") in respect of safety, security, and protection of the environment based on all relevant provisions in accordance with the Applicable Laws to the Employer within twenty-eight (28) days after the Start Date. The SESMPs must be approved by the Employer prior to commencement of the execution of the Contract.



## Section VII. Particular Conditions of Contract

The following Particular Conditions of Contract shall supplement the GCC. Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

GCC reference	Particular Conditions of Contract
	<b>General Provisions</b>
<b>1.1.2.</b>	The Employer is: <b>Municipal Development Fund of Georgia (the “MDF”)</b>
<b>1.1.2.</b>	<p>The financier is: <b>NEFCO</b> (Nordic Environmental Finance Corporation) International Financial Organisation established according to agreement between Nordic Countries – Denmark, Finland, Iceland, Norway and Sweden – having its headquarters in Helsinki at the address: Fabianinkatu 34, FIN-00100, Helsinki, Finland</p> <p>This Contract is financed by a grant from the Eastern European Energy Efficiency and Environmental Fund (“E5P Fund”). NEFCO is defined as Implementing Agency for E5P Fund within the agreed financing limits with E5P in accordance with Grant Agreement between NEFCO and Recipient.</p>
<b>1.1.2.</b>	The Recipient of E5P grant via NEFCO is: <b>Municipal Development Fund of Georgia</b>
<b>1.1.3</b>	The Start Date is: <i>[15 days from the date of the contract signature]</i>
<b>1.1.6.</b>	The Employer’s Country is: <b>Georgia</b>
<b>1.1.6.</b>	<p>The Project Sites are:</p> <ul style="list-style-type: none"> <li>- <i><b>Rustavi Central Archive, address: People Friendship Ave., #6, Rustavi City, Georgia</b></i></li> <li>- <i><b>Kindergarten #32 in Rustavi, address: #21 district, Rustavi City, Georgia;</b></i></li> <li>- <i><b>Public School #1 of village Kvemo Bolnisi; village Kvemo Bolnisi, Bolnisi Municipality, Georgia</b></i></li> </ul>
<b>1.3.(b)</b>	The version of Incoterms shall be the current edition of Incoterms 2010, published by The International Chamber of Commerce, Paris.
<b>1.8</b>	<p>Communications means:</p> <p>For notices that are served on the Employer, the address shall be:  <b>Municipal Development Fund of Georgia</b>          Address: #150 D. Aghmashenebeli Ave          Tbilisi 0112, Georgia          Phone: +99532 2437001 or/02/03/04          E-mail: <a href="mailto:procurement@mdf.org.ge">procurement@mdf.org.ge</a></p> <p>For notices that are served on the Contractor, the address shall be:          Address:          Phone:          E-mail:</p>

- 1.9** The governing law is that of: **Georgia**.  
The language for communications is **Georgian and English**. Foreign Contractors need to ensure translation/interpretation into Georgian.  
The ruling language is: **English**
- 1.18** The individuals or firms in a joint venture, consortium or association shall be held jointly and severally liable.
- 1.20** Schedule of Key Personnel:
- Construction Manager
  - Site Manager
  - Environment and Social Manager
  - Health and Safety Manager
- 5.1** For **notices**, the Employer's address shall be:  
Attention: Mr. George Shengelia, Executive Director  
Street Address: #150 D. Aghmashenebeli Ave.,  
Floor/ Room number: 3rd floor, Room #301  
City: Tbilisi  
Postal Code: 0112  
Country: Georgia  
Telephone: +99532 2437001 or/02/03/04  
Facsimile number: +995 32 43 70 77  
Electronic mail address: [procurement@mdf.org.ge](mailto:procurement@mdf.org.ge)
- 6.2** The rules of procedure for arbitration shall be as follows:
- (a) In the case of a dispute between the Employer and a Georgia Contractor, the dispute shall be referred to adjudication/arbitration in accordance with the laws of Georgia.
  - (b) In the case of a dispute between the Employer and a foreign Contractor, the dispute shall be settled by arbitration in accordance with the provisions of the UNCITRAL Arbitration Rules.
  - (c) The place of arbitration shall be the International Commercial Arbitration Court at the Chamber of Commerce and Industry of Georgia.
  - (d) The arbitration proceedings shall be conducted in the language governing the Contract.
- Notwithstanding any referral of a dispute to arbitration herein:
- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
  - (b) the Employer shall pay the Contractor any monies due the Contractor.
- 8.1.** The shipping and other documents to be furnished by the Contractor are:
- (a) For Plant supplied from outside Georgia: the Plant shall be delivered DDP <<place of final destination with indication of each building address>>.  
Upon shipment, the Contractor shall notify the Employer and the Insurance

Company by fax of the full details of the shipment, including: Contract number; description of Plant; quantity; the number and date of the usual transport document (such as railway or road consignment note, bill of lading, or multimodal transport document); date of shipment; expected date of arrival; vessel and ports of loading and discharge, if appropriate.

The Contractor shall mail the following documents to the Employer, with a copy to the Insurance Company:

- (i) copies of the Contractor's invoice showing the Plant description, quantity, unit price and total amount;
- (ii) original and 3 copies of the negotiable, clean, on-board bill of lading marked "freight prepaid" and 3 copies of non-negotiable bill of lading;
- (iii) copies of packing list identifying contents of each package;
- (iv) insurance certificate;
- (v) Manufacturer's/Contractor's warranty certificate;
- (vi) inspection certificate, issued by the nominated inspection agency and the Contractor's factory inspection report;
- (vii) certificate of origin

The above documents shall be received by the Employer at least one week before arrival of the Plant at the port or place of arrival, and, if not received, the Contractor will be responsible for any consequent expenses.

- (b) For Plant supplied from within Georgia: the Plant shall be delivered at Site.

Upon delivery of the Plant to the transporter, the Contractor shall notify the Employer and mail the following documents to the Employer:

- (i) copies of the Contractor's invoice showing the Plant description, quantity, unit price and total amount;
- (ii) delivery note, railway receipt or truck receipt;
- (iii) Manufacturer's or Contractor's warranty certificate;
- (iv) inspection certificate issued by the nominated inspection agency, and the Contractor's factory inspection report;
- (v) evidence of payment of customs duties or other similar import taxes on directly imported components incorporated in the Plant.

The above documents shall be received by the Employer before arrival of the Plant and, if not received, the Contractor will be responsible for any consequent expenses.

Works:

- (i) copy of the Contractor's invoice, which should provide a full description of the Works performed.

**10.1** Price adjustments shall not apply.

**11.1** The terms of payment shall be as follows:

All payments under the Contract shall be made in GEL.

The method and conditions of payment to be made to the Contractor under this Contract shall be as follows:

- (a) Payment for Plant and Related Works shall be made in the currency of contract in the following manner:
  - (i) Advance payment: Twenty (20%) percent of the Contract Price shall be paid within thirty (30) days of signing the Contract, and upon submission of the Performance Security and Bank Guarantee for Advance Payment. The Bank Guarantee for Advance Payment shall be valid until the First Payment is made;
  - (ii) First Payment: Thirty (30%) percent of the Contract Price of the Plant and Relevant Works shall be paid within thirty (30) days upon submission of a claim supported by the acceptance certificate issued by the Employer for the respective Design Services, Plant and Related Works for not less than 50% of contract price.
  - (iii) Second Payment: Thirty (30%) percent of the Contract Price of the Plant and Relevant Works shall be paid within thirty (30) days upon submission of a claim supported by the acceptance certificate issued by the Employer for the respective Plant and Related Works.
  - (iv) Final Payment: Twenty (20%) percent of the Contract Price of the Plant and of the Relevant Works shall be paid within thirty (30) days upon submission of a claim supported by the acceptance certificate issued by the Employer for the final Plant and Related Works
- (c) Before the advance payment, the Contractor shall submit to the Employer a written confirmation from the Contractor's bank that the Contractor is a legal owner and has an exclusive access to the bank's account that is indicated in this Contract as the Contractor's account. The Employer shall submit this written confirmation together with a request for disbursement of NEFCO funds. In case the bank data of the Contractor were changed during the validity of this Contract, then the Contractor shall submit a new written confirmation from its bank to the Employer immediately.

**11.2** The Contractor shall nominate up to 3 (three) accounts and notify these to the Employer within 28 days after the Contractor receives the Letter of Acceptance. Payments shall be made only to the account(s) nominated by the Contractor in accordance with this Clause.

**11.4** The Amount of Advance Payment is up to 20% of the Total Contract Price.  
Payment will be proceeded upon submission of the Performance Security and Bank Guarantee for Advance Payment

**13.1** A performance security shall be required;  
The amount of performance security shall be: **10% of the Contract Price.**

**13.2** Performance security shall be issued from local reputable Banks operating on the territory of Georgia (*Full list of commercial Bank's operating on the territory of Georgia is available on National Bank of Georgia's website on following link:*

[www.nbg.gov.ge/index.php?m=403&lng=eng](http://www.nbg.gov.ge/index.php?m=403&lng=eng)) in a form acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Con-

tract Price is payable.

**13.4** After delivery and acceptance of the Plant, the performance security shall be reduced to two and half (2.5) percent of the Contract Price to cover the Contractor's warranty obligations in accordance with GCC Clause 21.3

**14.1** Supplement the sub-clause with the following sentence: "Subcontracts shall be officially approved by the Employer prior to the start of the respective Subcontractors' work".

**16.2** The packing, marking and documentation within and outside the packages shall be:

The package shall be suitable for crane and manual removals, wagon or truck haulage.

The following Georgia and English text (English is optional for goods supplied from Georgia) shall be marked on two visible opposite sides of the packages with package marking labels or indelible ink:

Markings:

Receiver and Address

Sender

Contract No.

Contractor ref. No.

A waterproof envelope including a copy of the packing list shall be fastened on the outside wall of each case. Another copy of the packing list shall be placed in the case and fastened onto the items or the inside wall of the case.

The Contractor is responsible for extra transportation and all costs involved and damages caused by shipment to a wrong address, and by incomplete and/or wrong marking.

In the event that the Goods has been packed incorrectly and not according to these instructions the Employer may repack the Goods at the Contractor's expense. All delays caused by this are the full responsibility of the Contractor.

Any written instructions given in addition to these by the Employer to the Contractor at any stage of the Contract prior to shipment must be fulfilled.

For the Goods supplied from outside Georgia, the Contractor should submit such documents as required for importing the goods into Georgia.

For the Goods supplied from within Georgia, the Contractor shall provide documents that are required for the transported goods according to the Georgian legislation.

**17.1** The insurance coverage shall be in an amount equal to 110 percent of the DDP value of the Plant from "warehouse to warehouse" on an "All Risks" basis, excluding War Risks. The Insurance Policies shall be approved by the Employer.

**18.1** Responsibility for arranging transportation of the Plant & Equipment shall be in accordance with the specified Incoterms.

**19.1** The inspections and tests shall be:

**Prior to shipment of Goods**

FAT (Factory Acceptance Test) including visual inspections and physical measurements.

### **At the delivery**

The Plant will be inspected by the Employer during the Customs clearance or immediately after they have arrived at site, as appropriate. The conformity of the enclosed Plant shall be checked to be as stipulated in the documents. The Employer shall:

- (a) issue the Minutes of Arrival to the Contractor within three days after arrival of Goods to the Site, stating the date on which the Goods were delivered in accordance with the Contract; or
- (b) give reasons and specify the item to be finished by the Contractor to enable the Minutes of Arrival to be issued. The Contractor shall then complete this item before issuing a further notice under this Contract to receive the Minutes of Arrival.

The Contractor shall compensate all and any damage caused to the Employer in case of non-conformity of the Plant applied for custom clearance and plant actually supplied including compensation of all custom duties, taxes and penalties which shall be paid in order to supply the non supplied part.

**The Employer's Acceptance:** The Plant shall be considered as taken over and accepted by the Employer when the Plant and Works are delivered according to the Contract and the Acceptance Certificate has been issued.

The Contractor may apply by notice to the Employer for Acceptance Certificate not earlier than 14 days before the Goods in the Contractors opinion are installed, passed all agreed tests and ready for taking over and acceptance.

The Employer shall, within 28 days after receiving the Contractor's application:

- (a) issue the Acceptance Certificate to the Contractor, stating the date on which the Goods or lots and Services were completed in accordance with the Contract; or
- (b) reject the application, giving reasons and specifying the item to be finished by the Contractor to enable the Acceptance Certificate to be issued. The Contractor shall then complete this item before issuing a further notice under this Contract.

If signing of Acceptance Certificate is delayed not due to the Contractor's fault, the Employer shall be deemed to have taken over and accepted the Plant not later than **12** months from the last delivery Minutes of Arrival date.

The Employer shall then issue the Acceptance Certificate accordingly, and Works (if not carried out yet) and Tests on Completion shall be carried out as soon as practicable, before the expiry date of the warranty period.

In addition to any other information the Acceptance Certificate shall contain the information of the Works rendered and the price of the Works rendered. By request of the Employer Parties shall sign separate acceptance certificate for Works which shall not be signed earlier then Acceptance Certificate for the Plant.

**19.9** The Defects Liability Period is: **twenty-four (24) months from the date of issuing of Certificate of Completion**

**20.1** The liquidated damage shall be: 0.5 % of the Contract Price per week.  
The maximum percentage of liquidated damages shall be: 10% of the Contract Price.

**21 Warranty**

**21.3** Without prejudice to Clauses 21.3, 21.4 and 21.5, the Contractor shall promptly correct, at no cost to the Employer, any defect in any Plant & Equipment and Related Works or parts repaired or replaced pursuant to Clauses 21.3, 21.4 and 21.5 above, upon receipt of a written notice of defect within **12** months of the acceptance of the repaired or replaced Plant.

**21.5** The period for repair or replacement shall be: **30 (thirty)** days.

## **Section VIII. Contract Forms**

This Section contains Contract Forms which once completed will constitute part of the Contract. The forms for the Contract Agreement, Performance Security and Advance Payment Security, when required, shall only be completed by the successful Tenderer after the contract award.

- 1. Letter of Acceptance**
- 2. Contract Agreement**
- 3. Performance Security**
- 4. Form of Bank Guarantee for Advance Payment**



<b>1. LETTER OF ACCEPTANCE</b>
--------------------------------

*[on letterhead paper of the Employer ]*

To: *[name and address of the Contractor]* . . . . .

. . . . . *[date]*. . . . .

Subject: *[Notification of Award Contract No]*. . . . .

This is to notify you that your Tender dated . . . . *[insert date]* . . . . for the execution of the . . . . . *[insert name of the contract and identification number]* . . . . . for the amount of . . . . . *[insert amount(s) in figures and words and name(s) of currency(ies)]*, as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by us.

You are requested to furnish the Performance Security in the amount of *[insert amount(s) in figures and words and name(s) of currency(ies)]* within 28 days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section VIII (Contract Forms) of the Tender Document.

Authorised Signature:

Name of Signatory:

Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

## 2. Contract Agreement

THIS CONTRACT AGREEMENT is made on the *[insert number]* day of *[insert month]*, *[insert year]*.

BETWEEN

- (1) *[insert complete name of the Employer]*, a *[insert description of type of legal entity, for example, an agency of the Ministry of {insert name of Ministry/agency} of the Government of {insert name of Country of the Employer }, or corporation incorporated under the laws of {insert name of Country of the Employer }]* and having its principal place of business at *[insert address of the Employer ]* (hereinafter called “the Employer”),

and

- (2) *[insert name of the Contractor]*, a corporation incorporated under the laws of *[insert country of Contractor]* and having its principal place of business at *[insert address of Contractor]* (hereinafter called “the Contractor”).

WHEREAS the Employer invited tenders for Plant & Equipment and Related Services, described as *[insert brief description of the Plant & Equipment and Related Services]* and has accepted a Tender by the Contractor for the supply of these Plant & Equipment and Related Works, and the Employer agrees to pay the Contractor the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
  - (a) the Letter of Acceptance
  - (b) the Letter of Tender
  - (c) the Addenda No.s . . . . . *[insert addenda numbers if any]*. . . . .
  - (d) the Particular Conditions
  - (e) the General Conditions
  - (f) the Employer’s Requirements
  - (g) the Drawings; and
  - (h) the completed Schedules.
3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to supply of the Plant & Equipment and Related Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the supply of the Plant & Equipment and Related Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

Agreement to be executed in accordance with the laws of . . . . . *[name of the Recipient country]* . . . . . on the day, month and year indicated above.

**Signed for and on behalf of the Employer:**

.....

Name:

Date:

**In the presence of Witness:**

.....

Name:

Address:

Date:

**Signed for and on behalf the Contractor:**

.....

Name:

Date:

**In the presence of Witness:**

.....

Name:

Address:

Date:

### 3. PERFORMANCE SECURITY

[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated]

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

Tendering Process Reference: [insert no. and title of Tendering process]

Bank's Branch or Office: [insert complete name of Guarantor]

**Beneficiary:** [insert complete name of Employer ]

**PERFORMANCE GUARANTEE No.:** [insert Performance Guarantee number]

We have been informed that [insert complete name of the Contractor (hereinafter called "the Contractor")] has entered into Contract No. [insert number] dated [insert day and month], [insert year] with you, for the supply of [description of Plant & Equipment and related Services] and the remedying of any defects therein (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Contractor, we hereby irrevocably undertake to pay you any sum(s) not exceeding [insert amount(s) in figures and words] such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing declaring the Contractor to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than the [insert number] day of [insert month] [insert year],<sup>2</sup> and any demand for payment under it must be received by us at this office on or before that date. This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

.....[Signatures of authorised representatives of the bank]

The Bank shall insert the amount(s) specified in the **PCC** and denominated, as specified in the **PCC**, either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Employer.

<sup>2</sup> Dates established in accordance with Clause 13.4 of the General Conditions of Contract ("GCC"), taking into account any warranty obligations of the Contractor under Clause 11.2 of the GCC intended to be secured by a partial Performance Guarantee. The Employer should note that in the event of an extension of the time to perform the Contract, the Employer would need to request an extension of this Guarantee from the Bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Employer might consider adding the following text to the Form, at the end of the penultimate paragraph: "We agree to a one-time extension of this Guarantee for a period not to exceed [six months] [one year], in response to the Employer's written request for such extension, such request to be presented to us before the expiry of the Guarantee."

#### 4. Advance Payment Security

*[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated]*

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

Tendering Process Reference: *[insert number and title of Tendering process]*

*[bank's letterhead]*

**Beneficiary:** *[insert legal name and address of Employer]*

**ADVANCE PAYMENT GUARANTEE No.:** *[insert Advance Payment Guarantee no.]*

- I. We have been informed that . . . . . *[name of the Contractor]*. . . . . (hereinafter called “the Contractor”) has entered into Contract No. . . . . *[reference number of the Contract]*. . . . . dated . . . . . with you, for the supply of Plant and Related Works *[name of contract and brief description of Plant and Related Works]* (hereinafter called “the Contract”).
- II. Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum . . . . . *[name of the currency and amount in figures]* <sup>1</sup>. . . . . ( . . . . . *[amount in words]*. . . . . ) is to be made against an advance payment guarantee.
- III. At the request of the Contractor, we . . . . . *[name of the Bank]*. . . . . hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of . . . . . *[name of the currency and amount in figures]\**. . . . . ( . . . . . *[amount in words]*. . . . . ) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than performing his obligations under the Contract.
- It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on its account number . . . . . *[Contractor's account number]*. . . . . at . . . . . *[name and address of the Bank]*. . . . .

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

- IV. . . . . *[Seal of Bank and Signature(s)]*.

**Note –**

*All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.*

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