

# **Recovery and Development Agency Quick Contracting Invitation to Tender**



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## **BOOKLET 2**

### **CONDITIONS OF CONTRACT**

#### **FOR**

#### **SUPPLY OF FINISHES (PAINT, PRIMER, AND EPOXY WATERPROOF COATING) FOR THE ELMORE STOUTT HIGH SCHOOL RE-DEVELOPMENT PROJECT**

#### **AT**

#### **TORTOLA, BRITISH VIRGIN ISLANDS**

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# Short Contract

A contract between .....  
.....  
.....  
and .....  
.....  
.....  
for .....  
.....  
.....

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Notes about this contract are printed in boxes like this one. They are not part of the contract. Further guidance is provided in the NEC3 Supply Short Contract Guidance Notes.

## Contract Data

The *Purchaser* is

Name .....  
Address .....  
Telephone .....  
E-mail address .....

The *Purchaser* requires the *Supplier* to Provide the Goods when instructed by  
Batch Order Yes / No (delete as appropriate)

The *goods* are .....  
The *law of the contract* is .....  
The *period for reply* is ..... weeks.  
The *starting date* is .....  
The *delivery date* is .....

**If the *goods* are instructed by Batch Order enter here 'The *delivery date* is identified in the Batch Order'.**

The *premises* are .....  
The period for the correction of  
Defects after Delivery is ..... weeks.  
The *defects date* is ..... weeks after Delivery.  
The *delay damages* are ..... per day.

**If the *goods* are instructed by Batch Order enter a *delay damages* amount appropriate to the quantity or use of the goods in the Batch.**

The *assessment day* is the ..... of each month.  
If the *goods* are instructed by  
Batch Order  
the *batch order interval* is .....  
the *end date* is .....  
the quantity range of *goods* in  
a batch is from ..... to .....

# Contract Data

The *Adjudicator* is

Name .....

Address .....

Telephone .....

E-mail address .....

The interest rate on late payment is ..... % per complete week of delay.

Enter a rate only if a rate less than 0.5% per week of delay has been agreed.

The *Supplier's* liability to the *Purchaser* for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to .....

The *Supplier* is not liable to the *Purchaser* for loss of or damage to the *Purchaser's* property in excess of ..... for any one event.

The *Purchaser* provides this insurance

Only enter details here if the *Purchaser* is to provide insurance.

.....

.....

The *Adjudicator* nominating body is

The *tribunal* is .....

If the *tribunal* is arbitration, the arbitration procedure is .....

The *conditions of contract* are the NEC3 Supply Short Contract April 2013 and the following additional conditions

Only enter details here if additional conditions are required.

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# The *Supplier's* Offer

The *Supplier* is

Name .....  
Address .....  
.....  
Telephone .....  
E-mail address .....

The percentage for overheads and profit added to Defined Cost is ..... %.

The *Supplier* offers to Provide the Goods in accordance with the *conditions of contract* for an amount to be determined in accordance with the *conditions of contract*.

The offered total of the Prices is .....

Enter the total of the Prices from the Price Schedule.

Signed on behalf of the *Supplier*

Name .....  
Position .....  
Signature ..... Date .....

# The *Purchaser's* Acceptance

The *Purchaser* accepts the *Supplier's* Offer to Provide the Goods

Signed on behalf of the *Purchaser*

Name .....  
Position .....  
Signature ..... Date .....

# Price Schedule

Entries in the first four columns of this Price Schedule are made either by the *Purchaser* or the tenderer. If the *Supplier* is to be paid an amount for the item which is not adjusted if the quantity of goods in the item changes, the tenderer enters the amount in the Price column only, the Unit, Quantity and Rate columns being left blank.

If the *Supplier* is to be paid an amount for the item of goods which is the rate for the goods multiplied by the quantity supplied, the tenderer enters a rate for each item and multiplies it by the Quantity to produce the Price, to be entered in the final column.

Item number	Description	Unit	Quantity	Rate	Price
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
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.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
The total of the Prices					<div></div>

# Goods Information

The Goods Information should be a complete and precise statement of the *Purchaser's* requirements. If it is incomplete or imprecise there is a risk that the *Supplier* will interpret it differently from the *Purchaser's* intention. Information describing the *Purchaser's* requirements for the supply of the *goods*, including the information to be provided by the *Supplier* in connection with the supply of the *goods*, should be stated in the section headed Supply requirements.

## 1 Description of the goods

Give a detailed description of what *goods* the *Supplier* is required to supply. This may include drawings. Give the information of the required quality standards, the tests and inspections required and any health and safety requirements.

## 2 Specifications

List the specifications that apply to this contract.

Title	Date or revision	Tick if publicly available

# Goods Information

## 3 Constraints on how the *Supplier* Provides the Goods

State any constraints on how the *Supplier* is to provide the *goods* such as, any limits on subcontracting.

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## 4 Requirements for the programme

State whether a programme is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated.

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# Goods Information

## 5 Services and other things provided by the *Purchaser*

Describe what the *Purchaser* will provide, in connection with the supply of the *goods*, such as transport, loading or unloading of the *goods*.

Item	Date by which it will be provided
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

## 6 Supply requirements

State the information which describes the *Purchaser's* requirements (other than services he is to provide) in connection with the supply of the *goods* including the requirements for transport, the mode of transport and the loading and unloading of the *goods*.

State the delivery place, the hours of access to the delivery place and other information to be provided by the *Supplier* at the time of Delivery such as the delivery note, which notifies the actual delivery date. The information necessary for a purchase that involves international, cross border transactions should be stated here, such as export and import requirements of the Customs authorities.

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## Contract Forms

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

- **Form of Tender- Securing Declaration**
- **Letter of Acceptance**
- **Advance Payment Security**
- **Performance Security (Bank Guarantee)**

## Form of Tender-Securing Declaration

Date: *[insert date (as day, month and year)]*  
Tender No.: *[insert number of tender process]*

To: *[insert complete name of Purchaser]*

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 with the Recipient for the period of time of **12 months starting on 31<sup>st</sup> May 2022**, if we are in breach of our obligation(s) under the tender conditions, because we:

- (a) have withdrawn our Tender during the period of tender validity specified in the Instructions to Tender document; or
- (b) having been notified of the acceptance of our tender by the Purchaser during the period of bid 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 Tenderer; or (ii) twenty-eight days after the expiration of our Tender.

Signed: *[insert signature of person whose name and capacity are shown]* In the capacity of *[insert legal capacity of person signing the Tender-Securing Declaration]*

Name: *[insert complete name of person signing the tender-Securing Declaration]*

Duly authorised to sign the tender for and on behalf of: *[insert complete name of Tenderer]*

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

Corporate Seal (*where appropriate*)

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

# Letter of Acceptance

*[On letterhead of the Employer]*

..... *[Date]* .....

To: ..... *[Name and Address of the Contractor]* .....

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

Thank you for taking part in the above-mentioned tender process. This Letter of Acceptance is to notify you that your Tender dated ..... *[insert date]* ..... for execution of the ..... *[insert name of the contract]* ..... for a price not exceeding ..... *[insert amount in numbers and words and name of currency]*, is hereby accepted by our Agency.

This letter constitutes the formation of a Contract until the formal Contract Agreement is signed by both parties. A draft Contract Agreement will be forwarded for your review in a separate email, subject to the Board’s formal approval. The Adjudicator for this Contract is the British Virgin Islands International Arbitration Center (BVIAC).

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included below in this Invitation to Tender Document.

Authorised Signature: .....

Name and Title of Signatory: .....

# Advance Payment Security

**[Bank's Name, and Address of Issuing Branch or Office]**

**Beneficiary:** ..... **[Name and Address of Employer]** .....

**Date:** .....

**Advance Payment Guarantee No.:** .....

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 execution of . . . . . **[name of contract and brief description of Works]**. . . . . (hereinafter called "the Contract").

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.

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 the costs of mobilization in respect of the Works.

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]**. . . . .

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that eighty (80) percent of the Contract Price has been certified for payment, or on the . . . day of . . . . . , . . . . . <sup>2</sup>, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

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



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

<sup>1</sup> 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.

<sup>2</sup> Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

## Performance Security (Bank Guarantee)

*[Bank's Name, and Address of Issuing Branch or Office]*

**Beneficiary:** ..... *[Name and Address of Employer]* .....

**Date:** .....

**Performance Guarantee No.:** .....

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 execution of . . . . . *[name of contract and brief description of Works]*. . . . . (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 . . . . . *[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]* <sup>1</sup>. . . . . ( . . . . . *[amount in 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 accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the . . . . . Day of . . . . . , . . . . . <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 (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

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

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

<sup>1</sup> *The Guarantor shall insert an amount representing the percentage of the Contract Price specified in the Contract and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Employer.*

<sup>2</sup> *Insert the date 28 days after the expected completion date. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."*