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Instructions to Bidders

A. General

- 1. Scope of Bid**
- 1.1 The Employer, as defined in the **Bidding Data** and Appendix to Bid, hereinafter called "the Employer," wishes to receive bids for the construction of Works, as described in this Bidding document.
- 1.2 The successful bidder will be expected to complete the Works within the period stated in the Appendix to Bid from the date of commencement of the Works.
- 1.3 Throughout these bidding documents, the terms "bid" and "tender" and their derivatives ("bidder/tenderer", "bid/tendered," "bidding/tendering," etc.) are synonymous, and *day* means calendar day. Singular also means plural.
- 2. Source of Funds**
- 2.1 The source of fund is shown in the Bidding Data.
- 3. Eligible Bidders**
- This invitation to bid is open only to domestic bidders registered in Ethiopia meeting all three of the following requirements:
- 3.1 (a) a bidder shall not be affiliated with a firm or entity:
- (i) that has provided consulting services related to the Works to either the Employer during the preparatory stages of the Works or of the Project of which the Works form a part, or
 - (ii) that has been hired (or is proposed to be hired) by the Employer as Engineer for the contract.
- (b) A bidder shall not be under a declaration of ineligibility for corrupt or fraudulent practices.

3.2 Bidders shall provide evidence of eligibility in accordance with Sub-Clause 3.1.

4. Eligible Materials, Supplies, Equipment and Services

4.1 The materials, Contractor's equipment, other supplies, and services to be supplied under the Contract, shall have their origin in eligible source countries defined under section XIV, eligible countries of the bidding document and all expenditures made under the Contract will be limited to such materials, Contractor's equipment, other supplies, and services.

4.2 For purposes of Sub-Clause 4.1 above, "origin" means the place where the materials, equipment, and other supplies are mined, grown, produced, or manufactured, and from which the services are supplied.

5. Qualification of the Bidder

5.1 To be qualified for award of the Contract, bidders shall provide evidence satisfactory to the Employer of their capability and adequacy of resources to carry out the Contract effectively. Bidders as part of their qualification application shall submit all the information in the forms included in the qualification questionnaire Section XII of the bidding document.

5.2 Bids submitted individually, as a partner in a Joint Venture or as a group as the case may be, must comply with the qualification requirements set in the Bidding documents Section XII, Qualification Questionnaires. Moreover the Joint Venture shall satisfy the following :

- (a) The Bid, and in case of a successful Bid, the Form of Agreement, shall be signed so as to be legally binding on all partners;
- (b) One of the partners shall be nominated as being in charge, and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the

partners;

- (c) The partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture, and the entire execution of the Contract, including payment, shall be done exclusively with the partner in charge;
- (d) All partners of the joint venture shall be liable jointly and severally for the execution of the Contract in accordance with the Contract terms, and a statement to this effect shall be included in the authorization mentioned under (b) above, as well as in the Form of Bid and in the Form of Agreement (in case of a successful Bid); and
- (e) A copy of the Joint Venture Agreement entered into by all partners shall be submitted with the Qualification Information. Alternatively, a Letter of Intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all partners and submitted with the Bid, together with a copy of the proposed Agreement. Bidders shall meet the minimum qualifying criteria set in the Qualification Questionnaire. The JV agreement shall be authenticated by a Notary public.

5.3 For the purpose of this particular contract, Bidders shall fully meet minimum qualifying y with the criteriasas stated in Section XII and also comply with our bidding instructions.

5.4 The figures for each of the partners of a joint venture shall be added together to determine the bidder's compliance with the minimum qualifying criteria.

5.5 The qualifications, capacity, and resources of proposed

subcontractors will not be taken into account in assessing those of individual or joint venture bidders, unless they are named specialist subcontractors and the scope of their specialized participation in the Works is clearly defined in the bid.

6. Cost of Bidding

7.1 The bidder shall bear all costs associated with the preparation and submission of its bid, and the Employer will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

7. Site Visit

7.1 The bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the bidder's own expense.

7.2 The bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises for the purpose of such visit, but only upon the express condition that the bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.

B. Bidding Documents

8. Content of Bidding Documents

8.1 The bidding documents are those stated below and should be read in conjunction with any Addenda issued if any in accordance with Clause 11:

Section I. Not applicable at this point and it will be provided in the future.

Section II. Instructions to Bidders

Section III. Bidding Data

Section IV. Part I—General Conditions of Contract

Section V. Part II—Conditions of Particular Application

Section VI. Technical Specifications

Section VII. Form of Bid and Appendix to Bid

Section VIII. Bill of Quantities

Section IX. Forms of Agreement, Performance Guarantee (Unconditional and Conditional) and Bank Guarantee for Advance Payment (Unconditional and Conditional), Anti-Bribery Pledge Form, Form of Advance Payment Disbursement Agreement, and Advance Payment Disbursement Schedule

Section X. Drawings

Section XI. Not used

Section XII. Qualification Questionnaire

Section XIII. Disputes Settlement Procedure

Additional information will be accessible to bidders as given in the Bidding Data.

9. Clarification of Bidding Documents

- 9.1 A prospective bidder requiring any clarification of the bidding documents may notify the Employer in writing or by cable (hereinafter, the term "cable" is deemed to include telex and facsimile) at the Employer's address indicated in the **Bidding**

Data. The Employer will respond to any request for clarification that it receives earlier than 3 days prior to the deadline for submission of bids.

**10. Amendment
of Bidding
Documents**

10.1 At any time prior to the deadline for submission of bids, the Employer may amend the bidding documents by issuing Addenda.

10.2 Any Addendum thus issued shall be part of the bidding documents pursuant to Sub-Clause 8.1 and shall be communicated in writing or by cable to all purchasers of the bidding documents. Prospective bidders shall promptly acknowledge receipt of each Addendum by cable to the Employer.

10.3 To give prospective bidders reasonable time in which to take an Addendum into account in preparing their bids, the Employer may extend as necessary the deadline for submission of bids, in accordance with Clause 21.

C. Preparation of Bids

**11. Language of
Bid**

11.1 The bid, and all correspondence and documents related to the bid exchanged by the bidder and the Employer shall be written in the bid language stipulated in the Bidding Data and Conditions of Particular Application. Supporting documents and printed literature furnished by the bidder may be in another language provided they are accompanied by an accurate translation of the relevant passages in the above stated language, English in which case, for purposes of

interpretation of the bid, the English translation shall prevail.

**12. Documents
Comprising
the Bid**

12.1 The bid submitted by the bidder shall comprise the following: duly filled-in Form of Bid and Appendix to Bid, and other documents as per the **bidding documents herewith attached**. The documents listed under Sections VII, VIII and XII shall be filled in without exception, subject to extensions thereof in the same format **as dictated in the Bidding Data**.

12.2 If so indicated in the Bidding Data, bidders bidding for this contract, together with other contracts to form a package will so indicate in the bid, together with any discounts offered for the award of more than one contract.

13. Bid Prices

13.1 Unless stated otherwise in the bidding documents, the Contract shall be for the whole Works as described in Sub-Clause 1.1

13.2 The bidder **will not** fill in rates and prices of the Works only qualification information and technical proposal will be submitted at this point.

- 14.Currencies of Bid and Payment** 14.1 Please be informed in advance that all payments shall be made in Ethiopian Birr
- 15.Bid Validity** 15.1 Bids shall remain valid for the period stipulated in the **Bidding Data** after the deadline for bid submission as specified in Clause 21.
- 16.Bid Security** Not Applicable (N/A).
- 17.Alternative Proposals by Bidders** 17.1 When alternative times for completion are explicitly invited, a statement to that effect will be included in the **Bidding Data**, as will the method of evaluating different times for completion.
- 18.Pre-Bid Meeting**
- 18.1 The bidder's designated representative is invited to attend a pre-bid meeting, which, if convened, will take place at the venue and time stipulated in the **Bidding Data**.
- 18.2 The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 18.3 The bidder is requested, as far as possible, to submit any questions in writing or by cable, to reach the Employer not later than one week before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted in accordance with the following sub-clause.
- 18.4 Minutes of the meeting, including the text of the questions raised and the responses given, together with any responses prepared after the meeting, will be transmitted without delay to all purchasers of the bidding documents. Any modification of the bidding documents listed in Sub-Clause 8.1 that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an

Addendum pursuant to Clause 10 and not through the minutes of the pre-bid meeting.

18.5 If applicable, non attendance at the pre-bid meeting will not be a cause for disqualification of a bidder.

19.Format and Signing of Bid

19.1 The bidder shall prepare one original for each of Qualification Information/technical proposal as described in the bidding documents and clearly mark each of them as "original". In addition, the bidder shall submit copies of the bid, in the number specified in the bidding Data and bidding documents clearly marked "copies." In the event of discrepancy between them, the original shall prevail.

19.2 The original and all copies of the bid shall be typed or written in indelible ink (in the case of copies, photocopies are also acceptable) and shall be signed by a person or persons duly authorized to sign on behalf of the bidder. All pages of the bid where entries or amendments have been made shall be initialed by the person or persons signing the bid.

19.3 The bid shall contain no alterations, omissions, or additions, unless such corrections are initialed by the person or persons signing the bid.

D. Submission of Bids

20.Sealing and Marking of Bids

20.1 The bidder shall seal each copy of his bid defined in Clause 19 and tender documents."

20.2 The inner and outer envelopes shall

(a) be addressed to the Employer at the address provided in the "**invitation to tender**" and **Bidding Data**;

"

- "21. Deadline for Submission of Bids**
- 21.1 Bids must be received by the Employer at the e-mail address specified in Sub-Clause 20.2 no later than the time and date stipulated in the **Bidding Data and tender documents**.
- 21.2 The Employer may, in exceptional circumstances and at its discretion, extend the deadline for submission of bids by issuing an Addendum in accordance with Clause 10, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will thereafter be subject to the deadline as extended.
- 22. Late Bids**
- 22.1 Any bid received by the Employer after the deadline for submission of bids prescribed in Clause 21 will be rejected.
- 23. Modification and Withdrawal of Bids**
- 23.1 The bidder may modify or withdraw its bid after bid submission, provided that written notice of the modification or withdrawal is received by the Employer prior to the deadline for submission of bids.
- Modifications should be submitted separately.
- 23.2 The bidder's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with the provisions of Clause 20, with the outer and inner envelopes additionally marked "modification" or "withdrawal," as appropriate.
- 23.3 Except as provided in Sub-Clause 23.1, withdrawal of a bid during the interval between the deadline for submission of bids and expiration of the period of bid validity specified in Clause 15 may result in the forfeiture of pursuant to Sub-Clause 16.7.
- 24. Process to Be**
- 24.1 Information relating to the examination, clarification, evaluation, and comparison of bids, and

Confidential

recommendations for the award of a contract, shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful bidder has been announced. Any effort by a bidder to influence the Employer's processing of bids or award decisions may result in the rejection of the bidder's bid.

25. Clarification of Bids and Contacting the Employer

25.1 To assist in the examination, evaluation, and comparison of bids, the Employer may, at its discretion, ask any bidder for clarification of its bid. The request for clarification and the response shall be in writing or by cable..

25.2 From the time of the date the tender documents dispatched to the time of Contract award, if any bidder wishes to contact the Employer on any matter related to the bid, it should do so in writing.

25.3 Any effort by the bidder to influence the Employer in the Employer's bid evaluation, bid comparison, or Contract award decisions may result in the rejection of the bidder's bid.

26. Examination of Bids and Determination of Responsiveness

26.1. Prior to the detailed evaluation of bids, the Employer will determine whether each bid; (a) meets the eligibility criteria of Section XIV; (b) has been properly signed; (c) is accompanied by the required securities where applicable; (d) is substantially responsive to the requirements of the bidding documents as set out in the Bidding Documents and (e) provides any clarification and/or substantiation that the Employer may require to determine responsiveness pursuant to Sub-Clause 26.2. Furthermore, the bidder shall, if required, provide substantiation that the Employer may require, pursuant to Sub-Clause 25.1.

26.2. A substantially responsive bid is one that conforms to all the terms, conditions, and specifications of the bidding documents without material deviation or reservation. A material deviation or reservation is one (a) that affects in any substantial way the scope, quality, or performance of the Works; (b) that limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the bidder's obligations under the contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

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

27. Correction of Errors

27.1. Bids determined to be substantially responsive will be checked by the Employer.

28. Evaluation and Comparison of Bids

28.1. The Employer will evaluate and compare only the bids determined to be substantially responsive in accordance with Clause 26.

28.2. The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, alternative offers, and other factors that are in excess of the requirements of the bidding documents shall not be taken into account in bid evaluation.

28.3. The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.

30. Employer's Right to Accept Any

30.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids,

- Bid and to Reject Any or All Bids** at any time prior to award of Contract, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds for the Employer's action.
- 31. Notification of Award** As per the **bid documents**.
- 32. Signing of Agreement** 32.1 The employer will notify the winner to sign the contract and provide necessary information.
- 33. Performance Security** 33.1 Within 1 day of signing of the contract, the successful bidder shall furnish to the Employer a performance security in the form stipulated in the **Bidding Data** and the Conditions of Contract. The form of performance security provided in Section IX of the bidding documents may be used or some other form acceptable to the Employer.
- 33.2 If it is stipulated in the **Bidding Data** that the performance security is to be provided by the successful bidder in the form of a bank guarantee, it shall be issued by a reputable institution selected by the bidder or by a foreign bank through a correspondent bank located in Ethiopia.
- 33.3 Failure of the successful bidder to comply with the requirements of Clauses 32 or 33 shall constitute a breach of Contract, cause for annulment of the award, forfeiture of any remedy the Employer may take under the Contract, and the Employer may resort to awarding the Contract to the next ranked bidder.
- 34. Corrupt & Fraudulent Practices** 34.1 The Employer requires that its officials as well as bidders/suppliers/contractors under this and similar contracts, observe the highest standard of ethics

during the procurement and execution of such contracts. In pursuance of this, the Employer:

- (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 of anything of value to influence the action of a public official in the procurement process or in contract execution; and
 - (ii) "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Employer, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial noncompetitive levels and to deprive the Employer of the benefits of free and open competition;
 - (iii) "Collusive practice" means a scheme or arrangement between two or more bidders, with or without the knowledge of the Employer, designed to establish bid prices at artificial, noncompetitive levels; and
 - (iv) "Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract;

- (v) "Obstructive practice" is:
 - i. deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede the Employer's investigations into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or;
 - ii. acts intended to materially impede the exercise of the Employer's inspection and audit rights.

- (b) Will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the Contract in question;

- (c) Will sanction a firm or individual through the Government's Procurement Agency, including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded a Government-financed contract if it at any time determines that they have, directly or through an agent, engaged, in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a Government-financed contract;

and

34.2. Furthermore, bidders shall be aware of the provision stated in Sub-Clause 63.5 of the Conditions of Contract, Part II—Conditions of Particular Application.