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**Kurdistan Regional Government**

**Ministry of Planning**

**Standard Bidding Documents for Non-Consulting Services**

&

**User’s Guide**

**November 2019**

**Procurement Document**

**Issued on …………...**

**Implementation of Non-Consulting Services Contract**

*[Insert Definition of Non-Consulting Services]*

**Tender No: \_\_\_\_\_\_\_\_\_\_\_ *[Insert Tender number]***

**Services: \_\_\_\_\_\_\_\_\_\_\_\_ *[Insert name of Project, if applicable]***

**Contracting Authority:\_\_\_\_\_\_\_\_\_\_\_\_ *[Insert complete name]***

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**Introduction**

Projects funded by the Kurdistan Regional Government (KRG) are implemented in accordance with the policies and procedures set out in the Public Procurement Regulation No. 2 of 2016. To assist contracting authorities in contracting for non-consultancy services[[1]](#footnote-1) (services not classified as advisory services), the KRG has designed these standard bidding documents forms for use. Non-consulting services are hereinafter referred to as "Services".

The Sample Bidding Documents have been prepared for use by the Contracting Authorities in the procurement of Services by International Competitive Bidding (ICB). These documents may also be adapted to National Competitive Bidding (NCB) with some changes generally necessary in the Instructions to Bidders and the Special Conditions of Contract.

These Sample Bidding Documents are intended as model lump sum types of Contract, which are the most common in Services contracting. Lump sum contracts are used in particular for Services which are well defined and are unlikely to change in quantity or specification, and where encountering difficult or unforeseen site conditions are unlikely.[[2]](#footnote-2)

Care should be taken to check the relevance of the provisions of the standard documents against the requirements of the specific Services to be procured. The following directions should be observed when using the documents:

1. All the documents listed in the Table of Contents are normally required for the procurement of Services; however, they should be adapted as necessary to the circumstances of the particular Project.
2. Details to be provided by the Contracting Authority prior to release of the bidding documents are limited to the Invitation for Bids (User’s Guide), Instructions to Bidders (Section I), Bidding Data Sheet (Section II), and Special Conditions of Contract (Section VII), in addition to Sections V and VI, which deal with Activity Schedule, Performance Specifications and Drawings, respectively. Specific details should be furnished in the spaces indicated by italicized notes inside brackets. Those details not filled in by the Contracting Authority are the responsibility of the Bidder.
3. These Sample Bidding Documents are intended to serve on a repetitive basis in KRG. Modifications to address specific Project or Contract needs should be provided only in the Special Conditions of Contract as amendments to the Conditions of Contract. If modifications must be made to the bidding procedures, they can be presented in the Bidding Data Sheet.
4. The foot-notes and the notes inside boxes with single borders are not part of the text, but rather contain instructions for the user, as do this Introduction section. **They should not be incorporated in the bidding documents**. The cover should be modified as required to identify the bidding documents as to the names of the Project, Contract, and Contracting Authority, in addition to the date of issue.
5. The notes inside boxes with double borders should be retained in the issued bidding documents, since these notes provide important guidance to bidders.
6. The standard documents have been prepared for bidding where postqualification applies; adaptations are necessary to ITB Clause 5 and corresponding Bidding Data Sheet, and Forms when prequalification has taken place. The process of prequalification of bidders is not covered in these standard documents.

**Summary Description**

These Standard Bidding Documents for Procurement of Non-Consulting Services and its User’s Guide apply either when a prequalification process has taken place before bidding or when a prequalification process has not taken place before bidding (provided alternative documents should be selected as applicable). A brief description of these documents is given below.

**SBD for Procurement of Non-Consulting Services**

|  |  |
| --- | --- |
| **PART 1** | **BIDDING PROCEDURES** |
| **Section I** | **Instructions to Bidders (ITB)** |
|  | This Section provides relevant information to help Bidders prepare their bids. Information is also provided on the submission, opening, and evaluation of bids and on the award of Contracts. **Section I contains provisions that are to be used without modification.** |
| **Section II** | This Section consists of provisions that are specific to each procurement and that supplement the information or requirements included in Section I, Instructions to Bidders. |
| **Section III** | **Evaluation and Qualification Criteria** |
|  | This section contains criteria for determining the lowest evaluated bid and the bidder's qualifications for contract execution. This section is prepared by the Contracting Authority. |
| **Section IV** | **Bidding Forms** |
|  | This section contains the forms that the bidder must complete and submit as part of their bid. |
| **PART 2** | **Services Requirements** |
| **Section V** | **Activity Schedule** |
|  | This section contains the activity table. This section is prepared by the Contracting Authority. |
| **Section VI** | **Performance requirements and Drawings** |
|  | This section is contains the required service specifications. The Contracting Authority shall include performance specifications and schemes, if any, in this section. |
| **PART 3** | **Conditions of Contract and contract Forms** |
| **Section VII** | **General Conditions of Contract** |
|  | This section contains general clauses to be applied in all contracts. **The text of paragraphs in this section may not be modified.** |
| **Section VIII** | **Special Conditions of Contract** |
|  | The contents of this section complement the general terms of the contract and are prepared by the Contracting Authority. |
| **Section VIIII** | **Contract Forms** |

|  |  |
| --- | --- |
|  | This section contains templates that, once completed, are part of the contract. The forms of performance security and advance payment security, if needed, will be completed only by the successful bidder after contract award. |
|  |  |
| **User’s Guide** | The Bidding Documents Guide contains detailed explanations and recommendations on how to prepare the Bidding Document for a specific contracting process for the related services. The Guide is not part of the Bidding Documents. |

**Part I – Bidding Procedures**

**Section I. Instructions to Bidders**

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**Section I. Instructions to Bidders**

# A. General Provisions

## 1. Scope of Bid

1.1 The Contracting Authority, as defined in the **Bidding Data Sheet (BDS)**, invites bids for the Services, as described in the Appendix A to the Contract. The name and identification number of the Contract is **provided in the BDS.** The name and number of the packages are also specified if the services are divided into packages.

1.2 The winning bidder is expected to complete the performance of the services within the execution period specified in the **in the BDS**.

1.3 The contracting and contract procedures, at the time of implementation, are subject to the Public Procurement Regulations No. 2 of 2016 and any related government instructions, and the laws in force in the Region.

1.4 The following definitions shall prevail throughout this Bidding Document:

(a) the term “**in writing**” means any written or digital expression that can be read or re-copied and communicated later, and may cover the information transmitted or stored electronically.

(b) The words indicating the singular also include the plural and words indicating the plural also include the singular.

(c) “day” means calendar day.

## 2. Source of Funding

2.1 The source of the funding for the contract (contracts) to be awarded is the budget allocated to the Contracting Authority or any other source as **specified in the BDS.**

## 3. Corrupt and Fraudulent Practices

3.1 The Contracting Authority requires bidders and awarded contractors to upload the ethical criteria during competition and implementation of the contract. In this respect and to achieve this policy:

1. The Contracting Authority adopts the definitions in paragraphs (16) to (20) of Article (1) of the Public Procurement Regulation 2 of 2016.
2. The Contracting Authority has the right to reject the recommendation for award if the bidder is proved to be involved directly or through an intermediary in any of the corruption practices during completion for the specific contract.
3. The Contracting Authority has the right to sanction (individuals or companies) including debarment in accordance with the Procedures for Debarment in the case of their proven involvement directly or through an intermediary in any of the corruption practices during competition or implementation of a public-financed contract.
4. The Contracting Authority has the right to include, in the bidding documents and contracts, a condition that binds the bidders to permit the Contracting Authority or its assigned auditors to inspect or audit their accounts and records or any documents relating to submission of bids and implementation of contracts.

3.2 Additionally, the bidders should be aware of the obligations listed in Sub-Clauses 1.7 and 2.6.1 of the General Conditions of Contract to this effect.

## 4. Eligibility Requirements of Bidders

4.1 Bidder shall meet the eligibility requirements stated in article (8) of the Public Procurement Regulation Number (2) of (2016).

4.2 Bidders should prove their continuous eligibility in accordance with the with the Contracting Authority requirements.

4.3 The Directorate of Public Contracts at the Ministry of Planning shall publish a list of bidders debarred from participation in public procurements, on the single-portal procurement website **specified in the BDS**.

## 5. Qualification of the Bidder

5.1 All bidders shall provide in Section IV, Bidding Forms, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.

5.2 In the event that prequalification of potential bidders has been undertaken as **stated in the BDS**, only bids from prequalified bidders shall be considered for award of Contract, in which case the provisions of Sub-Clauses 5.3 to 5.6 hereafter shall not apply. These qualified bidders should submit with their bids any information updating their original prequalification applications or, alternatively, confirm in their bids that the originally submitted prequalification information remains essentially correct as of the date of bid submission. The update or confirmation should be provided in Section IV.

5.3 If the Contracting Authority has not undertaken prequalification of potential bidders, all bidders shall include the following information and documents with their bids in Section IV, unless otherwise **stated in the BDS**:

1. copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Bid to commit the Bidder;
2. total monetary value of Services performed;
3. experience in Services of a similar nature and size, details of current or contractually committed Services; and the names and addresses of former Contracting Authorities who can be contacted for more information on such contracts;
4. list of major items of equipment proposed to carry out the Contract;
5. qualifications and experience of key site management and technical personnel proposed for the Contract;

1. reports on the financial standing of the Bidder, such as profit and loss statements and auditor’s reports;

1. evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);

1. authority to the Contracting Authority to seek references from the Bidder’s bankers;
2. information regarding any litigation, current or during the last five years, in which the Bidder is involved, the parties concerned, and disputed amount; and
3. proposals for subcontracting components of the Services amounting to more than 30 percent of the Contract Price.

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

(a) the Bid shall include all the information listed in ITB Sub-Clause 5.3 above for each joint venture partner;

(b) the Bid shall be signed so as to be legally binding on all partners;

(c) the Bid shall include a copy of the agreement entered into by the joint venture partners defining the division of assignments to each partner and establishing that all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms; 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;

(d) one of the partners shall be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and

(e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

5.5 To qualify for award of the Contract, bidders shall meet the following minimum evaluation and qualification criteria set out in Section III, evaluation and qualification criteria:

(a) annual volume of Services**;**

(b) experience as prime contractor in the provision Service contracts of a nature and complexity equivalent to the Services subject to this Bid;

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

(d) a Contract Manager with experience in Services of an equivalent nature and volume; and

(e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract; and

(f) a consistent history of litigation or arbitration awards against the Applicant or any partner of a Joint Venture may result in considering the Bid as non-responsive.

The Bidder must provide all the information required to evaluate its Bid in section IV- Bidding Forms of Bidding Documents.

5.6 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 set out in Section III, Evaluation and Qualification Criteria, however, in order for a joint venture company to qualify, the joint venture partners must meet the minimum evaluation and qualification requirements in proportions stated for the authorized partner and each partner in it. Failure to meet this requirement will result in the joint venture's Bid being rejected. The experience and resources of Subcontractors will not be taken into account when determining that the Bidder meets the evaluation and qualification criteria, unless otherwise **stated in the BDS**.

## 6. One Bid per Bidder

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

## 7. Cost of Bidding

7.1 The Bidder shall bear all costs associated with the preparation and submission of his Bid, and the Contracting Authority will in no case be responsible or liable for those costs.

## 8. Visit the site and attending the Pre-Bid conference

8.1 The Bidder, and at the Bidder's own responsibility, is supposed to visit and examine the location of the requested Services and their surroundings and to obtain all information that may be necessary to prepare the Bid and enter into a Service Contract. The cost of visiting the site is at the expense of the Bidder.

8.2 Unless otherwise **specified in the BDS**, the Bidder's representative is invited to attend the Pre-Bid Conference, which aims to clarify the inquiries raised by the Bidders and to answer any questions raised at this stage.

8.3 The Contracting Authority will send the minutes of the Pre-Bid Conference, if any, to all Bidders who have purchased the Bidding Documents, as quickly as possible, including the text of the Bidders' questions, without revealing their source, and answering them during the session or what comes after them. The Contracting Authority will issue any amendments to the Bidding Documents resulting from the Pre-Bid Conference under a special amendment supplement according to Clause (11) and not through the minutes of the Pre-Bid Conference. The failure of any of the Bidders to attend the Pre-Bid Conference shall not result in the Bidder being disqualified.

# B. Contents of Bidding Document

## 9. Content of Bidding Documents

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

**Part I – Bidding Procedures**

Section I. Instructions to Bidders

Section II. Bidding Data Sheet

Section III. Evaluation and Qualification Criteria

Section IV. Bidding Forms

**Part II – Services Requirements**

Section V. Activity Schedule

Section VI. Performance Specifications and Drawings

**Part III – Conditions of Contract and Contract Forms**

Section VII. General Conditions of Contract (GCC)

Section VIII. Special Conditions of Contract (SCC)

Section IX. Contract Forms

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

9.3 The Bid must be submitted by the same Bidder who obtained the documents directly from the Contracting Authority.

* 1. The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents. Failure to furnish all information required by the Bidding Documents or to submit a Bid not substantially responsive to the Bidding Documents in every respect will be at the Bidder’s risk and may result in the rejection of its Bid. Sections IV should be completed and returned with the Bid in the number of copies **specified in the BDS.**

## 10. Clarification of Bidding Documents

10.1 A prospective Bidder requiring any clarification of the Bidding Documents may notify the Contracting Authority in writing at the Contracting Authority’s address indicated in the Invitation for Bid. The Contracting Authority will respond to any request for clarification received earlier than the period **specificed in the BDS** prior to the deadline for submission of bids. Copies of the Contracting Authority’s response will be forwarded to all purchasers of the Bidding Documents, including a description of the inquiry, but without identifying its source.

## 11. Amendment of Bidding Documents

11.1 Before the deadline for submission of bids, the Contracting Authority may modify the Bidding Documents by issuing addenda.

11.2 Any addendum thus issued shall be part of the Bidding Documents and shall be communicated in writing to all who purchased[[3]](#footnote-3) of the Bidding Documents. Prospective Bidders shall acknowledge receipt of each addendum in writing to the Contracting Authority.

11.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Contracting Authority shall extend, as necessary, the deadline for submission of bids, in accordance with ITB Sub-Clause 21.2 below.

# C. Preparation of Bids

## 12. Language of Bid

* 1. The bid prepared by the Bidder, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Contracting Authority shall be written in the language **specified in the BDS**. 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 language specified in the Bidding Data Sheet, in which case, for purposes of interpretation of the Bid, the translation shall govern.

## 13. Documents Comprising the Bid

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

(a) Service Provider’s Letter of Bid;

1. Bid Security;
2. Priced Activity Schedule;

(d) Qualification Information Form and Documents;

(e) Alternative offers (where invited);

(f) Delegation to the Signatory of the Bid

(g) If the Bidder is a joint venture, joint venture agreement or letter of intent to conclude a partnership agreement or a draft partnership agreement must be attached; and

any other materials required to be completed and submitted by Bidders, as **specified in the BDS**.

13.2 Bidders bidding for this contract together with other contracts stated in the IFB to form a package will so indicate in the Bid together with any discounts offered for the award of more than one contract.

## Bid Prices

14.1 The Contract shall be for the Services, as described in Appendix A to the Contract and in the Specifications, Section VI, based on the priced Activity Schedule, Section V, submitted by the Bidder.

14.2 The Bidder must fill the prices for all elements of the Services provided in the Activity Schedule in Section V and are set out in the Terms of Reference and Specifications. The Contracting Authority will not pay for items for which the Bidder did not enter a price when executed and will be considered to be included in the prices of other items in the Activity Schedule.

14.3 All duties, taxes, and other levies payable by the Service Provider under the Contract, or for any other cause, as of the date 14 days prior to the deadline for submission of bids, shall be included in the total Bid Price submitted by the Bidder.

14.4 If **provided for in the BDS**, the prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract in accordance with and the provisions of Clause 6.6 of the General Conditions of Contract and/or Special Conditions of Contract. The Bidder shall submit with the Bid all the information required under the Special Conditions of Contract and of the General Conditions of Contract.

14.5 For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Bidder in the form of Appendices D detailing the contract price in foreign currency and E detailing the contract price in local currency.

## Currencies of Bid and Payment

15.1 The lump sum price shall be quoted by the Bidder separately in the following currencies:

(a) for those inputs to the Services which the Bidder expects to provide from within the Kurdistan Region, the prices shall be quoted in the Iraqi Dinar; and

(b) for those inputs to the Services which the Bidder expects to provide from outside the Kurdistan Region, the prices shall be quoted in the currency **specified in the BDS**.

## Bid Validity

16.1 Bids shall remain valid for the period **specified in the** **BDS** after the bid submission deadline date prescribed by the Contracting Authority in accordance with Sub-Clause 21.1. A Bid valid for a shorter period shall be rejected as non-responsive.

16.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Contracting Authority may request that Bidders extend the period of validity for a specified additional period. The request and the Bidders’ responses shall be made in writing. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid, but will be required to extend the validity of Bid Security for the period of the extension, and in compliance with ITB Clause 17 in all respects.

## Bid Security

17.1 The Bidder shall furnish, as part of the Bid, Bid Security as **specified in the BDS**.

17.2 The Bid Security must be in the amount **specified in the BDS** and be in the currency of the Contracting Authority country or in a freely convertible currency, and must:

1. be issued by a licensed Bank in Kurdistan selected by the Bidder, or from Foreign Banks (not operating in Iraq) accredited by the Central Bank of the Region;
2. comply with one of the guarantee forms in Section IV - Bidding Forms, or any other form adopted by the Contracting Authority prior to Bid submission;
3. be unconditional, irrevocable and payable immediately upon issuance of a written request by the Contracting Authority in cases stipulated in Sub-Clause 17.6;
4. be submitted in the original version, photocopies will not be accepted;
5. be valid for 28 days after the expiry of the Bid validity and be extended if requested in accordance with Sub-Clause 16.2.

17.3 If Bid Security is required in accordance with Sub-Clause 17.1, any Bid that does not include a substantially responsive Bid Security in accordance with Sub-Clause 17.2 will be rejected by the Contracting Authority and deemed as non-responsive.

17.4 The Bid Security of the unsuccessful Bidders shall be returned as soon as possible when the winning Bidder has submitted Performance Security in accordance with Clause 35.

17.5 The Bid Security shall be forfeited, or debarment applied in accordance with the Bid-Securing Declaration, preventing the Bidder from participating in public procurement for the period **specified in the** **BDS:**

1. if the Bidder withdraws its Bid after the opening of the Bids and during the bid validity period specified by the Bidder in the bid submission form, except as stipulated in Sub-Clause 16.2, or
2. if the winning Bidder fails to:
   * + 1. Sign the contract in accordance with Clause 34.

2. Provide "Performance Security" in accordance with Clause 35.

17.6 In the case of a joint venture, the Bid Security or Bid-Securing Declaration must be in the name of the joint venture submitting the Bid or on behalf of the authorized partner, and if the joint venture was not legally established at the time of the bidding, the Bid Security or Bid-Securing Declaration be provided on behalf of all future partners mentioned in the letter of intent to establish a joint venture.

## Alternative Bids

18.1 Unless otherwise **stated in the BDS**, alternative bids will not be taken into account.

18.2 When an alternative completion period is explicitly permitted, a statement to this effect will be included in Section III, Evaluation and Qualification Criteria, as well as the method of evaluating the alternative completion period.

18.3 Except as provided in Sub-Clause 18.4 below, Bidders wishing to provide technical alternatives to the requirements of the Bidding Documents must submit a Bid that complies with the requirements of the Bidding Documents, including scope, basic technical statements, graphic documents and specifications. In addition to submitting the base Bid, the Bidder must provide all the information necessary to make a full evaluation of the alternative by the Contracting Authority, including accounts and technical specifications, price details, proposed working methods and other relevant details, and the Contracting Authority must consider technical alternatives, if any, from the least evaluated bidder that complies with basic technical requirements, and alternatives to specific performance specifications should not be accepted.

18.4 When Bidders are allowed in the BDS to provide alternative technical solutions for specific parts of the Services, these parts are described by the Contracting Authority in specifications (or Terms of Reference) and in the charts, Section VI. In this case, these alternatives are evaluated as described in Section III - Evaluation and Qualification Criteria.

## Format and Signing of Bid

19.1 The Bidder shall prepare one original of the documents comprising the bid as described in Sub-Clause 13.1 and clearly mark it “ORIGINAL.” In addition, the Bidder shall submit copies of the bid, in the number **specified in the BDS** and clearly mark them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail.

19.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder, pursuant to Sub-Clauses 5.3(a) or 5.4(b), as the case may be. 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 or additions, except those to comply with instructions issued by the Contracting Authority, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Bid.

# D. Submission of Bids

## Sealing and Marking of Bids

20.1 The Bidder shall seal the original and all copies of the Bid in two inner envelopes and one outer envelope, duly marking the inner envelopes as “Original” and “Copies”.

20.2 The inner and outer envelopes shall:

(a) be addressed to the Contracting Authority at the address **provided in the BDS;**

1. bear the name and identification number of the Contract as **defined in the BDS** and Special Conditions of Contract; and
2. provide a warning not to open before the specified time and date for Bid opening as **defined in the BDS.**

20.3 In addition to the identification required in Sub-Clause 20.2, the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to Clause 22.

20.4 If the outer envelope is not sealed and marked as above, the Contracting Authority will assume no responsibility for the misplacement or premature opening of the Bid.

## Deadline for Submission of Bids

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

21.2 The Contracting Authority may extend the deadline for submission of bids by issuing an amendment in accordance with Clause 11, in which case all rights and obligations of the Contracting Authority and the bidders previously subject to the original deadline will then be subject to the new deadline.

## Late Bids

22.1 Any Bid received by the Contracting Authority after the deadline prescribed in Clause 21 will be returned unopened to the Bidder.

## Modification and Withdrawal of Bids

23.1 Bidders may modify or withdraw their bids by giving notice in writing before the deadline prescribed in Clause 21.

23.2 Each Bidder’s modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clauses 19 and 20, with the outer and inner envelopes additionally marked “MODIFICATION” or “WITHDRAWAL,” as appropriate.

23.3 No Bid may be modified after the deadline for submission of Bids.

23.4 Withdrawal of a Bid between the deadline for submission of bids and the expiration of the period of Bid validity specified in the BDS or as extended pursuant to Sub-Clause 16.2 may result in the forfeiture of the Bid Security pursuant to Clause 17.

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

# E. Bid Opening and Evaluation

## Bid Opening

24.1 The Bid Opening Committee will open the bids, including modifications made pursuant to Clause 23, in the presence of the bidders’ representatives who choose to attend at the time and in the place **specified in the BDS**.

24.2 Envelopes marked “WITHDRAWAL” shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause 23 shall not be opened Envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening. Only envelopes that are opened and read out at Bid opening shall be considered further for evaluation.

24.3 The Bidders’ names, the Bid prices, the total amount of each Bid and of any alternative Bid (if alternatives have been requested or permitted), any discounts, Bid modifications and withdrawals, the presence or absence of Bid Security, and such other details as the Committee may consider appropriate, will be announced by the Contracting Authority at the opening. No bid shall be rejected at bid opening except for the late bids pursuant to Clause 22; Bids, and modifications, sent pursuant to Clause 23 that are not opened and read out at bid opening will not be considered for further evaluation regardless of the circumstances. Late and withdrawn bids will be returned unopened to the bidders.

24.4 The Bid Opening Committee will prepare the minutes of the Bid Opening session, including information disclosed to those present in accordance with Sub-Clause 24.3. The chairman and members of the opening ommittee shall sign the minutes of the Bid Opening session and submit it to the head of the Contracting Authority. A copy of the signed record should also be placed on the Contracting Authority's bulletin board. Bidders can be provided with a copy of the signed Bid opening session minutes upon request.

## Confidentiality

25.1 Information relating to the examination, clarification, evaluation, and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the results are officially announced in the award notice.

25.2 If, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the Contracting Authority, who will provide written explanation. Any request for explanation from one bidder should relate only to its own bid; information about the bid of competitors will not be addressed.

## Clarification of Bids

26.1 To assist in the examination, evaluation, and comparison of bids, the Bid Analysis and Evaluation Committee may, at the Committee’s discretion, ask any Bidder for clarification of the Bidder’s Bid, including breakdowns of the prices in the Activity Schedule, and other information that the Committee may require. The request for clarification and the response shall be in writing, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Bid Analysis and Evaluation Committee in the evaluation of the bids in accordance with Clause 28.

26.2 Subject to Sub-Clause 26.1, no Bidder shall contact the Bid Analysis and Evaluation Committee on any matter relating to its bid from the time of the bid opening to the time the contract is awarded. If the Bidder wishes to bring additional information to the notice of the Committee, he should do so in writing.

26.3 Any effort by the Bidder to influence the Contracting Authority in the Bid Analysis and Evaluation Committee’s bid evaluation or contract award decisions may result in the rejection of the Bidder’s bid.

## Examination of Bids and Determination of Responsiveness

27.1 Prior to the detailed evaluation of bids, the Bid Analysis and Evaluation Committee will determine whether each Bid:

(a) meets the eligibility criteria defined in Clause 4;

(b) has been properly signed;

(c) is accompanied by the required securities; and

(d) is substantially responsive to the requirements of the Bidding Documents.

27.2 A substantially responsive Bid is one which conforms to all the terms, conditions, and specifications of the Bidding Documents, without material deviation or reservation. A material deviation or reservation is one:

(a) which affects in any substantial way the scope, quality, or performance of the Services;

(b) which limits in any substantial way, inconsistent with the bidding documents, the Contracting Authority’s rights or the Bidder’s obligations under the Contract; or

1. whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

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

## Correction of Arithmatic Errors

28.1 Bids determined to be substantially responsive will be checked by the Contracting Authority for any arithmetic errors. Arithmetical errors will be rectified by the Contracting Authority on the following basis:

1. if there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected;

(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 the amounts in figures and in words, the amount in words will prevail.

28.2 The amount stated in the Bid will be adjusted by the Bid Analysis and Evaluation Committee in accordance with the above procedure for the correction of errors and, shall be considered as binding upon the Bidder.

## Currency for Bid Evaluation

29.1 The Contracting Authority will convert the amounts in various currencies in which the Bid Price, corrected pursuant to Clause 28, is payable (excluding Provisional Sums, for the purposes of the Contracting Authority, but including Daywork where priced competitively) to the Iraqi Dinar at the selling rates established for similar transactions by the authority **specified in the BDS** on the date **stipulated in the BDS.**

## Evaluation and Comparison of Bids

|  |
| --- |
| 30.1 The Bid Analysis and Evaluation Committee will evaluate and compare only the bids determined to be substantially responsive in accordance with ITB Clause 27.  30.2 In evaluating the bids, the Bid Analysis and Evaluation Committee will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:  (a) making any correction for arithmetic errors pursuant to ITB Clause 28;  (b) excluding provisional sums and the provision, if any, for contingencies in the Activity Schedule, Section V, but including Day work, when requested in the Specifications (or Terms of Reference) Section VI;  (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with Clause 18; and  (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with Sub-Clause 23.5.  30.3 Variations, deviations, and alternative offers and other factors, which are in excess of the requirements of the Bidding Documents or otherwise result in unsolicited benefits for the Contracting Authority will not be taken into account in Bid evaluation.  30.4 The estimated effect of any price adjustment conditions under Sub-Clause 6.6 of the General Conditions of Contract, during the period of implementation of the Contract, will not be taken into account in Bid evaluation. |
| Preference for Domestic Bidders 31.1 Unless otherwise **specified in the BDS**, a margin of preference for domestic Bidders shall not apply. F. Award of BidAward Criteria |

32.1 Subject to ITB Clause 33, the Contracting Authority will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the Bidding Bocuments and who has offered the lowest evaluated Bid Price, provided that such Bidder has been determined to be:

(a) eligible in accordance with the provisions of Clause 4, and

1. qualified in accordance with the provisions of Clause 5.

32.2 If, pursuant to ITB Sub-Clause 13.2 this contract is being let on a “slice and package” basis, the lowest evaluated Bid Price will be determined when evaluating this contract in conjunction with other contracts to be awarded concurrently. Taking into account any discounts offered by the bidders for the award of more than one contract.

## Contracting Authority’s Right to Accept any Bid and to Reject any or all Bids

33.1 Notwithstanding Clause 32, the Contracting Authority reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Contracting Authority’s action.

## Notification of Award and Signing of Contract

34.1 Notice of intention to award shall be sent promptly to the successful Bidder, before the expiry of the bid validity period confirmed by a letter from the Contracting Authority. At the same time, inform all other bidders of the name, address, and bid price of the proposed awardee.

34.2 No action may be taken to sign the contract until after the seven-day suspension period has expired from the date of the notice of intention to award.

34.3 After seven days of the notice of intention to award, and before the expiry of the Bid validity period, the Contracting Authority must send the winning bidder the Letter of Award, which must stipulate the amount that the Contracting Authority will pay the Service Provider for the implementation, completion, and maintenance of the Services in accordance with what the contract specifies (referred to below and in the contract called "Contract Amount").

34.4 The Contract, in the form provided in the Bidding Documents, will incorporate all agreements between the Contracting Authority and the successful Bidder. It will be signed by the Contracting Authority and sent to the successful Bidder along with the Letter of Award. The successful bidder shall sign the Contract within the period stated in the Letter of Award and return it to the Contracting Authority, together with the required Performance Security pursuant to Clause 35.

34.5 If, after notification of the award intent, a Bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the Contracting Authority. The Contracting Authority will promptly respond in writing to the unsuccessful Bidder.

## Performance Security

35.1 The successful Bidder shall deliver to the Contracting Authority a Performance Security in the amount **stipulated in the BDS,** denominated in the type and proportions of currencies in the Letter of Award and in accordance with the General Conditions of Contract.

35.2 The Performance Security is provided by the successful Bidder in the form of a unconditional Bank Guarantee, and according to the form in Section IX - Contract Forms or any other form adopted by the Contracting Authority, issued according to the bidder's choice, either:

(a) from a licensed Bank in Kurdistan Region; selec, or

(b) from Foreign Bank accredited by the Central Bank of the Region.

35.3 Failure of the successful Bidder to comply with the requirements of Sub-Clause 35.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security in accordance with Sub-Clause 17.5.

## Advance Payment and Advance Payment Security

36.1 If **permitted in the BDS**, the Contracting Authority will provide an advance payment on the amount of the contract as stipulated in the conditions of the contract, taking into account the percentage **stated in the BDS**.

## Adjudicator

37.1 The Contracting Authority proposes the person **named in the BDS** to be appointed as Adjudicator, in exchange for the hourly fees **specified in the BDS**, in addition to reimbursable expenses. If the Bidder does not agree to this proposal, the Bidder must specify this in the Letter of Bid. If the Contracting Authority in the Letter of Award does not agree to appoint the Adjudicator, the Adjudicator is appointed by the designated appointment authority in the **Special Conditions of Contract** on the basis of the Letter of Award.

**Section II. Bidding Data Sheet**

The following data related to the Non-Consulting services to be contracted for complement and amend the provisions in Section I - Instructions to Bidders. If there is any conflict, the texts in this data are adopted. **This section should be prepared by the Contracting Authority.**

|  |  |
| --- | --- |
| **ITB Clause Reference** | **A. General** |
| **1.1** | Name of the Contracting Authority: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.*  *[Insert the same information as in Sub-Clause 1.1 in Section VIII, Special Conditions of Contract]* |
| **1.1** | The name and identification number of the Bid: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *[Insert the same information as in Sub-Clause 1.1 in Section VIII, Special Conditions of Contract]*  Name and number of Lots constituting the Bid: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *[Insert name and identification number of the Lots (if any)]:\_\_\_\_\_\_\_\_\_\_\_\_\_*  The Bidder is *[Insert "entitled or "Not entitled]* to bid for individual lot or group of lots |
| **1.2** | Implementation period of the Service: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  *[Insert the same information as in Sub-Clause 2.3 in Section VIII, Special Conditions of Contract]* |
| **2.1** | Budget Year is: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Name of the Contracting Authority: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Source of funding for this Contract \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name of Services: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **4.3** | A list of contractors subject to decisions of debarment in government contracts is available at the following web site: |
| **5.2** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Prequalification |
| **5.3** | The Qualification Information and Bidding forms to be submitted are as follows: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| **5.4** | The information needed for Bids submitted by joint ventures is as follows: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| **5.6** | Subcontractors’ experience \_\_\_\_\_\_\_\_\_\_\_\_be taken into account. |
| **8.2** | A Pre-Bid Conference \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ take place.  If a Pre-Bid Conference will take place:  Date of the Pre-Bid Conference: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Place of the Pre-Bid Conference: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Time of the Pre-Bid Conference: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **B. Contents of Bidding Document** | |
| **9.4 and**  **19.1** | In addition to the original bid, the number of copies of the Bid to be completed and returned shall be \_\_\_\_\_ |
| **10.1** | The Contracting Authority will respond to any request for clarification received \_\_\_\_\_\_\_\_\_\_ days before the deadline for submission of bids. |
| **C. Preparation of Bids** | |
| **12.1** | Language of the bid: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  For the purposes of translating supporting documents and printed materials, the language adopted is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **13.1** | The additional materials required to be completed and submitted are: \_\_\_\_\_\_\_ |
| **14.4** | The Bid Prices submitted by the Bidder *\_\_\_\_\_\_\_\_* subject to price adjustment |
| **15.1 (b)** | Inputs from outside the Region shall be quoted in *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| **16.1** | The period of Bid validity shall be *\_\_\_\_\_\_\_\_\_\_\_\_\_\_* days after the deadline for Bid submission. |
| **17.1** | The Bidder shall provide: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **17.2** | The amount of Bid Security shall be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **17.5** | [This paragraph is filled out only in the event that Bid Securing Declaration is required under Sub-Clause 17.1 of the instructions for the bidders]  In the event that the Bidder carry out any of the acts mentioned in (a) or (b) of this Sub-Clause, it will be debarred from participation in government contracts in accordance with the debarment procedures for a period of \_\_\_\_\_\_\_\_year  [Ensure that the entries in this Sub-Clause match the entries in the Bid Securing Declaration in Section IV of the Bidding Document] |
| **18.1** | Alternative bids \_\_\_\_\_\_\_\_\_\_\_\_ |
| **D. Submission of Bids** | |
| **20.2 (a)** | The Contracting Authority’s address for the purpose of Bid submission is:  Attention to: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Street Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Department Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Floor/Room number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  City: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Country: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Postal Code: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **20.2 (b)** | The envelopes must indicate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name and identification number of the Contract: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **21.1** | The deadline for submission of bids:  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Time: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **E. Bid Opening and Evaluation** | |
| **24.1** | Bids will be opened at \_\_\_\_\_\_\_\_\_\_\_\_ of the day \_\_\_\_\_\_\_\_\_\_\_\_ at the following address:  Street Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Department Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Floor/Room number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  City: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  country: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **29.1** | Source of exchange rate: Central Bank of Kurdistan Region  Date of exchange rate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. |
| **31.1** | \_\_\_\_\_\_\_\_\_Giving a margin of preference to local Service Providers from the Region |
| **F. Award of Contract** | |
| **35.0** | Amount of Performance Security |
| **36.1** | When permitted, the Advance Payment shall be of \_\_\_\_\_\_\_\_\_\_\_\_\_ percent of the Contract Price. |
| **37.1** | The Adjudicator proposed by the Contracting Authority is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  The hourly fee for this proposed Adjudicator shall be \_\_\_\_\_\_\_\_\_\_\_\_  The biographical data of the proposed Adjudicator is as follows: \_\_\_\_\_\_\_\_\_ |

## Section III. Evaluation and Qualification Criteria

This section contains all the criteria to be applied by the Contracting Authority to evaluate bids and bidders qualifications, in accordance with Sub-Clauses 5.5 and 18.2 of the Instructions to Bidders. No other factors, methods or criteria will be used. The Bidder must provide all the required information in the forms in Section IV, Bidding Forms. **This section is prepared by the Contracting Authority.**

**Contents**

1. Alternative Completion Period in accordance with Sub-Clause 18.2 of the Instructions to Bidders;
2. Alternative Technical Solutions in accordance with Sub-Clause 18.4 of the Instructions to Bidders;
3. Margin for Domestic Preference in accordance with Sub-Clause 31.1 of the Instructions to Bidders;
4. Evaluation and Qualification Criteria in accordance with Sub-Clause 5.5 of the Instructions to Bidders;
5. Key Personnel; and
6. Equipment.
7. **Alternative Completion Period in accordance with Sub-Clause 18.2 of the Instructions to Bidders;**

The Service Provider must complete the Services included for in Section V of the Activity Schedule within the completion period of the Services specified in the Section II of the Bidding Data Sheet (i.e. after the earliest completion date and before the deadline for completion). Services completed before the earliest date will not be given preference, and Bids offering completion of Services after the deadline will be treated as unresponsive. For evaluation purposes only, the prices of Bids offering completion of Services after the "earliest completion date", if provided for in the Bidding Data Sheet, may be adjusted for evaluation purposes.

1. **Alternative Technical Solutions in accordance with Sub-Clause 18.4 of the Instructions to Bidders;**

If alternative technical solutions are allowed in the Bidding Data Sheet, the evaluation method will be as follows:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*[Insert evaluation method]*

*["The Bidder is entitled to offer alternative technical solutions if it has submitted a bid for the original bid. If only the original bid is a bid that is responsive to all the conditions and the lowest cost, the Contracting Authority will take into account the alternative technical solutions."]*

1. **Margin for Domestic Preference in accordance with Sub-Clause 31.1 of the Instructions to Bidders;**

A margin of preference for Non-Consulting Services will not be applied unless otherwise stated in the Bidding Data Sheet. If applicable, the methodology listed below is followed for bid comparison purposes:

[Insert details and methodology for applying the margin of preference]

*[Refer to User’s Guide, Section III, Evaluation and Qualification Criteria for the application of margin of preference]*

**4. Evaluation and Qualification Criteria in accordance with Sub-Clause 5.5 of Instructions to Bidders**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Eligibility and Qualification Criteria** | | | **Compliance Requirements** | | | | **Documentation** |
| **No.** | **Subject** | **Requirement** | **Single Entity** | **Joint Venture (existing or intended)** | | | **Submission Requirements** |
| **All Parties Combined** | **Each Member** | **One Member** |
| **1. Eligibility** | | | | | | | |
| 1.1 | Nationality | Nationality | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Section IV- Bidding Forms  Service Provider letter of Bid |
| 1.2 | Conflict of Interest | Conflicts of Interest | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Section IV- Bidding Forms  Service Provider letter of Bid |
| 1.3 | Inclusion on the list of debarment from participation | Inclusion on the list of debarment from participation | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Section IV- Bidding Forms |
| 1.4 | Country eligibility in accordance with UN resolutions or Iraqi laws | Country eligibility in accordance with UN resolutions or Iraqi laws | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Section IV- Bidding Forms  Service Provider letter of Bid |
|  | **2. Historical Contract Non-Performance** | | | | | | |
| 2.1 | History of Non-Performing Contracts | Non-performance of a contract did not occur as a result of contractor default since 1st January [*Insert year providing that specified period does not exceed previous three years].* | Must meet requirement | Must meet requirements | Must meet requirement | N/A | Section IV- Bidding Forms |
| 2.2 | Pending Litigation | Bidder’s financial position and prospective long term profitability sound according to criteria established in 3.1 below and assuming that all pending litigation will be resolved against the Bidder | Must meet requirement | N/A | Must meet requirement | N/A | Section IV- Bidding Forms |
| 2.3 | Litigation History | No consistent history of court/arbitral award decisions against the Bidder since 1st January *[Insert year providing that specified period does not exceed previous three years].* | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Section IV- Bidding Forms |
|  | **3. Financial Situation** | | | | | | |
| 3.1 | Financial Performance | Balance sheet, profit and loss data, auditors' reports *[enter number of years]* | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Section IV- Bidding Forms |
| 3.2 | Average Annual Turnover | Minimum average annual turnover of the Bidder is *[insert number and figure of the amount in IQD]* calculated as total certified payments received for contracts completed or in progress within the last *[insert number of years in figure and word]* years. | Must meet requirement | Must meet requirement | Must meet  *[insert percent in word and figure]* of the requirement | Must meet  *[insert percent in word and figure]* of the requirement | Section IV- Bidding Forms |
| 3.3 | Financial Resources | Cash flow and/or credit facilities, net other contractual obligations, except for any advance payments that may be made under the contract, at least [enter the amount in numbers and letters in Iraqi dinars] | Must meet requirement | Must meet requirement | Must meet  *[insert percent in word and figure]* of the requirement | Must meet  *[insert percent in word and figure]* of the requirement | Section IV- Bidding Forms |
|  | **4. Experience** | | | | | | |
| 4.1 | Specific Experience | Participation as a major Service Provider in *[insert the number of contracts]* to execute contracts similar to the work of this contract and have been completed with complete substantial success as a principal contractor or member of a Joint Venture, administrative contractor or subcontractor.  Similarity means the analogy of physical size, nature, complexity, climatic and geological conditions, methods/technology and/or other characteristics described in section V - activity schedule and section VI - performance specifications and drawings, with the value of each contract not less than *[insert the amount and currency in numbers]* *[insert amount and currency in words]* during the last *[insert the number of years in numbers] [enter the number of years in words]* years. | Must meet requirement | N/A | Must meet requirement | N/A | Section IV- Bidding Forms |

[Refer toSection III. Evaluation and Qualification Criteria User’s Guide]

1. **Key Personnel**

The Bidder's staff or the main staff of the bidder.

Bidders must demonstrate the availability of Contracting Authority for key positions to execute the contract and meet the requirements:

|  |  |  |  |
| --- | --- | --- | --- |
| Sr. No. | Position | General experience in the implementation of Services contracts ( ) years | Specialized experience in similar works ( ) years |
| 1. | Project Manager |  |  |
|  |  |  |  |
|  |  |  |  |

The Bidder must attach the CVs of Key Staff proposed for the execution of the contract, specifying their previous experiences.

1. **Equipment**

The Bidder must prove ownership or possession of the following main equipment:

|  |  |  |
| --- | --- | --- |
| **Required Number** | **Equipment Type and Specifications** | **Sr. No.** |
|  |  | 1. |
|  |  | 2. |
|  |  | 3. |
|  |  | 4. |

The Bidder must provide the additional details of the equipment proposed to be used in the execution of the contract.

**Section IV. Bidding Forms**

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Form of Bid-Securing Declaration 40

[The Bidder must prepare this section, provide the information and attach the required documents to assist the Contracting Authority in evaluating the extent to which the Bis is responsive to the Evaluation and Qualification requirements provided for in Section III - Evaluation and Qualification Criteria]

[Note: The Bidder can add other pages to describe the proposed program (How the service works and the time program)]

# Letter of Bid

|  |
| --- |
| *The Bidder must prepare the Letter of Bid in accordance with the instructions below. Any amendment to this letter shall not be permitted and any replacement shall be rejected. This form shall be prepared on the Letterhead of the Bidder.* |

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

Tender No.: **[*insert number of the tender*]**

To: **[*insert complete name of the Contracting Authority*]**

We the undersigned confirm that:

1. *[Insert we “accept” or “do not accept”] [Insert the name of the adjudicator proposed by the Contracting Authority]* , we propose *[insert name of adjudicator]*
2. We have examined the Bidding Documents and have accepted all conditions and requirements contained therein, including the annexes: *[insert reference and date of each annex]*
3. We pledge to execute the following Services in conformity with the Bidding Documents within the completion period indicated in Part 2, Services Requirements:   
   *[insert a brief description of the Servicess, including the lot or combination of lots covered by the bid]*;
4. The total price of our Bid, excluding any discounts offered in item (e) below is:   
    [insert the total price of the bid in words and figures. In case of one lot or combination of lots, the price shall be detailed for each lot in the currencies indicated for each lot];
5. The discounts offered and the methodology for their application are:

**Discounts:** If our bid is accepted, the following discounts shall be applied:

***[Specify in detail each discount offered to which lot or combination of lots in Services requirements to be specifically applied****]*

**Methodology of application**: Discounts shall be applied using the method shown below*:*

*[****Specify in detail the method that shall be used to apply the discounts****];*

Our net price after applying discounts: [*Insert net price in figures and in letters*]

Our bid shall be valid for the period specified in ITB Sub-Clause (16.1) from the date specified for the bid submission deadline in accordance with ITB Sub-Clause (21.1), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

1. We pledge, if our bid is accepted, to provide Performance Security in accordance with ITB Sub-Clause (35.1), and ITB Sub-Clause 3.9 of the General Conditions of Contract, also sign the contract in accordance with ITB Sub-Clause (34.4) and according to the time limits specified in the BDS. Otherwise, we are liable to all legal proceedings taken against us, including the confiscation of our bid security, which deprives us of participation in government contracts for the period specified in ITB Sub-Clause 17.5 and we bear the difference of the two bids resulting from the award of the tender to another candidate.
2. We, along with any of our subcontractors, hold nationalities of eligible countries [*insert Bidder nationality and the nationalities of all parties entered in the Bid if the Bidder is a JV and the nationality of every sub-contractor*].
3. We have no conflict of interest in accordance with ITB Sub-Clause (3.2).
4. Our company or any branch thereof or any of its affiliates including sub-contractors has not been previously declared ineligible for any part of this work in accordance with the prevailing laws in KRG in accordance with ITB Sub-Clause (4.1).
5. We understand that the Bid and Letter of Award comprise a binding contract between us until the formal signature of contract; and
6. We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

For and on behalf of the Service Provider.

Signature of the person duly authorized to sign the Bid \_\_\_\_\_\_\_\_\_\_\_\_\_

Name and capacity of the signatory [*Insert name and capacity of the signatory*]

Note:

[If the Service Provider is a joint venture, all members of the joint venture must sign the Service Provider's Letter of Bid jointly and severally. **The Contracting Authority should not accept that the named joint venture authorized partner sign the Letter of Bid of the Service Provider individually on behalf of each member of the Service Provider joint venture Company**]

We, the members of the joint venture company, jointly and severally sign the Letter of Bid of the Service Provider:

[Name of authorized member] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[The position of authorized member] \_\_\_\_\_\_\_\_\_\_\_\_\_

[Signature] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name of authorized member] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[The position of authorized member] \_\_\_\_\_\_\_\_\_\_\_\_\_

[Signature] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Qualification Information

|  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 1. **Single entity Bidders or members in joint venture company** | | | | | | | | | | | | |
| **1. Eligibility** | | | | | | | | | | | | |
| 1.1 Nationality | | | | | Constitution or legal status of Bidder: *[attach copy]*  Place of registration: *[insert]*  Principal place of business: *[insert]*  Power of attorney of signatory of Bid: *[attach]* | | | | | | | |
| 1.3 Inclusion on the list of debarment from participation | | | | | Our company [Enter "was"or " was not” included on the list of debarment from participation- Public Procurement Regulation No. (2) of 2016 and in accordance with ITB Sub-Clause (2)].  [*If it was, enter the details*] | | | | | | | |
| Name of project and Country | | Type of Service/year of completion | | | Name of Contracting Authority and responsible person | | | | | | | Contract Value |
| 1. | |  | | |  | | | | | | |  |
| 2. | |  | | |  | | | | | | |  |
| 2. **History of Non-Performing Contracts** | | | | | | | | | | | | |
| 2.1 History of Non-Performing Contracts | | | | | Non-performance of a contract\_\_\_\_\_ “did” or “did not “occur as a result of our company’s default since 1st January [*Insert year. The specified period should not be earlier than the last three (3) years*].  If non-performance of a contract occurred as a result of the company's default, insert the details] | | | | | | | |
| Name of project and Country | Name of Contracting Authority and responsible person | | | | Type of implemented Service | | Contract Value | | | | Reasons of default | |
| 1. |  | | | |  | |  | | | |  | |
| 2. |  | | | |  | |  | | | |  | |
| 2.2 Pending Litigation | | | | | Bidder’s financial position and prospective long term profitability are sound according to criteria established and assuming that all pending litigation will be resolved against the Bidder. | | | | | | | |
| Other Part(ies) | | | Details of dispute | | | | | Amount involved | | | | |
|  | | |  | | | | |  | | | | |
|  | | |  | | | | |  | | | | |
| 2.3 Litigation History | | | | | Information regarding any litigation, current or within the last five years, in which the Bidder is or has been involved. [Refer to ITB Sub-Clause 5.5 (f)]. | | | | | | | |
| **3. Financial Situation** | | | | | | | | | | | | |
| 3.1 Financial Performance | | | | | Financial reports for the last five to ten years: Balance sheet, profit and loss data, Auditors' reports, etc.  Insert details below and attach copies. | | | | | | | |
| 3.2 Average Annual Turnover | | | | | Total annual volume of Services, locally or internationally traded currency, specified in Section III - Evaluation and Qualification Criteria:   1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 4. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 5. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   [Refer to Sub-Clause 5.5 (a) of the instructions for bidders]. | | | | | | | |
| 3.2 Financial Resources | | | | | Evidence of access to financial resources to meet the qualification requirements: liquid assets, credit facilities, etc. List below and attach copies of support documents.  [Refer to ITB Sub-Clause 5.5 (e)]. | | | | | | | |
| **4. Experience** | | | | |  | | | | | | | |
| 4.1 Specific Experience | | | | | [Insert list of contracts in the table below] | | | | | | | |
| Name of project and Country | | Type of Service/year of completion | | | Name of Contracting Authority and responsible person | | | | | | Contract Value | |
| 1. | |  | | |  | | | | |  | | |
| 2. | |  | | |  | | | | |  | | |
| **5. Key Personnel** | | | | | | | | | | | | |
| The qualifications and expertise of the proposed key staff to manage and implement the contract. Attach CV data.  [Refer to Sub-Clause 5.5 (d) of the instructions for bidders and Sub-Clause 4.1 of the General Conditions of Contract] | | | | | | | | | | | | |
| Position | | Name | | | Years of Experience | | | | Years of Experience in proposed position | | | |
| 1. Project Manager | |  | | |  | | | |  | | | |
| 2. | |  | | |  | | | |  | | | |
| 1. **Equipment** | | | | | | | | | | | | |
| Major items of Service Provider's Equipment proposed for carrying out the Services. List all information requested below.  [Refer also to ITB Sub-Clause 5.4(c)]. | | | | | | | | | | | | |
| Item of equipment | Description, make, and age (years) | | | Condition (new, good, poor) and number available | | Owned, leased (from whom?), or to be purchased (from whom?) | | | | | | |
| 1. |  | | |  | |  | | | | | | |
| 2. |  | | |  | |  | | | | | | |
| 1. **Subcontractors** | | | | | | | | | | | | |
| Total subcontracting shall not exceed **30%** of Contract Value. | | | | | | | | | | | | |
| Sections of the Services | | Value of subcontract | | | Subcontractor  (name and address) | | | | | Experience in providing similar Services | | |
| 1. | |  | | |  | | | | |  | | |
| 2. | |  | | |  | | | | |  | | |
|  | | | | | 1. Name, address, and telephone, telex, and facsimile numbers of banks that may provide references if contacted by the Contracting Authority. | | | | | | | |
| 1. All bidders shall provide in Section IV, Bidding Forms, a statement that the Bidder (including all members of a joint venture and subcontractors) is not associated, nor has been associated in the past, directly or indirectly, with the consultant or any other entity that has prepared the design, specifications, and other documents for the Project or being proposed as Project Manager for the Contract. A firm that has been engaged by the Contracting Authority to provide Consultant Services for the preparation or supervision of the Services, and any of its affiliates, shall not be eligible to bid. | | | | | | | |
|  | | | | | 1. Proposed Program (service work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the bidding documents. | | | | | | | |
| 1. **Joint Venture Company** | | | | | 1. The information in 1-9 above must be provided to each partner of the Joint Venture. | | | | | | | |
| 2. The information in 10 above must be provided for the Joint Venture company. | | | | | | | |
| 3. Attach the power of attorney of the signatory(ies) of the Bid authorizing signature of the Bid on behalf of the joint venture. | | | | | | | |
| 4. Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that:  (a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;  (b) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and  (c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge. | | | | | | | |
| 1. **Additional Requirements** | | | | | Bidders should provide any additional information required in the BDS and to fulfill the requirements of ITB Sub-Clause 5.1, if applicable. | | | | | | | |

# Priced Activity Schedule

[The bidder must fill the prices in this table in accordance with ITB Sub-Clause 14 and submit with its bid in accordance with ITB Sub-Clause 13.1].

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service No.** | **Description of Service** | **Quantity[[4]](#footnote-4)** | **Unit** | **Unit Rate** | **Total Price** | **Place where services will be provided** | **Date (dates) completion of services** |
|  |  |  |  | [*Insert unit rate for each item*] | [*Insert total price for each item*] |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
| **Total Price** | | | | |  |  |  |

[The contracting authority will provide interested Service Providers with a CD containing the Activity Schedule to facilitate the pricing process of the Services and to avoid deletion or error. The Bidder must, after filling the prices in this table, print the priced table and mark and sign the priced table in accordance with ITB Sub-Clause 19].

# Form of Bid Security (Bank Guarantee)

*[The Bank fills out the Bank Security Form in accordance with the instructions fixed within brackets]*

*[insert Bank’s name and address or the issuing source]*

**Beneficiary: *[****Insert name and address of the* Contracting Authority*]*

**Invitation for Bids No:** *[Insert reference number for the Invitation for Bids]*

**Date:** [*Insert date of issue]*

**BID SECURITY No.:** *[Insert guarantee reference number]*

We have been informed that *[insert name of the Bidder[[5]](#footnote-5)]* (hereinafter called "the Applicant") has submitted its bid dated *[insert date]* (hereinafter called "the Bid") for the execution of *[insert description of contract]*.

Furthermore, we understand that, according to your conditions, bids must be supported by a bid security.

At the request of the Applicant, we *[insert Bank’s name]*, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in letters]* (*insert amount in numbers*) Iraqi Dinars immediately upon receipt by us a written request at first instant of the Beneficiary supported by the Beneficiary’s statement, stating that the Applicant has violated its (commitments) under the bid conditions, because the Applicant:

(a) has withdrawn its Bid during the period of bid validity specified by the Applicant in the Letter of Bid, or

(b) having been notified of the acceptance of its Bid by the Beneficiary during the period of bid validity,

(i) fails or declines to execute the Contract Agreement, if applicable, or

(ii) fails or declines to furnish the performance security, in accordance with the Instructions to Bidders (“ITB”).

This guarantee will expire:

(a) if the Applicant is the successful Bidder, upon our receipt of copies of the contract agreement signed by the Applicant and the performance security issued to the Beneficiary, or

(b) if the Applicant is not the successful Bidder, upon the earlier of:

(i) our receipt of a copy of the Beneficiary’s notification to the Applicant that the tender was not awarded to him; or

(ii) twenty-eight days after the Validity Period of the bid.

Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 458.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*[signature(s) of authorized representative(s)]*

# Form of Bid-Securing Declaration

*[The Bidder shall fill in this Form in accordance with the instructions indicated]*

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

Tender No.: *[insert identification number of tender]*

To: *[insert complete name of Contracting Authority]*

We, the undersigned, declare that:

We know that the bid should be supported by a Bid Security Declaration in accordance with your conditions.

We accept to automatically be suspended from being eligible for bidding in any public contract in Kurdistan Region for a period of *[insert period] [[6]](#footnote-6)* as of *[insert start date] [[7]](#footnote-7),* if we are in breach of our obligation(s) under the bid conditions, because we: to:

After having been notified of the acceptance of our bid by the Contracting Authority within the period of bid validity,

1. we failed or refused to furnish a Performance Security in accordance with the ITB; or
2. we failed or refused to sign the Contract.

We know that this Bid-Securing Declaration will expire, if contract is not awarded to us, upon:

1. our receipt of your notification to us of the name of the successful Bidder; or
2. twenty-eight days after the expiration of our Bid or any extension to it.

We know if we are a JV, the Bid- Securing Declaration should be in the name of the JV submitting the bid. If the JV is not legally constituted at the time of bidding, the Bid-Securing Declaration will be in the name of all partners named in the JV agreement.

Signed: *[insert signature of person whose name and capacity are shown]*

In the capacity of *[insert legal capacity of person signing the Bid-Securing Declaration Form]*

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

Duly authorized to sign the bid for and on behalf of: *[insert complete name of Bidder]*

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

[If the Service Provider is a joint venture company, all members of the joint venture must jointly and severally sign the Contract. **The Contracting Authority should not accept that the named joint venture authorized partner sign the declaration alone**].

**Part 2 - Services Requirements**

**Section V. Activity Schedule**

*[The contracting authority must fill this schedule except the unit price and the total price, which will be filled by the Service Provider when preparing its Bid]*

[The required completion dates must be realistic and consistent with Service completion dates]

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Service No.** | **Description of Service** | **Quantity[[8]](#footnote-8)** | **Unit** | **Unit Rate** | **Total Price** | **Place where services will be provided** | **Date (dates) completion of services** |
| [*Insert number of Service*] | [*Insert description of the Services*] | [*Insert quantities for the required items*] | [*Insert unit for each item*] | **[*to be filled by the Service Provider*]** | **[*to be filled by the Service Provider*]** | [*Insert name of the place*] | [*Insert required completion date*] |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
| **Total Price** | | | | |  |  |  |

[If there is a need for a Non-Consulting Service such as aerial photography, the Contracting Authority or the applicant / beneficiary of the Service may prepare terms of reference for the Non-Consulting assignment using the terms of reference form below. At the same time, the applicant/beneficiary must prepare the required outputs and specifications in the Section VI - performance specifications and plans]

Non-Consulting Assignment [name and number of Non-Consulting Assignment in the federal budget]:

1. Background:
2. Objectives:
3. Scope of Services
4. Deliverables and Time Program:
5. Training (if required:
6. Reporting Requirement; and
7. Data, Local Services and Counterpart Staff and Facilities to be provided by the Contracting Authority/Beneficiary:

(Refer to User’s Guide)

**Section VI. Performance Specifications and Drawings**

**(Describe outputs and performance, rather than inputs, where possible)**

*[This Section to be completed by the Contracting Authority]*

#### Part 3 – Conditions of Contract and Contract Forms

**Section VII. General Conditions of Contract**

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**Section VII. General Conditions of Contract**

# 

# 1. General Provisions

## 1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

1. The “**Adjudicator**” is the person appointed jointly by the Contracting Authority and the Service Provider to resolve disputes in the first instance, as provided for in Sub-Clause 8.2 hereunder.
2. “**Activity Schedule**” is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Bid;
3. “**Completion Date**” means the date of completion of the Services by the Service Provider as certified by the Contracting Authority;
4. “**Preliminary Takingover Certificate**” is the Certificate issued by the Contracting Authority after completion of the Services;
5. “**Final Takingover Certificate**” is the Certificate issued by the Contracting Authority after the expiry of the Defects Liability Period;

(e) “**Contract**” means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract;

(f) “**Contract Price**” means the price to be paid for the performance of the Services, in accordance with Sub-Clause 6.1;

(g) “**Dayworks**” means varied work inputs subject to payment on a time basis for the Service Provider’s Contracting Authorityes and equipment, in addition to payments for associated materials and administration.

(h) “**Contracting Authority**” means the party who employs the Service Provider

(i) “**Foreign Currency**” means any currency other than the Iraqi Dinar;

(j) “**Local Currency**” means the currency of the country of the Contracting Authority;

(k) “**GCC**” means these General Conditions of Contract;

(l) “**SCC**” means the Special Conditions of Contract by which the GCC may be amended or supplemented;

(m) “**Government**” means the Government of Kurdistan Region;

(n) “**Member**” in case the Service Provider consist of a joint venture of more than one entity, means any of these entities; “**Member**s” means all these entities, and “**Member in Charge**” means the entity specified in the SCC to act on their behalf in exercising all the Service Provider’ rights and obligations towards the Contracting Authority under this Contract;

(o) “**Party**” means the Contracting Authority or the Service Provider, as the case may be, and “Parties” means both of them;

(p) “**Personnel**” means persons hired by the Service Provider or by any Subcontractor as Contracting Authorityes and assigned to the performance of the Services or any part thereof;

(q) “**Service Provider**” is a person or corporate body whose Bid to provide the Services has been accepted by the Contracting Authority;

(r) “**Service Provider’s Bid**” means the completed bidding document submitted by the Service Provider to the Contracting Authority;

(s) “**Specifications**” means the specifications of the service included in the bidding document submitted by the Service Provider to the Contracting Authority;

(t) “**Services**” means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider’s Bid;

(u) “**Subcontractor**” means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Sub-Clauses 3.5 and 4; and

(v) “**Day**” means calendar day and “Year” means calendar year 365 days.

## 1.2 Applicable Law

The Contract shall be interpreted in accordance with the laws of the Government of Kurdistan Region.

## 1.3 Language

This Contract has been executed in the language **specified in the SCC,** which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

## 1.4 Notices

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed at the address **specified in the SCC.**

## 1.5 Location

The Services shall be performed at such locations as are specified in Appendix A, in the specifications and, where the location of a particular task is not so specified, at such locations, it is determined within the Region, as the Contracting Authority may approve.

## 1.6 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Contracting Authority or the Service Provider may be taken or executed by the officials **specified in the SCC.**

## 1.7 Inspection and Audit by the Contracting Authority

The Service Provider shall permit the Contracting Authority to inspect its accounts and records relating to the performance of the Services and to have them audited by auditors appointed by the Contracting Authority, if so required by the Contracting Authority.

## 1.8 Taxes and Duties

The Service Provider, Subcontractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.

# 2. Commencement, Completion, Modification, and Termination of Contract

## 2.1 Effectiveness of Contract

This contract shall come into effect from the date of the Letter of Award and the notification of the winning bidder or any subsequent date that may be **stated in the SCC**.

## 2.2 Commencement of Services

**2.2.1** **Program**

The Service Provider must, within the period **stipulated in the SCC**, submit to the Contracting Authority a program explaining the methods, general arrangements, order and timing of all activities for approval. The Services shall be carried out in accordance with the approved Program as updated.

**2.2.2 Starting Date**

The Service Provider shall start carrying out the Services by any date as may be **specified in the SCC.**

## 2.3 Services Completion Period

Unless terminated earlier pursuant to Sub-Clause 2.6, the Service Provider shall complete the activities by the Completion Period, as is **specified in the SCC.** If the Service Provider does not complete the activities by the Completion Period, it shall be liable to pay liquidated damage as per Sub-Clause 3.8. In this case, the last day of the Completion Period will be the date of completion of all activities.

## 2.4 Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties and shall not be effective until the consent of the Contracting Authority, as the case may be, has been obtained.

## 2.5 Force Majeure

**2.5.1 Definition**

With respect to this Clause, “Force Majeure” refers to any exceptional occurrence which is:

1. beyond the control of any of the Contract parties;
2. any of the parties could not have taken precaution against prior to concluding the Contract;
3. upon occurrence, any of the parties cannot avoid or control;
4. cannot be attributable to the other party.

Force Majeure comprises exceptional circumstances, like but not limited to:

1. Hostile acts like war whether declared or undeclared, invasion and other actions of chaos and disturbances that are not caused by the Service Provider’s staff or his agents or Sub-contractors.
2. Any effects/results of ionic or nuclear radiations or conventional explosions or turbulences resulting from sonic or supersonic flying transport means.
3. Any effects/results of natural disasters which the Service Provider cannot foresee or avoid through precautionary procedures or insure against.

**2.5.2 No Breach of Contract**

The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event:

(a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and

(b) has informed the other Party as soon as possible about the occurrence of such an event.

**2.5.3 Extension of Time**

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

**2.5.4 Payments**

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

## 2.6 Termination of the Contract

**2.6.1 By the Contracting Authority**

The Contracting Authority may terminate this Contract, by not less than twenty eight (28) days’ written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Sub-Clause 2.6.1:

(a) if the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within twenty eight (28) days after being notified or within any further period as the Contracting Authority may have subsequently approved in writing;

(b) if the Service Provider become insolvent or bankrupt;

(c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less thanfifty six (56) days;

(d) if the Service Provider, in the judgment of the Contracting Authority has engaged in corrupt or fraudulent practices in competing for or in executing the Contract; and

(e) for the common good.

The Contracting Authority requires that contractors, suppliers and consultants observe the highest standard of ethics during implementation duration of the Contract. In pursuit of this policy, the Contracting Authority shall:

1. Adopt the definitions included in paragraphs (16) to (20) in Article (1) of the Public Procurement Regulations number (2) of (2016).
2. Reserve the right to sanction a firm or individual, including declaring it ineligible to participate in public procurements in accordance to the debarment procedures, if it at any time determines that such firm or individual, directly or through an agent, engaged, in corrupt or fraudulent practices during the Contract performance.
3. Oblige contractors, suppliers and consultants to permit the Contracting Authority or its appointed auditors to inspect the accounts, records and other documents relating to the Bid submission and Contract performance.

**2.6.2 By the Service Provider**

The Service Provider may terminate this Contract, by not less than twenty eight (28) days’ written notice to the Contracting Authority, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Sub-Clause 2.6.2:

(a) if the Contracting Authority fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 7 within forty-two (42) days after receiving written notice from the Service Provider that such payment is overdue; or

(b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than fifty six (56) days.

**2.6.3 Payment upon Termination**

Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the Contracting Authority shall make the following payments to the Service Provider:

(a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;

(b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel.

If the contract is terminated due to a fundamental breach of contract by the Service Provider, the Contracting Authority must issue a certificate of the value of the work done and the materials required, less the value of the advance payment until the date of issuance of the certificate. The Contracting Authority has the right to complete the remaining services either by direct execution with their own sources or through another Service Provider at the expense of the Service Provider. The cost of completing the remaining services will be deducted plus the percentage **stipulated in the SCC**, which represents the administrative expenses of the Contracting Authority. Additional delayed fines are not applied. If the total amount due to the Contracting Authority exceeds any payments due to the Service Provider, the difference must be a debt owed to the Contracting Authority.

# 3. Obligations of the Service Provider

## 3.1 General

The Service Provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Contracting Authority, and shall at all times support and safeguard the Contracting Authority’s legitimate interests in any dealings with Subcontractors or third parties.

## 3.2 Conflict of Interests

**3.2.1 Service Provider Not to Benefit from Commissions and Discounts**

The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider’s sole remuneration in connection with this Contract or the Services, and the Service Provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.

**3.2.2 Service Provider and Affiliates Not to be Otherwise Interested in Project**

The Service Provider agree that, during the term of this Contract and after its termination, the Service Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

**3.2.3 Prohibition of Conflicting Activities**

Neither the Service Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

(a) during the term of this Contract, any business or professional activities in the Kurdistan Region which would conflict with the activities assigned to them under this Contract;

(b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public Contracting Authorityes in active duty or on any type of leave, to perform any activity under this Contract;

(c) after the termination of this Contract, such other activities as may be **specified in the SCC.**

## 3.3 Confidentiality

The Service Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Contracting Authority’s business or operations without the prior written consent of the Contracting Authority.

## 3.4 Insurance to be Taken Out by the Service Provider

The Service Provider:

(a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at its (or the Subcontractors’, as the case may be) own cost but on terms and conditions approved by the Contracting Authority, insurance against the risks, and for the coverage, as shall be **specified in the SCC;** and

(b) at the Contracting Authority’s request, shall provide evidence to the Contracting Authority showing that such insurance has been taken out and maintained and that the current premiums have been paid

## 3.5 Service Provider’s Actions Requiring Contracting Authority’s Prior Approval

The Service Provider shall obtain the Contracting Authority’s prior approval in writing before taking any of the following actions:

(a) entering into a subcontract for the performance of any part of the Services,

(b) appointing such members of the Personnel not listed by name in Appendix C (“Key Personnel and Subcontractors”),

(c) changing the Program of activities; and

(d) any other action that may be **specified in the SCC.**

## 3.6 Reporting Obligations

The Service Provider shall submit to the Contracting Authority the reports and documents specified in Appendix B (“Schedule of Payments and Reporting Obligations”) in the form, in the numbers, and within the periods set forth in the said Appendix.

## 3.7 Documents Prepared by the Service Provider to Be the Property of the Contracting Authority

All work plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clauses 3.6 and 2.2.1 shall become and remain the property of the Contracting Authority, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Contracting Authority, together with a detailed inventory thereof. The Service Provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be **specified in the SCC.**

## 3.8 Liquidated Damages

**3.8.1 Payments of Liquidated Damages**

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

**3.8.2 Lack of performance penalty**

If the Service Provider has not corrected a Defect within the time specified in the Contracting Authority’s notice, a penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in Sub-Clause 7.2 and **specified in the SCC.** The correction period is **specified in the SCC.**

## 3.9 Performance Security

The Service Provider shall provide the Performance Security to the Contracting Authority no later than the date specified in the Letter of Award. The Performance Security shall be issued in an amount and form and by a bank acceptable to the Contracting Authority, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The performance Security shall be valid until a date 28 days from the Completion Date of the Contract.

# Service Provider’s Personnel

## 4.1 Description of Personnel

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider’s Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix C are hereby approved by the Contracting Authority.

## 4.2 Removal and/or Replacement of Personnel

(a) Except as the Contracting Authority may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.

(b) If the Contracting Authority finds that any of the Personnel have:

(i) committed serious misconduct or have been charged with having committed a criminal action, or

(ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel.

Then the Service Provider shall, at the Contracting Authority’s written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Contracting Authority.

(c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

# Obligations of the Contracting Authority

## 5.1 Assistance and Exemptions

The Contracting Authority shall use its best efforts to ensure that the Government will provide the Service Provider such assistance and exemptions as **specified in the SCC.**

## 5.2 Change in the Applicable Law

If, after the effectiveness date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Sub-Clauses 6.2 (a) or (b), as the case may be.

## 5.3 Services and Facilities

The Contracting Authority shall make available to the Service Provider the Services and Facilities listed under Appendix F “Services and Facilities Provided by the Contracting Authority”).

# Payments to the Service Provider

## 6.1 Lump-Sum Remuneration

The Service Provider’s remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all Subcontractors’ costs, and all other costs incurred by the Service Provider in carrying out the Services described in Appendix A. Except as provided in Sub-Clause 5.2, the Contract Price may only be increased above the amounts stated in Sub-Clause 6.2 if the Parties have agreed to additional payments in accordance with Sub-Clauses 2.4 and 6.3.

## 6.2 Contract Price

(a) The price payable in local currency is **set forth in the SCC.**

(b) The price payable in foreign currency is set **forth in the SCC.**

## 6.3 Payment for Additional Services

For the purpose of determining the remuneration due for additional Services as may be agreed under Sub-Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D (“Breakdown of Prices in Foreign Currency”) and E (“Breakdown of Prices in Local Currency”).

## 6.4 Terms and Conditions of Payment

**6.4.1 Payments Payable**

Payments will be made to the Service Provider according to the payment schedule **stated in the SCC** unless otherwise stated in the SCC. Any other payment shall be made after the Service Provider have submitted an invoice to the Contracting Authority specifying the amount due.

**6.4.2 Advance Payment**

If **provided for in the SCC**, the advance payment (Advance for Mobilization, Materials and Supplies) shall be made against the provision by the Service Provider of a bank guarantee for the equivalent amount and in the form provided in Section IX, Contract Forms, and shall be valid for the period **stated in the SCC.**

## 6.5 Interest on Delayed Payments

If the Contracting Authority has delayed payments beyond the due date **stated in the SCC**, interest shall be paid to the Service Provider for each day of delay at the rate **stated in the SCC**.

**6.6 Price Adjustment**

6.6.1

Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC.** If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

**Pc = Ac + Bc Lmc/Loc + Cc Imc/Ioc**

Where:

Pc is the adjustment factor for the portion of the Contract Price payable in a specific currency “c”.

Ac , Bc and Cc are coefficients specified in the SCC, representing: Ac the nonadjustable portion; Bc  the adjustable portion relative to labor costs and Cc the adjustable portion for other inputs, of the Contract Price payable in that specific currency “c”; and

Lmc is the index prevailing at the first day of the month of the corresponding invoice date and Loc is the index prevailing 28 days before Bid opening for labor; both in the specific currency “c”.

Imc is the index prevailing at the first day of the month of the corresponding invoice date and Ioc is the index prevailing 28 days before Bid opening for other inputs payable; both in the specific currency “c”.

If a price adjustment factor is applied to payments made in a currency other than the currency of the source of the index for a particular indexed input, a correction factor Zo/Zn will be applied to the respective component factor of pn for the formula of the relevant currency. Zo is the number of units of currency of the country of the index, equivalent to one unit of the currency payment on the date of the base index, and Zn is the corresponding number of such currency units on the date of the current index.

6.6.2

If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

## 6.7 Dayworks

6.7.1

If applicable, the Daywork rates in the Service Provider’s Bid shall be used for small additional amounts of Services only when the Contracting Authority has given written instructions in advance for additional services to be paid in that way.

6.7.2

All work to be paid for as Dayworks shall be recorded by the Service Provider on forms approved by the Contracting Authority. Each completed form shall be verified and signed by the Contracting Authority representative as indicated in Sub-Clause 1.6 within two days of the Services being performed.

6.7.3

The Service Provider shall be paid for Dayworks subject to obtaining signed Dayworks forms as indicated in Sub-Clause 6.7.2.

# Quality Control

## 7.1 Identifying Defects

The principle and modalities of Inspection of the Services by the Contracting Authority shall be as **indicated in the SCC.** The Contracting Authority shall check the Service Provider’s performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider’s responsibilities. The Contracting Authority may instruct the Service Provider to search for a Defect and to uncover and test any service that the Contracting Authority considers may have a Defect. Defect Liability Period is as **defined in the SCC**.

## 7.2 Correction of Defects, and Completion of Deficiencies

(a) The Contracting Authority shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.

(b) Every time notice a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the Contracting Authority’s notice.

(c) If the Service Provider has not corrected a Defect within the time specified in the Contracting Authority’s notice, the Contracting Authority will assess the cost of having the Defect corrected, the Service Provider will pay this amount, and a Penalty for Lack of Performance calculated as described in Sub-Clause 3.8.

# Settlement of Disputes

## 8.1 Amicable Settlement

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

## 

## 8.2 Dispute Settlement

8.2.1

If any dispute arises between the Contracting Authority and the Service Provider in connection with, or arising out of, the Contract or the provision of the Services, whether during carrying out the Services or after their completion, the matter shall be referred to the Adjudicator within 14 days of the notification of disagreement of one party to the other.

8.2.2

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

8.2.3

The Adjudicator shall be paid by the hour at the rate **specified in the BDS and SCC,** together with reimbursable expenses of the types **specified in the SCC**, and the cost shall be divided equally between the Contracting Authority and the Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator’s written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator’s decision will be final and binding.

8.2.4

The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place **shown in the SCC.**

8.2.5

Should the Adjudicator resign or die, or should the Contracting Authority and the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Contracting Authority and the Service Provider. In case of disagreement between the Contracting Authority and the Service Provider, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within 14 days of receipt of such request.

**Section VIII. Special Conditions of Contract**

*[To be completed by the Contracting Authority]*

| **Number of GC Clause** | **Amendments of, and Supplements to, Clauses in the General Conditions of Contract** |
| --- | --- |
| **1.1** | The words “in the Government’s country” are amended to read “in *[the Region]*.” |
| **1.1(a)** | The Adjudicator is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| **1.1(e)** | The contract name is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.* |
| **1.1(h)** | The Contracting Authority is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| **1.1(n)** | The Member in Charge is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| **1.1(q)** | The Service Provider is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| **1.3** | The language is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| **1.4** | The addresses are:  Contracting Authority:  Attention:  Service Provider:  Attention: |
| **1.6** | The Authorized Representatives are:  For the Contracting Authority:  For the Service Provider: |
| **2.1** | The date on which this Contract shall come into effect is the date of the Letter of Award |
| **2.2.1** | The Service Provider must submit to the Contracting Authority a program explaining the methods, general arrangements, order and timing of all activities for approval during \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. |
| **2.2.2** | The Starting Date for the commencement of Services is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.* |
| **2.3** | The Services Completion Period is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*. |
| **2.6.3** | Percentage of administrative expenses of the Contracting Authority to complete the remaining services \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. |
| **3.2.3** | Activities prohibited after termination of this Contract are: \_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **3.4 (A)** | The risks and coverage by insurance shall be:  (i) Third Party motor vehicle  (ii) Third Party liability  (iii) Contracting Authority’s liability and workers’ compensation  (iv) Professional liability  (v) Loss or damage to equipment and property |
| **3.5 (d)** | The other actions are . |
| **3.7** | Restrictions on the use of documents prepared by the Service Provider are:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **3.8.1** | The percentage of liquidated damages rate is *\_\_\_* per day/week beyond the Completion Date  The maximum amount of liquidated damages for the whole contract is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* percent of the final Contract Price. |
| **3.8.2** | The percentage *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* to be used for the calculation of Lack of performance Penalty(ies) is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.* |
| **5.1** | The assistance and exemptions provided to the Service Provider are:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **6.2 (a)** | The amount in local currency is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*. |
| **6.2 (b)** | The amount in foreign currency or currencies is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.* |
| **6.4.1** | Monthly payments reflect the progress of the work, taking into account the conviction/satisfaction of the Contracting Authority that the services have been provided and implemented satisfactorily. |
| **6.4.2** | \_\_\_\_\_\_\_\_\_\_\_\_\_ Advance Payment for Mobilization, Materials and Supplies  The amount of the Advance Payments: \_\_\_\_\_ shall be paid on the commencement date against the submission of Advance Payment bank guarantee.  The amortization of the Advance Payment mentioned above shall commence when the progress payments have reached 20% of the contract price and be completed when the progress payments have reached 80% of the contract price.  The bank guarantee for the Advance Payment shall be released when the advance payment has been fully amortized. |
| **6.5** | Payment shall be made within *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* days of receipt of the invoice and the relevant documents specified in Sub-Clause 6.4, and within *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*days in the case of the final payment.  The interest rate is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*. |
| **6.6.1** | Price adjustment is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* in accordance with Sub-Clause 6.6.  The coefficients for adjustment of prices are *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*:  (a) For local currency:  AL is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  BL is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  CL  is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Lmc and Loc are the index for Labor from *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Imc and Ioc are the index for *\_\_\_\_\_\_\_\_*  from *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  (b) For foreign currency  AF is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  BF is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  CF is *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Lmc and Loc are the index for Labor from *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Imc and Ioc are the index for *\_\_\_\_\_\_\_*  from *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  [*Note: Input like material or equipment*] |
| **7.1** | The principle and modalities of inspection of the Services by the Contracting Authorityr are as follows: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  The Defects Liability Period is  *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.* |
| **8.2.3** | The Adjudicator will be paid a rate of *\_\_\_\_\_\_\_* per hour of work.  The following reimbursable expenses are recognized: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| **8.2.4** | The arbitration procedures of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* will be used  Place of Arbitration \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **8.2.5** | The designated Appointing Authority for a new Adjudicator is *\_\_\_\_\_\_\_\_\_\_* |

## Section IX. Contract Forms

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# Notice of Intention to Award

*[This notice of intention to award to be prepared on the*

*Letterhead of the Contracting Authority]*

*[date]*

To: *[name and address of the Service Provider]*

Reference to your bid dated *[insert date]* for the execution of *[insert name and number of Contract as stated in the Contract Special Conditions]* for a value or equivalent[[9]](#footnote-9) *[insert amount in figures and words] [name of currency]* as [*Insert “corrected” or “amended”*][[10]](#footnote-10) in accordance with Instructions to Bidders (ITB), is accepted from our side.

Therefore, we send to you our notice of intention to award the Bid [*Insert name and identification of the Bid*] to you at your bid price as as corrected and amended. We inform you that we will inform the other bidders of the name and price of the winning Bidder.

Our organization will not take any action to sign the contract until the expiry of the seven (7) days suspension period from the date of this notice. This notice does not constitute a letter of acceptance of the Bid.

On behalf of the Contracting Authority

Name of the Contracting Authority:

Name and capacity of the signatory:

Copy to:

[*Insert name of the other winning bidders*]

# Letter of Award

*[This Letter of award to be prepared on the Letterhead of the Contracting Authority]*

Number: [Insert number]

Date: [Insert date]

To: *[name and address of the Service Provider]*

This is to inform you that your bid dated *[insert date]* for the execution of *[insert name of and identification number of Contract as stated in the Contract Special Conditions]* for the accepted contract price *[insert amount in figures and words] [name of currency]* as [*Insert “corrected” or “amended”]*[[11]](#footnote-11) in accordance with Instructions to Bidders, is accepted from our organization.

|  |
| --- |
| Note: Insert one of the three options for the second paragraph. The first option should be used if the Bidder does not object to the arbitrator's proposed name. The second option is if the bidder objects to the proposed arbitrator and proposes an alternative man, which has been accepted by the contracting authority and the third option if the bidder objects to the proposed arbitrator and proposes an alternative man who is not accepted by the contracting authority. |

We accept the appointment of [*Insert name of the arbitrator proposed by the Contracting Authority in the Bidding Data Sheet*]

Or

We accept the appointment of [*Insert name of the arbitrator proposed by the Bidder]*

Or

We do not accept appointment of *[insert name of Adjudicator as proposed by the bidder].* By sending a copy of this letter to *[insert name of appointment authority]*, we demand from [*insert name*], appointment authority, to appoint the Adjudicator pursuant to ITB Sub-Claue 37.1.

Accordingly, you have to (a) sign and return the attached Contract documents, and (b) provide us with performance security pursuant ITB Sub-Claue 35.1 and in the attached form within a period of no more than 28 days from receipt of this letter of award and in accordance with the General Conditions of Contract Slause 5 with the application of the stamp fee by (0,002) of the contract amount which is equivalent to [*enter the amount in number and in letters*].

Therefore, you have to proceed with the implementation of the Services in accordance with the Contract document.

Please sign and return the attached contract.

On behalf of the Contracting Authority

Name of the Contracting Authority: [*Insert name of Contracting Authority*]

Name and capacity of the signatory: [*Insert name and capacity of signatory*]

**Attachment: The Contract**

# Form of Contract

*[Letterhead paper of the Contracting Authorityr]*

**Lump-Sum Remuneration**

This CONTRACT (hereinafter called the “Contract”) is made the *[day]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of Contracting Authority]* (hereinafter called the “Contracting Authority”) and, on the other hand, *[name of Service Provider]* (hereinafter called the “Service Provider”).

[***Note****: In the text below text in brackets is optional; all notes should be deleted in final text*. *If the Service Provider consist of more than one entity, the above should be partially amended to read as follows:* “…(hereinafter called the “Contracting Authority”) and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly and severally liable to the Contracting Authority for all the Service Provider’s obligations under this Contract, namely, *[name of Service Provider]* and *[name of Service Provider]* (hereinafter called the “Service Provider”).]

WHEREAS

(a) the Contracting Authority has requested the Service Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the “Services”);

(b) the Service Provider, having represented to the Contracting Authorityr that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of [*Insert contract amount*];

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents shall be deemed to form and be read and construed as part of this Agreement, and the priority of the documents shall be as follows:
2. Form of Contract
3. Letter of Award;
4. Service Provider’s Bid
5. Special Conditions of Contract;
6. General Conditions of Contract;
7. Specifications;
8. Drawings
9. Priced Activity Schedule; and
10. The following Appendices: [***Note****: If any of these Appendices are not used, the words “Not Used” should be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix*.]

Appendix A: Description of the Services

Appendix B: Schedule of Payments and Reporting Obligations

Appendix C: Key Personnel and Subcontractors

Appendix D: Breakdown of Contract Price in Foreign Currency

Appendix E: Breakdown of Contract Price in Local Currency

Appendix F: Services and Facilities Provided by the Contracting Authority

1. The mutual rights and obligations of the Contracting Authority and the Service Provider shall be as set forth in the Contract, in particular:

(a) the Service Provider shall carry out the Services in accordance with the provisions of the Contract; and

(b) the Contracting Authority shall make payments to the Service Provider in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

On behalf of the Contracting Authority

Name of the Contracting Authority: [*Insert name of the Contracting Authority*]

Name and capacity of the signatory: [*Insert name of the signatory*]

For and on behalf of the Service Provider

Name of the Service Provider: [*Insert name of the Service Provider*]

Name and capacity of the signatory: [*Insert name of the signatory*]

[If the service provider is a joint venture company, members of the joint venture must sign the contract jointly and severally liable for the execution of the contract. **The Contracting Authority should not accept that the named joint venture authorized partner sign the contract alone on behalf of member of the joint venture**].

For and on behalf of each of the Members of the Service Provider

*[name of and position of the member]*

*[Authorized Representative]*

*[name of and position of the member]*

*[Authorized Representative]*

# Performance Security

**(Unconditional Bank Guarantee)**

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

Whereas *\_\_\_\_\_* (hereinafter called “the Service Provider”) has undertaken, in pursuance of Contract No. *\_\_\_\_\_\_\_\_* dated *\_\_\_\_\_\_\_\_* to execute *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* (hereinafter called “the Contract”);

And whereas it has been stipulated by you in the said Contract that the Service Provider shall furnish you with a Bank Guarantee by an accredited bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

And whereas we have agreed to give the Service Provider such a Bank Guarantee; we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Service Provider, up to a total of *\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_*, [[12]](#footnote-12)such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_* as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Services to be performed there under or of any of the Contract documents which may be made between you and the Service Provider shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Performance Security shall expire no later than the *[insert number]* day of *[insert month]* *[insert year]*,[[13]](#footnote-13) and any demand for payment under it must be received by us at this office on or before that date.

Signature and seal of the Guarantor

Name of Bank

Address

Date

[Note: All oblique texts (footnotes) are intended for preparing this form and must be deleted from the final version].

# Advance Payment Bank Guarantee

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

Gentlemen:

In accordance with the provisions of the Conditions of Contract, Sub-Clause 6.4 (“Terms and Conditions of Payment”) of the above-mentioned Contract, [*Insert name and address of the Service Provider*](hereinafter called “the Service Provider”) shall deposit with [*Insert name of the Contracting Authority*] a Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of [*amount of security in figures*] [*amount in words*].

We, the [Insert name of the Bank/Financial Institution], as instructed by the Service Provider, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to [*Insert name of the Contracting Authority*] on its first demand without whatsoever right of objection on our part and without its first claim to the Service Provider, in the amount not exceeding [*amount of security in figures*] [*amount in words*].

We further agree that no change or addition to or other modification of the terms of the Contract or of Services to be performed there under or of any of the Contract documents which may be made between you and the Service Provider, shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

The claimed payment under this security shall be conditional that the Service Provider has already received the advance payment and deposited in his account number *[insert number]* at *[insert name and address of the bank]*

This Guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until [*Insert name of the Contracting Authority*]receives full repayment of the same amount from the Service Provider.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. (458).

Yours truly,

Signature and seal:

Name of Bank/Financial Institution:

Address:

Date:

#### User’s guide

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**[This user’s guide contains detailed explanations and recommendations on how to prepare Bidding Document for the purchase of relevant services. This guide is not part of the Bidding Documents].**

# Invitation for Bids (IFB)

A bid invitation is usually issued (see Public Procurement Regulation Article 22 - publication of advertisement) as follows:

1. The advertisement or the invitation for prequalification for the national public tender is to be published at least once in two daily national newspapers that are widely distributed in the Region as well as on the official single-portal website established pursuant to article 70-Tenth and Eleventh.
2. The advertisement for international public tenders shall be published on the (UNDB Online)[[14]](#footnote-14), or on the “dgMarket” [[15]](#footnote-15)portal and at the commercial attachee at the Iraqi embassies and consulates outside Iraq when feasible.

Its purpose is to supply information to enable potential bidders to decide on their participation. Apart from the essential items listed in these Sample Bidding Documents, the Invitation for Bids should also indicate any important or unusual bid evaluation criteria (for example, the application of a margin of preference in bid evaluation).

The Invitation for Bids may be incorporated in the bidding documents merely for the record, or it may be omitted. In either event, the information contained in the Invitation for Bids should conform to the bidding documents, and in particular, to the relevant information in the Bidding Data Sheet and the Special Conditions of Contract.

The information contained in the Invitation for Bids (IFB) must match the corresponding information in the Bidding Data Sheet (BDS), for example, the name of the Contracting Authority, the validity of the Bid, the validity of the Bid Security, address for bid submission, the time and date of bid submission and bid opening, ... Etc.

# Attachment: Invitation for Bids

Name of Contracting Authority: [*Insert name of Contracting Authority*]

Name of Tender: [*Insert name of Tender*]

Identification Number of tender: [*Insert Identification Number of Tender*]

1. The [*insert name of Contracting Authority*] now invites sealed bids from eligible and qualified bidders for the execution of [*insert brief description of required Services for execution*] *[Insert brief description for all the lots comprising the Bid*] *[[16]](#footnote-16)*. The duration of execution of Services / Lots is [*Insert number of days/months/years or dates for the Services/Lots*][[17]](#footnote-17).
2. Bidding will be conducted through [*Insert National Competitve Bidding (NCB)*] or [*International Competitive Bidding (ICB)*] procedures set forth in the Public Procurement Regulation No. (2) Year 2016, and is open to all Bidders.
3. The winning Bidder must posses the required qualifications, these are*: [Enter a brief description of the qualifications specified in Section III, in the Bidding Documents].* A margin of preference *[insert “shall” or “shall not”]* be applied to eligible local Service Providers/joint venture companies in the Region, as appropriate.
4. Interested eligible bidders may obtain further information from *[insert full legal name of the Contracting Authority; insert name and e-mail of officer in charge]* and inspect the Bidding Documents at the address given below from *[insert office hours]* Sunday through Thursday.
5. A complete set of Bidding Documents in *[insert name of language(s)]* may be purchased by interested bidders on the submission of a written Application to the address below and upon payment of a non refundable fee[[18]](#footnote-18) *[insert amount in local currency]* or in *[insert amount in specified convertible currency]*. The method of payment will be *[insert method of payment[[19]](#footnote-19)]*.The Bidding Documents will be sent by *[insert delivery procedure]*.[[20]](#footnote-20)
6. Bids shall be valid for a period [*insert number of days as specified in Bid Data Sheet*] days beyond the deadline of bid submission. Bids should be accompanied by [*insert one of the options*] “Bid Security in the amount [*insert amount*][[21]](#footnote-21) in local currency or in equivalent amount in freelyconvertible currency valid for [*Insert number*] days beyond Bid validity” or “Bid-Securing Declaration” in accordance with the Form included in Bidding Documents.
7. Bids must be delivered to the address below *[Insert address]*[[22]](#footnote-22) at or before *[insert time and date]*. Electronic bidding [Insert “*will*” or “*will not”]* be permitted. Late bids will be rejected. Bids will be opened in the presence of the Bidders’ representatives who choose to attend in person or on-line at the address below *[state address]* at *[insert time and date]*.
8. The contracting authority is not obliged to accept the lowest priced bids at the expense of technical specifications and qualification requirements.
9. The winning Bidder shall bear the costs of publishing the invitation for bid.

Contracting Authority: [*Insert name of Contracting Authority]*

Attention: [*Insert name of person in charge*]

E-mail: *[insert electronic address]*

Telephone number: [*Insert telephone number*]

Department: [*Insert department name]*

Floor number: [*Insert floor number*]

Room number: [*Insert room number*]

Street address: [*Insert street address*]

City: [*Insert name of the city*]

Country: [*Insert name of country*]

Zip code: [*Insert zip code*]

# Section I. Instructions to Bidders

This section of the bidding documents should provide the information necessary for bidders to prepare responsive bids, in accordance with the requirements of the Contracting Authority. It should also give information on bid submission, opening and evaluation, and on the award of the Contract.

Matters governing the performance of the Service Provider, payments under the Contract, or matters affecting the risks, rights, and obligations of the parties under the Contract are not normally included in this Section, but rather under Section VII, General Conditions of Contract, and/or Section VIII, Special Conditions of Contract. If duplication of a subject is inevitable in the different sections of the documents, care must be exercised to avoid contradiction between clauses dealing with the same matter. This section contains provisions that are to be used without modifications. Any necessary modifications related to the bid will be reflected in section II, Bidding Data Sheet.

These Instructions to Bidders will not be part of the Contract and will cease to have effect once the Contract is signed.

# Section II. Bidding Data Sheet

This section must be filled by the Contracting Authority before issuing Bidding Documents. It reflects modifications or additions that the Contracting Authority deems necessary for the Services to be procured. The modifications made in this section must correspond to information inserted in the Invitation for Bids (IFB).

[Instructions for completing the data written in parentheses and in italics, must be deleted after the required completing the data].

|  |  |
| --- | --- |
| **ITB Clause Reference** | **A. General** |
| **1.1** | Name of the Contracting Authority: *[Insert the same information as in Sub-Clause 1.1 in Section VIII, Special Conditions of Contract] \_\_\_\_\_\_\_\_\_\_\_\_* |
| **1.1** | The name and identification number of the Bid: *[Insert the same information as in Sub-Clause 1.1 in Section VIII, Special Conditions of Contract]*  Name and number of Lots constituting the Bid: *[Insert name and identification number of the Lots (if any)]:\_\_\_\_\_\_\_\_\_\_\_\_\_*  The Bidder is *[Insert "entitled or "Not entitled]* to bid for individual lot or group of lots |
| **1.2** | Implementation period of the Service: *[Insert period]*  *[Insert the same information as in Sub-Clause 2.3 in Section VIII, Special Conditions of Contract]* |
| **2.1** | Budget Year is: *[Insert the budget year for the Contracting Authority certified by the competent authorities with the service tab]*  Name of the Contracting Authority: *[Insert* *Name of the Contracting Authority]*  Source of funding for this Contract *[Insert* *Source of funding]*  Name of Services: *[Insert* *name of Services list in the Contracting Authority’s budget]* |
| **4.3** | A list of contractors subject to decisions of debarment in government contracts is available at the following web site: *[Insert Electronic Address]* |
| **5.2** | Prequalification *[Insert “was” or “was not”]* carried out. |
| **5.3** | The Qualification Information and Bidding forms to be submitted are as follows: *[Insert any additions or deletions to the list in Sub-Clause 5.3, otherwise insert "None"]* |
| **5.4** | The information needed for Bids submitted by joint ventures is as follows: *[Insert any additions or deletions to the list in Sub-Clause 5.4, otherwise insert "None"]* |
| **5.6** | Subcontractors’ experience *[Insert “will” or “will not”]* be taken into account. |
| **8.2** | A Pre-Bid Conference *[Insert “will” or “will not”]* take place.  If a Pre-Bid Conference will take place:  Place of the Pre-Bid Conference: *[Insert place]*  Date of the Pre-Bid Conference: *[Insert date]*  Time of the Pre-Bid Conference: *[Insert time]* |
| **B. Contents of Bidding Document** | |
| **9.4 and**  **19.1** | In addition to the original bid, the number of copies of the Bid to be completed and returned shall be *[Insert the number of copies, usually two versions: more possible, when necessary]* |
| **10.1** | The Contracting Authority will respond to any request for clarification received *[Insert number, normally seven]* days before the deadline for submission of bids. |
| **C. Preparation of Bids** | |
| **12.1** | Language of the bid: *[insert Arabic/Kurdish]*  For the purposes of translating supporting documents and printed materials, the language adopted is: *[insert Arabic/Kurdish/English]*  If the Bidding Documents have been issued in more than one of the languages indicated above, Bidders are permitted, at their choice, to submit their bids in one language only.  Bidders shall not submit bids in more than one language. The Contract to be signed with the winning Bidder shall be written in the language in which the Bid was submitted, which shall be the language that shall govern the contractual relations between the Contracting Authority and the winning Bidder. A Bidder shall not sign a translated version of its Contract. |
| **13.1** | The additional materials required to be completed and submitted are: *[Insert the list of additional documents required, for example, a catalogue or manual concerning some of the equipment it intends to use in the provision of services indicating its effectiveness in performance, and any laboratory tests conducted in previous contracts to services/products].* |
| **14.4** | The Bid Prices submitted by the Bidder *[Specify “are” or are not”]* subject to price adjustment during the execution of the contract in accordance with the terms of Sub-Clause 6.6 of the general conditions of contract and/or the special conditions of contract.  **Prior approval from the Council of Ministers must be obtained to apply price adjustment for this contract.** |
| **15.1 (b)** | Inputs from outside the Region shall be quoted in *[Insert currency] [common currency used in international trade, such as, United States Dollar, EURO]* |
| **16.1** | The period of Bid validity shall be *[insert number The period should be a realistic time, usually not less than 45 days for small contracts nor more than 105 for large contract, allowing for bid evaluation, clarifications, and necessary approvals from the Contracting Authority’s authorized official, or from the Council of ministers for large contracts. The time should be the same as that specified in the Invitation for Bids]* days after the deadline for Bid submission specified in the BDS. |
| **17.1** | The Bidder shall provide: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *[insert one of the following options:*   * + 1. No Bid Security is required; or     2. Certified Cashier’s Check;     3. Bid Security (Bank Guarantee); or     4. Bid Securing Declaration*].* |
| **17.2** | The amount of Bid Security shall be *[Insert amount in local currency as stipulated in the invitation for bids. A lump sum amount must be specified equal to (1-3%) of the estimated cost of the Services, taking into consideration the nature and importance of the contract]* or in an equivalent amount in freely convertible currency. |
| **17.5** | [This paragraph is filled out only in the event that Bid Securing Declaration is required under Sub-Clause 17.1 of the instructions for the bidders]  In the event that the Bidder carry out any of the acts mentioned in (a) or (b) of this Sub-Clause, it will be debarred from participation in government contracts in accordance with the debarment procedures for a period of *[Insert number]* year  [Ensure that the entries in this Sub-Clause match the entries in the Bid Securing Declaration in Section IV of the Bidding Document] |
| **18.1** | Alternative bids [are/are not]permitted. |
| **D. Submission of Bids** | |
| **20.2 (a)** | The Contracting Authority’s address for the purpose of Bid submission is:  [Insert address for bid submission as stipulated in the invitation for bids. The address for bid submission must be an office operated during normal working hours by authorized employees to receive bids, certifying the time and date of receipt and making sure that the bid is kept safe until the time of opening of the bids. It is not preferable to include the post office address]  Attention to: *[Insert name of responsible official, project manager]*  Street Address: *[Insert street address]*  Department Name: *[Insert department name]*  Floor/Room number: *[Insert room/floor number]*  City: *[Insert name of the city]*  Country: *[Insert name of country]*  Postal Code: *[Insert postal code]* |
| **20.2 (b)** | The envelopes must indicate:  Name and identification number of the Contract: *[Insert Name and identification number of the Contract]* |
| **21.1** | The deadline for submission of bids shall be *[insert time and date; the date should be the same and the time, in no event, earlier than that given in the Invitation for Bids, unless subsequently amended pursuant to Sub-Clause 20.2]*.  Date: *[Insert date]*  Time: *[Insert time]* |
| **E. Bid Opening and Evaluation** | |
| **24.1** | Bids will be opened at *[ insert time ]* of the day *[ insert date ]* at the following address *[ insert address]*  Street Address: *[Insert name and number of the street]*  Department Name: *[Insert name of department]*  Floor/Room number: *[Insert room/floor number]*  City: *[Insert name of the city]*  Country: *[Insert name of country]* |
| **29.1** | Source of exchange rate: Central Bank of Kurdistan Region  Date of exchange rate: *[Insert date of Bid opening]* |
| **31.1** | Local Service Providers from the Region [Insert "will" or "will not be"] giving a margin of preference.  If a margin of preference is given to local Service Providers from the Region, Chapter III - Evaluation and Qualification Criteria determines the mechanism for applying the margin of preference, taking into account the percentage specified in Annex A of Public Procurement Regulation No. 2 year 2016. |
| **F. Award of Contract** | |
| **35.0** | Amount of Performance Security \_\_\_\_\_\_\_ [the amount for performance security is usually set at 5 to 10 per cent of the contract amount for Bank guarantee]. |
| **36.1** | When permitted, the Advance Payment shall be of *[insert percentage value, normally not more than 10%]* percent of the Contract Price.  *[The percentage value should be adequate to minimize the needs of the Service Provider to borrow for the Contract and will depend on the type of Services to be provided. Recommended when the Services to be provided include field works or preparation of products (like data base) in addition to provision of man-power]* |
| **37.1** | The Adjudicator proposed by the Contracting Authority is *[insert name and address]*.  The hourly fee for this proposed Adjudicator shall be *[insert amount and currency]*.  The biographical data of the proposed Adjudicator is as follows: *[provide relevant information, such as education, experience, age, nationality, and present position; attach additional pages as necessary, attach the CV of the Adjudicator]*.  **The agreed upon Adjudicator must be of good conduct, and has the qualities of integrity, honesty, and experienced in the scope of the contract.** |

# Section III. Evaluation and Qualification Criteria

This section contains all the criteria to be applied by the Contracting Authority to evaluate bids and bidders qualifications, in accordance with Sub-Clauses 5.5 and 18.2 of the Instructions to Bidders. No other factors, methods or criteria will be used. The Bidder must provide all the required information in the forms in Section IV, Bidding Forms. **This section is prepared by the Contracting Authority.**

1. Alternative Completion Period in accordance with Sub-Clause 18.2 of the Instructions to Bidders;
2. Alternative Technical Solutions in accordance with Sub-Clause 18.4 of the Instructions to Bidders;
3. Margin for Domestic Preference in accordance with Sub-Clause 31.1 of the Instructions to Bidders;
4. Evaluation and Qualification Criteria in accordance with Sub-Clause 5.5 of the Instructions to Bidders;
5. Key Personnel; and
6. Equipment.

1. **Alternative Completion Period in accordance with Sub-Clause 18.2 of the Instructions to Bidders;**

The Service Provider must complete the Services included for in Section V of the Activity Schedule within the completion period of the Services specified in the Section II of the Bidding Data Sheet (i.e. after the earliest completion date and before the deadline for completion). Services completed before the earliest date will not be given preference, and Bids offering completion of Services after the deadline will be treated as unresponsive. For evaluation purposes only, the prices of Bids offering completion of Services after the "earliest completion date", if provided for in the Bidding Data Sheet, may be adjusted for evaluation purposes.

**Note:** An adjustment coefficient must be set to assess the differences submitted by Bidders as a percentage of the Bid price, or a lump sum for each week of delay after the earliest completion date of services, which represents the loss of benefits on the Contracting Authority of the services, and the adjustment coefficient must not exceed the amount mentioned in the Special Conditions of contract for delay damages.

**Practical Example:**

Services Completion Period (12) months, earliest completion date (12) months, deadline for completion (14) months.

Price adjustment coefecient 5% of Bid price for each week of delay after earliest completion date to be added to the Bid price for comparison purposes only.

Bid price of Bidder (A) IQ100,000,000, completion period one week after the earliest completion date, therefore, the Bid price will be IQ105,000,000.

Bid price of Bidder (B) IQ94,000,000, completion period two week after the earliest completion date, the Bid price will be IQ103,000,000.

Therefore, the tender will be awarded to Bidder (B) at IQ94,000,000, completion period (12 months and two weeks)

1. **Alternative Technical Solutions in accordance with Sub-Clause 18.4 of the Instructions to Bidders;**

If alternative technical solutions are allowed in the Bidding Data Sheet, the evaluation method will be as follows:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*[Insert evaluation method]*

*["The Bidder is entitled to offer alternative technical solutions if it has submitted a bid for the original bid. If only the original bid is a bid that is responsive to all the conditions and the lowest cost, the Contracting Authority will take into account the alternative technical solutions."]*

1. **Margin for Domestic Preference in accordance with Sub-Clause 31.1 of the Instructions to Bidders;**

A margin of preference for Non-Consulting Services will not be applied unless otherwise stated in the Bidding Data Sheet. If applicable, the methodology listed below is followed for bid comparison purposes:

* 1. Mechanism of application margin of preference

1. After convertin currencies of the various bids to one common currency in accordance with ITB Sub-Clause 29.1, responsive bids will be classified in the following groups:
2. Group “A”, Bids submitted by local Bidders and local joint venture companies; and
3. Group “B” Bids submitted foreign companies.
4. Increase the price of the lowest bid from group "B"" by the ratio of the domestic margin of preference provided in the Bidding Documents for comparison purposes only
5. Compare the price of the foreign bid that was increased according to paragraph (B) above with the lowest evaluated bid price of local bidders.
6. If the lowest evaluated Bid from local bidders is lower than the lowest evaluated foreign bid after the adding the domestic margin of preference margin [as a result of subparagraphs (B) and (C) above, the tender must be awarded to the local bidder, and otherwise the tender must be awarded to the lowest evaluated foreign bidder before the increase.
   1. **Definition of Local Contractor**

Local Bidders must provide all the necessary evidence to prove that they meet the following criteria to be eligible for a margin of preference of no more than 5 per cent when comparing their bids with non-eligible bidders. Local Bidders must be:

1. Registered in the Region;
2. The partner/partners from the Region have a majority;
3. Does not subcontract more than 10 percent of the Contract Price, to foreign contractors.

A joint venture company between local and foreign companies may be eligible for the margin of preference offered to a partner or local partner:

1. Each member of the joint venture company meets the above eligibility criteria for preference;
2. Statement of a beneficiary's share, local (partner/partners), not less than 50% in the joint venture company, as evidenced by the profit and loss-sharing provisions of the joint venture Company Agreement; and
3. Under the proposed arrangements (partnership agreement), will implement at least 50 per cent of the Services, measured in value, which exclude any materials or plant imported directly by the local partner (partners) (provided that the local partner or partners are always qualified to implement that volume of the work).

**Note:**

Referring to paragraph 3.2 above, definition of the local contractor, the Directorate of General Contracts in the Ministry of Planning will issue a circular regarding the definition of the local contractor in the case of a joint venture partnership between a local contractor and a foreign contractor.

1. **Evaluation and Qualification Criteria in accordance with Sub-Clause 5.5 of Instructions to Bidders**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Eligibility and Qualification Criteria** | | | **Compliance Requirements** | | | | **Documentation** |
| **No.** | **Subject** | **Requirement** | **Single Entity** | **Joint Venture (existing or intended)** | | | **Submission Requirements** |
| **All Parties Combined** | **Each Member** | **One Member** |
| **1. Eligibility** | | | | | | | |
| 1.1 | Nationality | Nationality | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Section IV- Bidding Forms  Service Provider letter of Bid |
| 1.2 | Conflict of Interest | Conflicts of Interest | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Section IV- Bidding Forms  Service Provider letter of Bid |
| 1.3 | Inclusion on the list of debarment from participation | Inclusion on the list of debarment from participation | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Section IV- Bidding Forms |
| 1.4 | Country eligibility in accordance with UN resolutions or Iraqi laws | Country eligibility in accordance with UN resolutions or Iraqi laws | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Section IV- Bidding Forms  Service Provider letter of Bid |
|  | **2. Historical Contract Non-Performance** | | | | | | |
| 2.1 | History of Non-Performing Contracts | Non-performance of a contract did not occur as a result of contractor default since 1st January [*Insert year providing that specified period does not exceed previous three years].* | Must meet requirement[[23]](#footnote-23) | Must meet requirements | Must meet requirement[[24]](#footnote-24) | N/A | Section IV- Bidding Forms |
| Nonperformance, as decided by the Contracting Authority, shall include all contracts where (a) nonperformance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Nonperformance shall not include contracts where Contracting Authoritys decision was overruled by the dispute resolution mechanism. Nonperformance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder have been exhausted. | | | | | | | |
| 2.2 | Pending Litigation | Bidder’s financial position and prospective long term profitability sound according to criteria established in 3.1 below and assuming that all pending litigation will be resolved against the Bidder | Must meet requirement | N/A | Must meet requirement | N/A | Section IV- Bidding Forms |
| [All pending litigations shall not constitute in total more than (30% to 50%) of the net capital of the Bidder] | | | | | | | |
| 2.3 | Litigation History | No consistent history of court/arbitral award decisions against the Bidder since 1st January *[Insert year providing that specified period does not exceed previous three years].* | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Section IV- Bidding Forms |
|  | **3. Financial Situation** | | | | | | |
| 3.1 | Financial Performance | Balance sheet, profit and loss data, auditors' reports *[enter number of years]* | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Section IV- Bidding Forms |
| 3.2 | Average Annual Turnover | Minimum average annual turnover of the Bidder is *[insert number and figure of the amount in IQD]* calculated as total certified payments received for contracts completed or in progress within the last *[insert number of years in figure and word]* years. | Must meet requirement | Must meet requirement | Must meet  *[insert percent in word and figure]* of the requirement | Must meet  *[insert percent in word and figure]* of the requirement | Section IV- Bidding Forms |
| The amount mentioned should usually not be less than the annual cash flow of the contract's estimated cost multiplied by 1.5. The contract's annual cash flow is calculated by dividing the contract's estimated cost by execution duration calculated from a straight line projection chart of cost versus duration. For the number of years, from (5) five to (10) ten years.  Each partner must meet a minimum of 25% of the requirements and one partner must meet a minimum of 40% of the requirements, with all partners fulfilling 100% of the requirements. | | | | | | | |
| 3.3 | Financial Resources | Cash flow and/or credit facilities, net other contractual obligations, except for any advance payments that may be made under the contract, at least [enter the amount in numbers and letters in Iraqi dinars] | Must meet requirement | Must meet requirement | Must meet  *[insert percent in word and figure]* of the requirement | Must meet  *[insert percent in word and figure]* of the requirement | Section IV- Bidding Forms |
| The amount of monthly cash flow of the building is usually equal to the number of months specified, such as the total time the Contracting Authority needs to pay the amount due to the Service Provider, as follows: (a) the month of provision of services; (b) a month for the project manager to issue a payment certificate; (c) one month for the Contracting Authority to pay the amount; and (d) ome month for emergency. This period should not exceed six months. Monthly cash flow is calculated from a Straight Line Projection chart for cost versus duration.  Each partner must meet a minimum of 25% of the requirements and one partner must meet a minimum of 40% of the requirements, with all partners fulfilling 100% of the requirements. | | | | | | | |
|  | **4. Experience** | | | | | | |
| 4.1 | **Specific Experience** | Participation as a major Service Provider in *[insert the number of contracts]* to execute contracts similar to the work of this contract and have been completed with complete substantial success as a principal contractor or member of a Joint Venture, administrative contractor or subcontractor[[25]](#footnote-25).  Similarity means the analogy of physical size, nature, complexity, climatic and geological conditions, methods/technology and/or other characteristics described in section V - activity schedule and section VI - performance specifications and drawings, with the value of each contract not less than *[insert the amount and currency in numbers]* *[insert amount and currency in words]* during the last *[insert the number of years in numbers] [enter the number of years in words]* years. | Must meet requirement | Must meet requirement[[26]](#footnote-26) | N/A | N/A | Section IV- Bidding Forms |
| The number must be from one to three contracts, depending on the size and complexity of the contract in question, the circumstances of the country and the Contracting Authority at risk of default of the Service Provider. Each contract must be worth at least 80% of the annual cash flow value of the contract's estimated cost subject of the Bid, and the summation of the number of contracts of small value (less than the value specified by the requirements) will not be accepted to meet the overall requirements. In order to be considered in the bid evaluation, the service contracts mentioned must be at least 75 per cent complete.  The time period is usually five to ten years, and must be related to the number of similar contracts mentioned above and the duration of the contract in question. | | | | | | | |

1. **Key Personnel**

The Bidder's staff or tkey personnel of the Bidder

Bidders must demonstrate to the Contracting Authority the availability of staff for key positions to execute the contract and meet the requirements:

[Insert positions that are key to successful contract management, number of years of general total experience in contract execution and number of years of specialized experience in similar work

|  |  |  |  |
| --- | --- | --- | --- |
| **Sr. No.** | **Position** | **General experience in the implementation of Services contracts ( ) years** | **Specialized experience in similar Services contracts ( ) years** |
| 1. | Project Manager |  |  |
|  |  |  |  |
|  |  |  |  |

The Bidder must attach the CVs of Key Staff proposed for the execution of the contract, specifying their previous experience records in the relevant Information Forms included in Section IV (Bidding Forms).

Note to the official who will prepare the document, these guidance notes should not appear in the final Bidding Document.

[*The managerial and technical competence of a contractor is largely related to the key personnel on site. The extent to which the Bidder should demonstrate having staff with extensive experience should be limited to those requiring critical operational or technical skills. The prequalification criteria should therefore refer to a limited number of such key personnel, for instance, the project or contract manager and those superintendents working under the project manager who will be responsible for major components (e.g., superintendents specialized in dredging, piling, or earthworks, as required for each particular project). Criteria of acceptability should be based on:*

*(a) a minimum number of years of experience in a similar position; and*

*(b) a minimum number of years of experience and/or number of comparable projects carried out in a specified number of preceding years.*

*The requirement of specified education and academic qualifications is normally unnecessary for such positions, as contractors often employ competent staff who have learned their profession “on the job” rather than through academic training. It is appropriate to specify that certain positions are filled by individuals who have held posts of comparable authority for, say, three years with the Bidder, so that key staff in executive site positions have sufficient knowledge of the Bidder's management, policy, procedures, and practices to act with confidence and authority within that framework*].

1. **Equipment**

The bidder must prove ownership or possession of the main equipment listed in the table below.

[*Insert the main equipment necessary to successfully execute the contract*]

|  |  |  |
| --- | --- | --- |
| **No.** | **Equipment Type and Characteristics** | **No. Min. Number Required** |
| **1** |  |  |
| **2** |  |  |
| **3** |  |  |
| **4** |  |  |
| **5** |  |  |
|  |  |  |

The Bidder shall provide further details of proposed items of equipment using the relevant Form in Section IV (Bidding Forms)

Note to the official who will prepare the document, these guidance notes should not appear in the final Bidding Document.

In most cases Bidders can readily purchase, lease, or hire equipment; thus, it is usually unnecessary for the assessment of a contractor's qualification to depend on the contractor’s owning readily available items of equipment. The pass–fail criteria adopted should therefore be limited only to those bulky or specialized items that are critical for the type of project to be implemented, and that may be difficult for the contractor to obtain quickly. Examples may include items such as heavy lift cranes and piling barges, dredgers, asphalt mixing plants, etc. Even in such cases, contractors may not own the specialized items of equipment, and may rely on specialist subcontractors or equipment–hire firms. The availability of such subcontractors and of the specified equipment should be subject to verification prior to contract award.

# Section IV. Bidding Forms

[Note to the Contracting Authority: To assist bidders in filling their bids, in particular the activity schedule, the Contracting Authority must include those parts to be filled by the bidder on a CD, to be included in the Bidding Documents, with the bidder printing, signing and stamping these parts in accordance with the instructions to bidders and attach it within its Bid. Bidders should be warned that any modification of these parts will cause its Bid to be rejected].

**Notes on Form of Service Provider's Bid**

The Bidder shall fill in and submit this Bid form with the Bid. Additional details on the price should be inserted if the Bid is in various currencies. If the Bidder objects to the Adjudicator proposed by the Contracting Authority in the bidding documents, he should so state in his Bid, and present an alternative candidate, together with the candidate’s daily fees and biographical data, in accordance with ITB Clause 37.

**Form of Qualification Information**

The information to be filled out by the bidders in Section IV – Bidding Forms for qualification purposes will be used as stipulated in ITB Sub-Clause 5. This information will not be incorporated into the contract. Attach additional pages as necessary. Pertinent sections of attached documents should be translated into the language specified in the Bidding Data Sheet. If used for prequalification verification, the Bidder should fill in updated information only.

**Standard form of Letter of Award**

The Letter of Acceptance will be the basis for formation of the Contract as described in Clauses 33 and 34 of the Instructions to Bidders. This Standard Form of Letter of Acceptance should be filled in and sent to the successful Bidder only after evaluation of bids has been completed.

# Section V. Activity Schedule

**Objectives**

The objectives of the Activity Schedule are:

(a) to provide sufficient information on the quantities of Services to be performed to enable bids to be prepared efficiently and accurately; and

(b) when a Contract has been entered into, to provide a priced Activity Schedule for use in the periodic valuation of Services executed.

In order to attain these objectives, Services should be itemized in the Activity Schedule in sufficient detail to distinguish between the different classes of Services, or between Services of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Activity Schedule should be as simple and brief as possible.

**Daywork Schedule**

A Daywork Schedule should be included only if the probability of unforeseen work, outside the items included in the Activity Schedule, is high. To facilitate checking by the Contracting Authority of the realism of rates quoted by the bidders, the Daywork Schedule should normally comprise the following:

(a) A list of the various classes of Services, labor, materials, and Plant for which basic daywork rates or prices are to be inserted by the Bidder, together with a statement of the conditions under which the Service Provider will be paid for work executed on a daywork basis.

(b) Nominal quantities for each item of Daywork, to be priced by each Bidder at Daywork rates as Bid. The rate to be entered by the Bidder against each basic Daywork item should include the Service Provider’s profit, overheads, supervision, and other charges.

**Provisional Sums**

The estimated cost of specialized work to be carried out, or of special goods to be supplied, by other Service Providers (refer to Clause 8 of the Conditions of Contract) should be indicated in the relevant part of the Activity Schedule as a particular provisional sum with an appropriate brief description. A separate procurement procedure is normally carried out by the Contracting Authority to select such specialized Service Providers. To provide an element of competition among the bidders in respect of any facilities, amenities, attendance, etc., to be provided by the successful Bidder as prime Service Provider for the use and convenience of the specialist contractors, each related provisional sum should be followed by an item in the Activity Schedule inviting the Bidder to quote a sum for such amenities, facilities, attendance, etc.

*These Notes for Preparing an Activity Schedule are intended only as information for the Contracting Authority or the person drafting the bidding documents. They should not be included in the final documents.*

# Section VI. Performance Specifications and Drawings

**Notes on Specifications**

A set of precise and clear specifications is a prerequisite for bidders to respond realistically and competitively to the requirements of the Contracting Authority without qualifying or conditioning their bids. In the context of international competitive bidding, the specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials, and performance of the goods and services to be procured. Only if this is done will the objectives of economy, efficiency, and fairness in procurement be realized, responsiveness of bids be ensured, and the subsequent task of Bid evaluation facilitated. The specifications should require that all goods and materials to be incorporated in the Services be new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract.

Samples of specifications from previous similar projects in the same country are useful in this respect. The use of metric units is encouraged by the Government. Most specifications are normally written specially by the Contracting Authority or Project Manager to suit the Contract in hand. There is no standard set of Specifications for universal application in all sectors in all countries, but there are established principles and practices, which are reflected in these documents.

There are considerable advantages in standardizing General Specifications for repetitive Services in recognized public sectors, such as education, health, sanitation, social and urban housing, roads, ports, railways, irrigation, and water supply, in the same country or region where similar conditions prevail. The General Specifications should cover all classes of workmanship, materials, and equipment commonly involved in the provision of Services, although not necessarily to be used in a particular Services Contract. Deletions or addenda should then adapt the General Specifications to the particular Services.

Care must be taken in drafting specifications to ensure that they are not restrictive. In the specification of standards for goods, materials, Services, and workmanship, recognized international standards should be used as much as possible. Where other particular standards are used, whether national standards of the Contracting Authority’s country or other standards, the specifications should state that goods, materials, Services and workmanship that meet other authoritative standards, and which ensure substantially equal or higher quality than the standards mentioned, will also be acceptable. The following clause may be inserted in the Special Conditions or Specifications.

**Sample Clause: Equivalency of Standards and Codes**

Wherever reference is made in the Contract to specific standards and codes to be met by the goods and materials to be furnished, and Services or work performed or tested, the provisions of the latest current edition or revision of the relevant standards and codes in effect shall apply, unless otherwise expressly stated in the Contract. Where such standards and codes are national, or relate to a particular country or region, other authoritative standards that ensure a substantially equal or higher quality than the standards and codes specified will be accepted subject to the Engineer’s prior review and written consent. Differences between the standards specified and the proposed alternative standards shall be fully described in writing by the Service Provider and submitted to the Engineer at least 28 days prior to the date when the Service Provider desires the Engineer’s consent. In the event the Engineer determines that such proposed deviations do not ensure substantially equal or higher quality, the Service Provider shall comply with the standards specified in the documents.

*These Notes for Preparing Specifications are intended only as information for the Contracting Authority or the person drafting the bidding documents. They should not be included in the final documents.*

These notes for the preparation of specifications are intended solely to provide information to the Contracting Authority or the person drafting the Bidding Documents. It should not be included in the final documents. The person who formulates these specifications must be specialized in the type of services to be contracted.

**Example**

If the Ministry of Health wishes to enter into contract for catering services to hospitals, the specifications must be formulated by an employee of the Ministry (nutritionist) and include, but are not limited to, the following specifications:

1. The meals;
2. Meal processing equipment;
3. Serving tools;
4. Uniform/s of staff serving meals;
5. Any testing for meal ingredients may be appropriate; and
6. Any other aspects related to the Services.

**Notes on Drawings**

*Insert here a list of Drawings. The actual Drawings, including performance diagrams or curves, etc. and site plans, geographical areas covered, should be attached to this section or annexed in a separate folder.*

# Section VII. General Conditions of Contract

1. This sample contract for the Provision of Services has been prepared by the Kurdistan Regional Government Ministry of Planning for use by the Contracting Authorities in the Region when they hire firms to provide Services paid on the basis of lump-sum remuneration.

2. Lump-sum contracts are used when definition of the tasks to be performed is clear and unambiguous, when the commercial risk taken by the Service Provider is minimal, and when therefore such Service Provider/s are prepared to perform the assignment for an agreed predetermined lump-sum price. Such price is arrived at on the basis of inputs—including rates—provided by the Service Provider.The Contracting Authority agrees to pay the Service Provider according to a schedule of payments linked to the delivery of certain outputs. A major advantage of the lump-sum contract is the simplicity of its administration, the Contracting Authority having only to be satisfied with the outputs without monitoring the staff inputs.

3. The Contract includes three parts: the General Conditions of Contract, the Special Conditions of Contract, and the Appendices. The Employer using this sample contract should not alter the General Conditions. Any adjustment to meet project features should be made only in the Special Conditions.]

# Section VIII. Special Conditions of Contract

*[To be completed by the Contracting Authority]*

Clauses in brackets are optional; all notes should be deleted in final text.

| **Number of GC Clause** | **Amendments of, and Supplements to, Clauses in the General Conditions of Contract** |
| --- | --- |
| **1.1** | The words “in the Government’s country” are amended to read “in *[the Region]*.” |
| **1.1(a)** | The Adjudicator is \_\_\_\_\_\_\_\_\_\_\_\_\_ *[ Insert name]* |
| **1.1(e)** | The contract name is \_\_\_\_\_\_\_\_\_\_\_ *[Insert name of Contract].* |
| **1.1(h)** | The Contracting Authority is \_\_\_\_\_ *[Insert name of Contracting Authority]* |
| **1.1(n)** | The Member in Charge is \_\_\_\_\_\_\_\_\_ *[Insert name of authorized partner]* |
| **1.1(q)** | The Service Provider is \_\_\_\_\_\_\_\_\_\_ *[ Insert name]* |
| **1.2** | Applicable Law is the Law of the Kurdistan Regional Government |
| **1.3** | The language is *[Define Arabic/Kurdish]* |
| **1.4** | The addresses are:  Contracting Authority: \_\_\_\_\_\_\_\_\_ *[Insert name of Contracting Authority]*  Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[Insert name]*  Service Provider: \_\_\_\_\_\_\_\_\_\_\_\_ *[Insert name]*  Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *Insert name]* |
| **1.6** | The Authorized Representatives are:  For the Contracting Authority: \_\_\_\_\_\_\_\_\_\_\_\_ *[Insert name]*  For the Service Provider: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*[Insert name]* |
| **2.1** | The date on which this Contract shall come into effect is the date of the Letter of Award |
| **2.2.1** | The Service Provider must submit to the Contracting Authority a program explaining the methods, general arrangements, order and timing of all activities for approval *[Insert 28 days from the contract signing date]* |
| **2.2.2** | The Starting Date for the commencement of Services is *[Insert number of days from site possession dateor any other requirement such as completion of Advance Payment procedure]* |
| **2.3** | The Services Completion Period is *[Insert the duration, usually by the number of calendar days].* |
| **2.6.3** | Percentage of administrative expenses of the Contracting Authority to complete the remaining services \_\_\_\_\_\_\_\_\_\_\_  *[Insert the percentage, usually not more than 20% of the cost of the remaining services].* |
| **3.2.3** | Activities prohibited after termination of this Contract are: \_\_\_\_\_\_\_\_\_\_\_\_\_  *[Insert activities, or when there are no activities, insert not applicable].* |
| **3.4 (A)** | The risks and coverage by insurance shall be:  (i) Third Party motor vehicle: \_\_\_\_\_\_\_\_\_\_\_\_\_ *[Insert amount]*  (ii) Third Party liability: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*[Insert amount]*  (iii) Contracting Authority’s liability and workers’ compensation\_\_\_\_\_\_\_  *[Insert amount]*  (iv) Professional liability:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[Insert amount]*  (v) Loss or damage to equipment and property: \_\_\_\_*[Insert amount].* |
| **3.5 (d)** | ***[ Note****: When no other actions, insert not applicable ].*  The other actions are: [Insert other actions]   1. \_\_\_\_\_\_\_\_\_\_ 2. \_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **3.7** | Restrictions on the use of documents prepared by the Service Provider are:  *[Insert restrictions, when there are no restrictions, insert not applicable]*   1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **3.8.1** | The percentage of liquidated damages rate is *\_\_\_* per day/week  [Insert the lump sum for each [ enter a day or a week] for services as a whole and for each part  The maximum amount of liquidated damages for the whole contract is *\_\_\_\_\_\_\_\_\_[Insert percentage, normally not more than 10]* percent of the final Contract Price. |
| **3.8.2** | The percentage *[of the cost of having a Defect corrected ]* to be used for the calculation of Lack of performance Penalty/(ies) is *[ insert percentage]*  Defect correction period is *[Insert defect correction period, normally 14 days]* |
| **5.1** | The assistance and exemptions provided to the Service Provider are:  *[Insert assistance and/or exemptions that the Kurdistan Regional Government may provide to the Service Provider, such as:*  *1. Provide entry Visa for the service provider's staff;*  *2. Exemption from entry Visa fees for the employees of the Service Provider;*  *3. Customs clearance of any equipment needed by the Service Provider for the execution of the contract; and*  *4. Help obtain the necessary permits for the execution of the contract]*. |
| **6.2 (a)** | The amount in local currency is *[Insert amount]*. |
| **6.2 (b)** | The amount in foreign currency or currencies is *[Insert amount]*. |
| **6.4.1** | Monthly payments reflect the progress of the work, taking into account the conviction/satisfaction of the Contracting Authority that the services have been provided and implemented satisfactorily. |
| **6.4.2** | Advance Payment *[Insert “will” or “will not”]* be made for Mobilization, Materials and Supplies  The amount of the Advance Payments: *[Insert percentage, normally 10% of contract price]* shall be paid on the commencement date against the submission of Advance Payment bank guarantee.  The amortization of the Advance Payment mentioned above shall commence when the progress payments have reached 20% of the contract price and be completed when the progress payments have reached 80% of the contract price.  The bank guarantee for the Advance Payment shall be released when the advance payment has been fully amortized.  *[****Note****: Sub-Clause 6.4.1 and 6.4.2 must be specifically drafted for each contract]* |
| **6.5** | Payment shall be made within *[Insert number]* days of receipt of the invoice and the relevant documents specified in Sub-Clause 6.4, and within *[Insert number]* days in the case of the final payment.  *[****Note:*** *Specify, for example “sixty (60) days”, and in the case of final payment “sixty (60) days”].*  The interest rate is *[Insert the interest rate for each day of delay after the due date of the currency type according to the lists of the Central Bank of the Kurdistan Regional Government].* |
| **6.6.1** | Price adjustment is *[Insert “Applicable” or Not Applicable”]* in accordance with Sub-Clause 6.6.  The coefficients for adjustment of prices are *[The summation of Ac+Bc+Cc =1] in the equation for each currency]:*:  (a) For local currency:  AL is *[Insert value]*  BL is *[Insert value]*  CL  is *[Insert value]*  Lmc and Loc are the index for Labor from *[Insert source of index for labor]*  Imc and Ioc are the index for *[Insert name of input]* from *[Insert source of index].*  (b) For foreign currency  AF is *[Insert value]*  BF is *[Insert value]*  CF is *[Insert value]*  Lmc and Loc are the index for Labor from *[Insert source of index for labor]*  Imc and Ioc are the index for *[Insert name of input]* from *[Insert source of index].*  [*Note: Input like material or equipment*] |
| **7.1** | The principle and modalities of inspection of the Services by the Contracting Authority are as follows: *[Insert principle and modalities of inspection of the Services].*  The Defects Liability Period is *[Insert period, normally 365 days].* |
| **8.2.3** | The Adjudicator will be paid a rate of *[Insert amount and currency]* per hour of work.  The following reimbursable expenses are recognized: *[Insert list of expenses]*  *[Example:*   1. *Living allowance;* 2. *Cost of travel;* 3. *Cost of renting the office; and* 4. *The cost of international or local communications such as phone and fax use of services].* |
| **8.2.4** | *[This text is used only if dispute resolution is applied by Arbitration]*   1. **Contract with Foreign Service Provider**   [Insert one of the two options:   1. Any dispute, controversy or claim arising out of or relating to this Contract, shall be settled by arbitration in accordance with the ***UNCITRAL*** Arbitration Rules as at present in force.   Place of Arbitration \_\_\_\_\_\_ *[Insert name of city and country]*   1. Any dispute, controversy or claim arising out of or relating to this Contract, shall be settled by arbitration in accordance with the **International Chamber of Commerce (ICC)** Arbitration Rules as at present in force.   Place of Arbitration \_\_\_\_\_\_ *[Insert name of city and country]*   1. **Contracts with Supplier national from Kurdistan Region:**   Any dispute, controversy or claim arising out of or relating to this Contract between the Contracting Authority and a Service Provider who is a national from Kurdistan Region, the dispute shall be shall be settled in accordance with the laws in force in Kurdistan Region. |
| **8.2.5** | The designated Appointing Authority for a new Adjudicator is *[Insert name of the appointing authority].*  It is preferable that the appointing authority be an independent professional institution or an official of the institution. |

# Section IX. Contract Forms

**Appendices**

*[The Contracting Authority must prepare these appendicies before signing of the contract]*

*[If any of these appendicies isnot used, the word "unused" should be inserted next to the title of the appendix and on the attached paper with that bears the title of this appendix].*

**Appendix A—Description of the Services**

*Give detailed descriptions of the Services to be provided, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by Contracting Authority, etc.*

**Appendix B—Schedule of Payments and Reporting Requirements**

*List all milestones for payments and list the format, frequency, and contents of reports or products to be delivered; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here “Not applicable.”*

**Appendix C—Key Personnel and Subcontractors**

*List under: C-1 Titles [and names, if already available], detailed job descriptions and minimum qualifications of foreign Personnel to be assigned to work in the Government’s country, and staff-months for each.*

*C-2 Same as C-1 for Key foreign Personnel to be assigned to work outside the Government’s country.*

*C-3 List of approved Subcontractors (if already available); same information with respect to their Personnel as in C-1 or C-2.*

*C-4 Same information as C-1 for Key local Personnel.*

**Appendix D—Breakdown of Contract Price in Foreign Currency(ies)**

*List here the elements of cost used to arrive at the breakdown of the lump-sum price—foreign currency portion:*

*1. Rates for Equipment Usage or Rental or for Personnel (Key Personnel and other Personnel).*

*2. Reimbursable expenditures.*

*This appendix will exclusively be used for determining remuneration for additional Services.*

**Appendix E—Breakdown of Contract Price in Local Currency**

*List here the elements of cost used to arrive at the breakdown of the lump-sum price—local currency portion:*

*1. Rates for Equipment Usage or Rental or for Personnel (Key Personnel and other Personnel).*

*2. Reimbursable expenditures.*

*This appendix will exclusively be used for determining remuneration for additional Services.*

**Appendix F—Services and Facilities Provided by the Contracting Authority**

*[Insert a list of services and facilities the Contracting Authority will provide to the service Provider:*

*Example:*

1. *Suitable office;*
2. *Lot of Land for Service Provider’s equipment;*
3. *Obtain permits;*
4. *Assist in custom clearance of any equipment, or imported materials for the purposes of the contract].*

**Notes on Forms of Securities**

Samples of acceptable forms of Performance, and Advance Payment Securities are annexed. Bidders should not complete the Performance and Advance Payment Security forms at this time. Only the successful Bidder will be required to provide Performance and Advance Payment Securities in accordance with one of the forms or in a similar form acceptable to the Contracting Authority.

**Performance Bank Guarantee (Unconditional)**

The Unconditional Guarantee has the merit of simplicity and of being universally known and accepted by commercial banks. The contracting community, however, strongly objects to this type of Security because the Guarantee can be called (or threatened to be called) by Contracting Authorities without justification. Contracting Authorities` should recognize the contractual conditions governing nonperformance by the Service Provider and should normally act only on the advice of the Project Manager in calling a Performance Guarantee. Any unjustified calling of a Bank Guarantee, or unreasonable pressure exercised by a Contracting Authority, would be regarded contrary to the spirit and basic principles of international procurement.

# Performance Security

**(Unconditional Bank Guarantee)**

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

Whereas *\_\_\_\_\_* (hereinafter called “the Service Provider”) has undertaken, in pursuance of Contract No. *\_\_\_\_\_\_\_\_* dated *\_\_\_\_\_\_\_\_* to execute *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* (hereinafter called “the Contract”);

And whereas it has been stipulated by you in the said Contract that the Service Provider shall furnish you with a Bank Guarantee by an accredited bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

And whereas we have agreed to give the Service Provider such a Bank Guarantee; we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Service Provider, up to a total of *\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_*[[27]](#footnote-27), such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_* as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Services to be performed there under or of any of the Contract documents which may be made between you and the Service Provider shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Performance Security shall expire no later than the *[insert number]* day of *[insert month]* *[insert year]*,[[28]](#footnote-28) and any demand for payment under it must be received by us at this office on or before that date.

Signature and seal of the Guarantor

Name of Bank

Address

Date

[Note: All oblique texts (footnotes) are intended for preparing this form and must be deleted from the final version].

# Advance Payment Bank Guarantee

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

Gentlemen:

In accordance with the provisions of the Conditions of Contract, Sub-Clause 6.4 (“Terms and Conditions of Payment”) of the above-mentioned Contract, [*Insert name and address of the Service Provider*](hereinafter called “the Service Provider”) shall deposit with [*Insert name of the Contracting Authority*] a Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of [*amount of security in figures*] [*amount in words*].

We, the [Insert name of the Bank/Financial Institution], as instructed by the Service Provider, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to [*Insert name of the Contracting Authority*] on its first demand without whatsoever right of objection on our part and without its first claim to the Service Provider, in the amount not exceeding [*amount of security in figures*] [*amount in words*].

We further agree that no change or addition to or other modification of the terms of the Contract or of Services to be performed there under or of any of the Contract documents which may be made between you and the Service Provider, shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

The claimed payment under this security shall be conditional that the Service Provider has already received the advance payment and deposited in his account number *[insert number]* at *[insert name and address of the bank]*

This Guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until [*Insert name of the Contracting Authority*]receives full repayment of the same amount from the Service Provider.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. (458).

Yours truly,

Signature and seal:

Name of Bank/Financial Institution:

Address:

Date:

1. Services that are predominantly physical (surveying, cleaning, demining, aerial photography, satellite imagery, hospital catering, services contracted on the basis of tangible and measurable material output). [↑](#footnote-ref-1)
2. Lump sum contracts should be used for Services that can be defined in their full physical and qualitative characteristics before bids are called, or where the risks of substantial design or performance variations are minimal. In lump sum contracts, the concept of priced “activity schedules” has been introduced, to enable payments to be made as “activities” are completed. Payments can also be made on the basis of percentage completion of each activity. [↑](#footnote-ref-2)
3. It is therefore important that the Contracting Authority maintain a complete and accurate list of the names and addresses of the Bidders who purchased the Bidding Documents. [↑](#footnote-ref-3)
4. If Applicable [↑](#footnote-ref-4)
5. If the Bidder is a joint venture company, insert the names of members of the joint venture company. [↑](#footnote-ref-5)
6. The Contracting Authority fills the duration when preparing the Bidding Document. [↑](#footnote-ref-6)
7. The Contracting Authority fills the date of commencement of the debarment period when preparing Bidding Document. [↑](#footnote-ref-7)
8. If Applicable [↑](#footnote-ref-8)
9. Delete “equivalent” if the contract price is in one currency. [↑](#footnote-ref-9)
10. Delete “Corrected’ or “amended” if not applicable. Refer to notes on the standard contract agreement. [↑](#footnote-ref-10)
11. Delete “Corrected’ or “amended” if not applicable [↑](#footnote-ref-11)
12. The Guarantor must insert an amount that represents the percentage of the contract price specified in the contract, which is determined either in the contract currency(ies) or in a freely convertible currency acceptable by the contracting Authority. [↑](#footnote-ref-12)
13. Insert 28 days from the date of the Services completion period. The Contracting Authority should note that in the event of an extension of the time to perform the Contract, the Contracting Authority would need to request an extension of this Performance Security from the Bank. Such request must be in writing and must be made prior to the expiration date established in the Performance Security.

    In preparing this Performance Security, the Contracting Authority 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 Performance Security for a period not to exceed [six months] [one year], in response to the Contracting Authority’s written request for such extension, such request to be presented to us before the expiry of the Performance Security.” [↑](#footnote-ref-13)
14. United Nation Development Business [↑](#footnote-ref-14)
15. Development Gateway Market (dgMarket) [↑](#footnote-ref-15)
16. A brief description of the type (types) of services, including the duration of service executions, quantities, location of service execution, and other information needed to enable potential bidders to decide whether or not to respond to the invitation. [↑](#footnote-ref-16)
17. Where bids are called concurrently for multiple contracts, add a new para. 3 and renumber paras 3 - 9 as follows: “Bidders may bid for one or several contracts, as further defined in the Bidding Document. Bidders wishing to offer discounts in case they are awarded more than one contract will be allowed to do so; provided those discounts are included in the Letter of Bid.” [↑](#footnote-ref-17)
18. The fee, should defray the printing and mailing/shipping costs); it should not deter competition. [↑](#footnote-ref-18)
19. For example, cashier’s check, direct deposit to a specified account number. [↑](#footnote-ref-19)
20. The delivery procedure is usually air mail for overseas delivery and surface mail or courier for local delivery or by electronic means if electronic bidding is permitted. If urgency or security dictates, courier services may be required for overseas delivery. [↑](#footnote-ref-20)
21. A lump sum equivalent to (1 to 3%) of the estimated cost of services, taking into consideration the nature and importance of the contract. [↑](#footnote-ref-21)
22. Enter the detailed address (addresses), including the full legal name of the Contracting Authority, enter an electronic address if electronic bidding is permitted; enter different addresses if the addresses for the purchase of Bidding Documents, bid submission and bid opening are different. However, it is preferable that bids be submitted and opened at the same address (chamber) in order to avoid the transfer of bids. [↑](#footnote-ref-22)
23. This requirement also applies to contracts executed by the Applicant as JV member. [↑](#footnote-ref-23)
24. This requirement also applies to contracts executed by the Applicant as JV member. [↑](#footnote-ref-24)
25. For contracts under which the Applicant participated as a joint venture member or sub-contractor, only the Applicant’s share, by value, shall be considered to meet this requirement. [↑](#footnote-ref-25)
26. In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated. [↑](#footnote-ref-26)
27. The Guarantor must insert an amount that represents the percentage of the contract price specified in the contract, which is determined either in the contract currency(ies) or in a freely convertible currency acceptable by the contracting Authority. [↑](#footnote-ref-27)
28. Insert 28 days from the date of the Services completion period. The Contracting Authority should note that in the event of an extension of the time to perform the Contract, the Contracting Authority would need to request an extension of this Performance Security from the Bank. Such request must be in writing and must be made prior to the expiration date established in the Performance Security.

    In preparing this Performance Security, the Contracting Authority 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 Performance Security for a period not to exceed [six months] [one year], in response to the Contracting Authority’s written request for such extension, such request to be presented to us before the expiry of the Performance Security.” [↑](#footnote-ref-28)