**Section 1**

**Instruction to Bidders**

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## 1. Scope of Bid

1.1 In connection with the Invitation for Bids indicated in the Bid Data Sheet (BDS), the Employer, as indicated in the BDS, issues this Bidding Document for the procurement of plant and services as specified in Section 6 (Employer’s Requirements). The name, identification, and number of lots (contracts) of the International Competitive Bidding (ICB) are provided in the BDS.

1.2 Unless otherwise stated, throughout this Bidding Document definitions and interpretations shall be as prescribed in Section 7 (General Conditions of Contract).

## 2. Environmental & Social Compliance

The bidder agrees to;

1. Comply and ensure that its subcontractors, if any, comply with international environmental and labor standards consistent with applicable law and regulations in the country of implementation of the project, including the fundamental conventions of the International labor organization (ILO) and International Environmental treaties.
2. Adopt any environmental and social risk mitigations measures as defined in the environmental and social management plan or the notice of environmental and social impact issued by the employer

## 3. Corrupt Practices

3.1 The Government of Republic of Maldives represented by the Ministry of Finance and Treasury requires that bidders, suppliers, and contractors in the Government of Maldives financed contracts; observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Government of Republic of Maldives represented by the Ministry of Finance:

a. defines, for the purposes of this provision, the terms set forth below as follows:

(i) “Corrupt practice” means the offering, giving receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;

(ii) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(iii) “Coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

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

(v) “obstructive practice” is

(aa) deliberately destroying falsifying altering or concealing of evidence material to the investigation or making false statement investigators in order top materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice: and/ or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigations or from pursuing the investigation, or

(bb) acts intended to materially impede the exercise of the Environment’s inspections and audit rights provided for under the Contract.

b. will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract; and

c. will sanction a party or its successor, including declaring ineligible, either indefinitely or for a stated period of time, to participate in Government of Maldives financed activities if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, an Government of Maldives financed contract.

## 4. Eligible Bidders

4.1 A Bidder may be a natural person, private entity, government-owned entity—subject to ITB 4.4 and conditions stated in BDS or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture (JV). In the case of a JV:

a. all partners shall be jointly and severally liable for the execution of the contract in accordance with the contract terms, and

b. the JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution

4.2 The Government of Republic of Maldives represented by the Ministry of Finance considers a conflict of interest to be a situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations, and that such conflict of interest may contribute to or constitute a prohibited practice under Maldives’s Anticorruption Policy. In pursuance of Maldives’s Anticorruption Policy’s requirement that bidders, suppliers, and contractors under Government of Maldives-financed contracts, observe the highest standard of ethics. The Government of Republic of Maldives represented by the Ministry of Finance represented by the Government of Maldives will take appropriate actions, which include not financing of the contract, if it determines that a conflict of interest has flawed the integrity of any procurement process. Consequently, all Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to be in a conflict of interest with one or more parties in this bidding process if, including but not limited to:

a. they have controlling partners in common; or

b. they receive or have received any direct or indirect subsidy from any of them; or

c. they have the same legal representative for purposes of this bid; or

d. they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or

e. a Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which it is involved. However, this does not limit the inclusion of the same subcontractor, not otherwise participating as a Bidder, in more than one bid; or

f. a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the plant and services that are the subject of the bid.

4.3 A firm that is under a declaration of ineligibility by the Employer in accordance with ITB 21.8 at the date of the deadline for bid submission or thereafter, shall be disqualified.

4.4 Government-owned entities of the country shall be eligible only if they can establish that they

(i) are legally and financially autonomous,

(ii) operate under the principles of commercial law, and

(iii) are not dependent agencies of the Employer or the Borrower.

4.5 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.

4.6 Firms shall be excluded if by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower’s country prohibits any import of goods or contracting of works or services from that country or any payments to persons or entities in that country.

## 5. Eligible Plant and Services

5.1 Restrictions on origin are as follows; goods and services from country under embargo from the United Nations

5.2 Deleted.

## 6. Sections of Bidding Document

6.1 The Bidding Document consists of Part I, II, III and IV, which include all the Sections indicated below and should be read in conjunction with any Addenda issued in accordance with ITB 8.

*PART I Bidding Procedures*

Section 1 - Instructions to Bidders (ITB)

Section 2 - Bid Data Sheet (BDS)

Section 3 - Evaluation and Qualification Criteria (EQC)

Section 4A - Bidding Forms (BDF) – Letter of Bid and Bid Security

Section 4B - Bidding Forms (BDF) – General and Financial Information

Section 4C - Bidding Forms (BDF) – Technical Proposal

Section 5 - Eligible Countries

*PART II Requirements*

Section 6 - Employer’s Requirements (ERQ)

*PART III Conditions of Contract and Contract Forms*

Section 7 - General Conditions of Contract (GCC)

Section 8 – Special Conditions of Contract (SCC)

Section 9 - Forms of Contract

*PART IV Financial Proposal*

Section 10 - Price Schedules

6.2 The Invitation for Bids issued by the Employer is not part of the Bidding Document.

6.3 The Employer is not responsible for the completeness of the Bidding Document and its addenda, if they were not obtained directly from the source stated by the Employer in the Invitation for Bids.

6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document may result in the rejection of the bid.

## 7. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting

7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Employer in writing at the Employer’s address indicated in the BDS or raise his enquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer will respond to any request for clarification, provided that such request is received no later than the date stipulated as clarification deadline in the BDS later than twenty-one (21) days prior to the deadline for submission of bids. Should the Employer deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under ITB 8 and ITB 24.2.

7.2 The Bidder is advised to visit and examine the site where the plant is to be installed and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for the provision of plant and services. The costs of visiting the site shall be at the Bidder’s own expense.

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

7.4 The Bidder’s designated representative is invited to attend a pre-bid meeting, if provided for in the BDS. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

7.5 The Bidder is requested, as far as possible, to submit any questions in writing, to reach the Employer not later than one week before the pre-bid meeting.

7.6 Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Document as defined under ITB 6. Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting.

7.7 Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

## 8. Amendment of Bidding Document

8.1 At any time prior to the deadline for submission of bids, the Employer may amend the Bidding Document by issuing addenda.

8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Employer as defined under clause ITB 6.

8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 24.2

## 9. Cost of Bidding

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

## 10. Language of Bid

The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer, shall be written in the English language. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages into the English language, in which case, for purposes of interpretation of the Bid, such translation shall govern.

## 11. Documents Comprising the Bid

11.1 The Bid shall comprise the following:

* + 1. Letter of Bid;
    2. Bid Security, in accordance with ITB 21
    3. Alternative bids, if permissible, in accordance with ITB 13;
    4. written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 22.2;
    5. Documentary evidence establishing in accordance with ITB 14 that the Equipment / Machinery and services offered by the Bidder in its bid or in any alternative bid, if permitted, are eligible;
    6. Documentary evidence in accordance with ITB 15 establishing the Bidder’s eligibility and qualifications to perform the contract if its bid is accepted;
    7. Documentary evidence establishing in accordance with ITB 16 that the plant and services offered by the Bidder conform to the bidding document;
    8. Technical Proposal in accordance with ITB 17;
    9. Completed Price Schedules, in accordance with ITB 18, or as stipulated in the BDS;
    10. In the case of a bid submitted by a JV, the JV agreement, or letter of intent to enter into a JV including a draft agreement, indicating at least the parts of the work to be executed by the respective partners;
    11. List of subcontractors, in accordance with ITB 17.2; and
    12. Any other document required in the BDS

## 12. Letter of Bid and Schedules

12.1 The Letter of Bid, and the Schedules, and all documents listed under ITB 11 shall be prepared using the relevant forms furnished in Section 4 (Bidding Forms) and section 10 price schedules. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

## 13. Alternative Bids

13.1 Unless otherwise indicated in the BDS, alternative bids shall not be considered. If they are allowed, the BDS will also indicate whether they are permitted in accordance with ITB 13.3, or invited in accordance with ITB13.2 and/or ITB 32.

13.2 When alternatives to the Time Schedule are explicitly invited, a statement to that effect will be included in the BDS, and the method of evaluating different time schedules will be described in Section 3 (Evaluation and Qualification Criteria).

13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the Employer’s requirements as described in the bidding document must also provide:

(i) a price at which they are prepared to offer a plant meeting the Employer’s requirements; and

(ii) all information necessary for a complete evaluation of the alternatives by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed installation methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer.

13.4 When bidders are invited in the BDS to submit alternative technical solutions for specified parts of the facilities, such parts shall be described in Section 6 (Employer’s Requirements). Technical alternatives for the specific parts of the facilities that comply with the performance and technical criteria specified for the plant and services shall be considered by the Employer on their own merits, pursuant to ITB 32.

## 14. Documents Establishing the Eligibility of Plant and Services

14.1 To establish the eligibility of the plant and services in accordance with ITB Clause 5, Bidders shall complete the country of origin declarations in the Price Schedule Forms, included in Section 10.

## 15. Documents Establishing the Eligibility and Qualifications of the Bidder

15.1 To establish its eligibility and qualifications to perform the Contract in accordance with Section 3 (Evaluation and Qualification Criteria), the Bidder shall provide the information requested in the corresponding information sheets included in Section 4 -Bidding Forms

15.2 Domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility as described in ITB 35.

15.3 If the Bidder is an existing or intended Joint Venture in accordance with ITB 4.1, submit a copy of the Joint Venture Agreement, or a letter of intent to enter into such agreement. The respective document shall be signed by all legally authorized signatories of all the parties to the existing or intended Joint Venture, as appropriate.

## 16. Documents Establishing Conformity of the EQUIPMENT/MACHINER and Services

16.1 The documentary evidence of the conformity of the equipment and services to the Bidding Document may be in the form of literature, drawings and data, and shall furnish:

a. a detailed description of the essential technical and performance characteristics of the equipment and services, including the functional guarantees of the proposed plant and services, in response to the Specification;

b. a list giving full particulars, including available sources, of all spare parts, special tools, etc., necessary for the proper and continuing functioning of the plant for the period named in the BDS, following completion of plant and services in accordance with provisions of contract; and

c. a commentary on the Employer’s Specification and adequate evidence demonstrating the substantial responsiveness of the equipment and services to those specifications. Bidders shall note that standards for workmanship, materials and equipment designated by the Employer in the Bidding Document are intended to be descriptive (establishing standards of quality and performance) only and not restrictive. The Bidder may substitute alternative standards, brand names and/or catalog numbers in its bid, provided that it demonstrates to the Employer’s satisfaction that the substitutions are substantially equivalent or superior to the standards designated in the Specification.

16.2 In order to facilitate evaluation of Bids, deviations, if any, from the terms and conditions or Specification shall be listed as indicated in ITB 17.2.

## 17. Technical ProposaL

17.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section 4C -Technical Proposal, in sufficient detail to demonstrate the adequacy of the Bidders’ proposal to meet the work requirements and the completion time.

17.2 For major items of plant/work component and services as listed by the Employer in Section 3 (Evaluation and Qualification Criteria), which the Bidder intends to purchase/construct/install or subcontract, the Bidder in addition to detailed information required to determine technical competence, financial soundness, experience and capability of sub-contractor in Section 3 (Evaluation and Qualification Criteria) shall also give details of the name and nationality of the proposed Subcontractors, including manufacturers, for each of those items. In addition, the Bidder shall include in its bid information establishing compliance with the requirements specified by the Employer for these items. Bidders are free to list more than one Subcontractor against each item of the plant and services. Quoted rates and prices will be deemed to apply to whichever Subcontractor is appointed, and no adjustment of the rates and prices will be permitted.

17.3 The Bidder shall be responsible for ensuring that any Subcontractor proposed complies with the requirements of ITB 3, and that any equipment or services to be provided by the Subcontractor comply with the requirements of ITB 3and ITB 4.

## 18. Bid Prices and Discounts

18.1 Unless otherwise specified in the BDS and/or Section 6 (Employer’s Requirements), bidders shall quote for the entire plant and services on a “single responsibility” basis such that the total bid price covers all the Contractor’s obligations mentioned in or to be reasonably inferred from the bidding document in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the equipment. This includes all requirements under the Contractor’s responsibilities for testing, pre-commissioning and commissioning of the equipment and, where so required by the bidding document, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training services and such other items and services as may be specified in the Bidding Document, all in accordance with the requirements of the General Conditions. Items against which no price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed to be covered by the prices for other items.

18.2 Bidders are required to quote the price for the commercial, contractual and technical obligations outlined in the bidding document. If a Bidder wishes to make a deviation, such deviation shall be listed in the relevant form in Section 4A - Bidding Forms – Technical Proposal. The Bidder shall also provide the additional price if any, in the relevant form in Section 10 – Bidding Forms – Price Proposal for withdrawal of the deviation.

18.3 Bidders shall give a breakdown of the prices in the manner and detail called for in the Price Schedules included in Section 10. Where no different Price Schedules are included in the Bidding Document, bidders shall present their prices in the following manner: Separate numbered Schedules included in Section 4 - Bidding Forms shall be used for each of the following elements. The total amount from each Schedule (1 to 4) shall be summarized in a Grand Summary giving the total bid price(s) to be entered in the Bid Form.

Schedule No. 1: Survey and Design

Schedule No. 2: General Works

Schedule No. 3: Water Supply System works

Schedule No. 4: Gravity Sewerage system

Schedule No. 5: Provisional Sums

Grand Summary (Schedule Nos. 1 to 5)

18.4 The Bid price shall be inclusive of all taxes, duties, levies and charges payable in the Employer’s country as of twenty-eight (28) days prior to the deadline for submission of bids.

18.5 The current edition of Incoterms, published by the International Chamber of Commerce shall govern.

18.6 The prices shall be either fixed or adjustable as specified in the BDS.

a. In the case of Fixed Price, prices quoted by the Bidder shall be fixed during the Bidder’s performance of the contract and not subject to variation on any account. A bid submitted with an adjustable price quotation will be treated as non-responsive and rejected.

b. In the case of Adjustable Price, prices quoted by the Bidder shall be subject to adjustment during performance of the contract to reflect changes in the cost elements such as labor, material, transport and contractor’s equipment in accordance with the procedures specified in the corresponding Appendix to the Contract Agreement. A bid submitted with a fixed price quotation will not be rejected, but the price adjustment will be treated as zero. Bidders are required to indicate the source of labor and material indices in the corresponding Form in Section 9 (Contract Forms).

18.7 If so indicated in BDS 1.1, bids are being invited for individual lots (contracts) or for any combination of lots (packages). Bidders wishing to offer any price reduction (discount) for the award of more than one contract shall specify in their Letter of Bid the price reductions applicable to each package, or alternatively, to individual contracts within the package, and the manner in which the price reductions will apply.

## 19. Currencies of Bid and Payment

19.1 The currency(ies) of the bid shall be, as specified in the BDS.

19.2 Bidders shall indicate in the Schedule of Prices and the Letter of Bid the portion of the bid price that corresponds to expenditures incurred in the currency of the Employer’s country.

19.3 Bidders expecting to incur expenditures in other currencies for inputs to the Facilities supplied from outside the Employer’s country and wishing to be paid accordingly may indicate in the Schedule of Prices and the Letter of Bid up to three foreign currencies of their choice.

## 20. Period of Validity of Bids

20.1 Bids shall remain valid for the period specified in the BDS after the bid submission deadline date prescribed by the Employer. A bid valid for a shorter period shall be rejected by the Employer as non-responsive.

20.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Employer may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 21, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid.

## 21. Bid Security

21.1 Unless otherwise specified in the BDS, the Bidder shall furnish as part of its bid, in original form, either a Bid Securing Declaration or a bid security as specified in the BDS. In the case of a bid security, the amount shall be as specified in the BDS.

21.2 The bid security shall be a demand guarantee, at the Bidder’s option, in any of the following forms:

a. an unconditional bank guarantee; or

b. an irrevocable letter of credit; or

c. a cashier’s or certified check;

all from a reputable source from an eligible country. The bid security shall be submitted either using the Bid Security Form included in Section 4A - Bidding Forms – Technical Proposal, in the case of a bank guarantee, or in another substantially similar format approved by the Employer prior to bid submission. In either case, the form must include the complete name of the Bidder. The bid security shall be valid for twenty-eight days (28) beyond the original validity period of the bid, or beyond any period of extension if requested under ITB20.

21.3 If a bid security is specified, any bid not complying with ITB 21.1 and ITB 21.2, shall be rejected by the Employer as non-responsive.

21.4 If a bid security is specified pursuant to ITB 21.1, the bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security.

21.5 If a bid security is specified pursuant to ITB 21.1, the bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder’s furnishing of the performance security pursuant to ITB 44.

21.6 The bid security may be forfeited:

(a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid Form, except as provided in ITB 20.2 or

(b) if the successful Bidder fails to:

i. sign the Contract in accordance with ITB44; or

ii. furnish a performance security in accordance with ITB 45.

iii. furnish a domestic preference security if so required.

21.7 The Bid Security of a JV shall be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security shall be in the names of all future partners as named in the letter of intent referred to in ITB 4.

21.8 If a bid securing declaration is executed in accordance with ITB 21.1, the Employer will declare the Bidder ineligible to be awarded a contract by the Employer for the period of time stated in the Form of Bid-Securing Declaration.

## 22. Format and Signing of Bid

22.1 The Bidder shall prepare one original set of the documents comprising the bid as described in ITB 11 and clearly mark it “ORIGINAL BID”. Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked “ALTERNATIVE”. 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.

22.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid including where entries or amendments have been made shall be signed or initialed by the person signing the bid.

22.3 A bid submitted by a JV shall be signed so as to be legally binding on all partners.

22.4 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid.

## 23. Submission, Sealing and Marking of Bids

23.1 Bidders may submit their bids by mail or by hand. When so specified in the BDS, bidders shall have the option of submitting their bids electronically. Procedures for submission, sealing and marking are as follows:

(a) Bidders submitting bids by mail or by hand shall enclose the original and each copy of the Bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as “ORIGINAL”, “ALTERNATIVE” and “COPY”. These envelopes, containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB Sub-Clauses 23.2 and 23.3.

(b) Bidders submitting bids electronically shall follow the electronic bid submission procedures specified in the BDS.

23.2 The inner and outer envelopes shall:

(a) bear the name and address of the Bidder;

(b) be addressed to the Employer in accordance with ITB 24.1;

(c) bear the specific identification of this bidding process indicated in the BDS 1.1; and

(d) bear a warning not to open before the time and date for bid opening, in accordance to ITB 27.1.

23.3 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the bid. Such Bids shall not be accepted and shall be returned to the respective Bidder at the time of opening of Bid.

## 24. Deadline for Submission of Bids

24.1 Bids must be received by the Employer at the address and no later than the date and time indicated in the BDS.

24.2 The Employer may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

## 25. Late Bids

25.1 The Employer shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 24. Any bid received by the Employer after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

## 26. Withdrawal, Substitution, and Modification of Bids

26.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 22.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:

a. prepared and submitted in accordance with ITB 22 and ITB 23 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Withdrawal,” “Substitution,” “Modification;” and

b. received by the Employer prior to the deadline prescribed for submission of bids, in accordance with ITB 25.

26.2 Bids requested to be withdrawn in accordance with ITB 26.1 shall be returned unopened to the Bidders.

26.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Technical Bid or any extension thereof.

## 27. Bid Opening

27.1 The Employer shall conduct the opening of Bids in the presence of Bidders` designated representatives who choose to attend and at the address, date and time specified in the BDS. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB Sub clause 23.1 shall be as specified in the BDS.

27.2 First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening.

27.3 Second, envelopes marked “SUBSTITUTION” shall be opened, read out, recorded, and exchanged the corresponding Bid being substituted, which are to be returned to the bidder unopened. No envelope shall be substituted unless the corresponding Substitution Notice contains a valid authorization to request the substitution and is read out and recorded at bid opening.

27.4 Next, outer envelopes marked “MODIFICATION” shall be opened, read out, recorded 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 and recorded at Bid opening.

27.5 All the other envelopes shall be opened one at a time, and the following read out and recorded:

(a) The name of the Bidder;

(b) Whether there is a modification or substitution;

(c) The Bid Prices, discounts, and alternative offers;

(d) The presence of a Bid Security, if required; and

(d) Any other details as the Employer may consider appropriate.

Only Bids and alternative Bids read out and recorded at bid opening shall be considered for evaluation. No Bids shall be rejected at the opening except for late bids, in accordance with ITB Sub-Clause 24.1.

27.6 The Employer shall prepare a record of the Bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid price, any discounts, and alternative proposals if they were permitted; and the presence or absence of a bid security or a bid securing declaration, if one was required. The Bidders’ representatives who are present shall be requested to sign the record. The omission of a Bidder’s signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted bids in time and posted online when electronic bidding is permitted.

## 28. Confidentiality

28.1 Information relating to the evaluation of bids and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders.

28.2 Any attempt by a Bidder to influence the Employer in the evaluation of the bids or Contract award decisions may result in the rejection of its bid.

28.3 Notwithstanding ITB 28.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it should do so in writing.

## 29. Clarification of Bids

29.1 To assist in the examination, evaluation, comparison and qualification of the Bids, the Employer may, at its discretion, ask any Bidder for a clarification of its bid. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer’s request for clarification and the response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids, in accordance with ITB 33.

29.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Employer’s request for clarification, its bid may be rejected.

## 30. Deviations, Reservations, and Omissions

30.1 During the evaluation of bids, the following definitions apply:

a. “Deviation” is a departure from the requirements specified in the Bidding Document;

b. “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and

c. “Omission” is the failure to submit part or all of the information or documentation required in the Bidding Document.

## 31. Preliminary Examination of Bids

31.1 The Employer shall confirm that the following documents and information have been provided in the Technical bid. If any of these documents or information is missing, the offer may be rejected.

* + 1. Letter of bid
    2. written confirmation of authorization to commit the bidder;
    3. Bid Security, if applicable and
    4. Documentary evidence in accordance with ITB 15 establishing the Bidder’s eligibility and qualifications to perform the contract if its bid is accepted;
    5. Technical Proposal in accordance with ITB 17.
    6. Completed Price Schedules, in accordance with ITB 18, or as stipulated in the BDS;

## 32. Responsiveness of Bid

32.1 The Employer’s determination of a bid’s responsiveness is to be based on the contents of the bid itself, as defined in ITB11.1

32.2 A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,

a. if accepted, would:

i. affect in any substantial way the scope, quality, or performance of the plant and services specified in the Contract; or

ii. limit in any substantial way, inconsistent with the Bidding Document, the Employer’s rights or the Bidder’s obligations under the proposed Contract; or

b. if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.

32.3 The Employer shall examine the overall completeness and compliance of the Bid with the Employer’s Requirements; deviations from the Employer’s Requirements; conformity of the plant and equipment and services offered with specified performance criteria; suitability of the plant and equipment and services offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the bid. The bid that does not meet minimum acceptable standards of completeness, consistency and detail may be rejected for non-responsiveness; technical aspects of the Bid Submitted in accordance with ITB 17, Technical Proposal in particular shall confirm that all requirements of Section 6 (Employer’s Requirements) have been met without any material deviation or reservation.

32.4 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

## 33. Nonmaterial Nonconformities

33.1 Provided that a bid is substantially responsive, the Employer may waive any nonconformity in the bid that do not constitute a material deviation, reservation or omission.

33.2 Provided that a Bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the Price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

33.3 Provided that a Bid is substantially responsive, the Employer shall rectify nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the method indicated in Section 3 (Evaluation and Qualification Criteria).

## 34. Correction of ARITHMETICAL ERRORS

34.1 Provided the bid is substantially responsive, the Employer shall correct the arithmetical errors on the following basis:

a. if there is a discrepancy between the unit price 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 subtotal, the subtotals shall prevail and the total shall be corrected.

c. if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetical error, in which case the amount in figures shall prevail subject to (a) and (b) above.

34.2 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be disqualified and its bid security may be forfeited.

## 35. Conversion to Single Currency

35.1 For evaluation and comparison purposes, the currency(ies) of the bid shall be converted into a single currency as specified in the BDS.

## 36. Margin of Preference

36.1 Unless otherwise specified in the BDS, a margin of preference shall not apply.

## 37. Evaluation of Bids

37.1 The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.

37.2 To evaluate a Bid, the Employer shall consider the following:

(a) The bid price, excluding provisional sums and the provision, if any, for contingencies in the Price Schedules;

(b) price adjustment for correction of arithmetical errors in accordance with ITB 34.1;

(c) price adjustment due to discounts offered in accordance with ITB 18;

(d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 37; and

(e) the evaluation factors indicated in Section 3 (Evaluation and Qualification Criteria).

37.3 If price adjustment is allowed in accordance with ITB 18.6, the estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.

37.4 If this Bidding Document allows Bidders to quote separate prices for different lots (contracts), and the award to a single Bidder of multiple lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Letter of Bid, is specified in Section 3 (Evaluation and Qualification Criteria).

37.5 If the bid, which results in the lowest Evaluated Bid, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Price Schedules, to demonstrate the internal consistency of those prices with the methods and time schedule proposed. After evaluation of the price analyses, taking into consideration the terms of payments, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.

## 38. Comparison of Bids

38.1 The Employer shall compare all substantially responsive Bids to determine the lowest evaluated bid, in accordance with ITB 37.2.

## 39. POST Qualification of Bidder

39.1 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated substantially responsive Bid is qualified to perform the contract satisfactorily.

39.2 The determination shall be based upon an examination of the documentary evidence of the Bidder’s qualifications submitted by the Bidder, pursuant to ITB 15.

39.3 An affirmative determination shall be a prerequisite for award of contract. A negative determination shall result in disqualification of the Bid, in which event the Employer shall proceed to the next lowest evaluated bid to make a similar determination of the Bidder’s capabilities to perform satisfactorily.

## 40. Employer’s Right to Accept Any Bid, and to Reject Any or All Bids

40.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

## 41. Award Criteria

41.1 The Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be eligible and qualified to perform the Contract satisfactorily.

41.2 The Employer reserves the right to accept any of the deviations submitted in accordance with ITB 18.2 by the lowest evaluated bidder, at the price shown for the deviation in the bid.

## 42. Notification of Award

42.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, that its bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the “Letter of Acceptance”) shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the plant and services (hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Price”).

42.2 At the same time, the Employer will publish in an English language newspaper or well-known freely accessible website the results identifying the bid and lot numbers and the following information:

(i) name of each Bidder who submitted a Bid;

(ii) bid prices as read out at bid opening;

(iii) name and evaluated prices of each Bid that was evaluated;

(iv) name of bidders whose bids were rejected and the reasons for their rejection; and

(v) name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded. After publication of the award, unsuccessful bidders may request in writing to the Employer for a debriefing seeking explanations on the grounds on which their bids were not selected.

42.3 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.

42.4 The Employer shall promptly respond in writing to any unsuccessful Bidder who, after publication of contract award, requests in writing the grounds on which its bid was not selected.

## 43. Signing of Contract

43.1 Promptly after notification, the Employer shall send the successful Bidder the Contract Agreement.

43.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer.

## 44. Performance Security

44.1 Within twenty-eight (28) days of the receipt of notification of award from the Employer, the successful Bidder shall furnish the performance security in accordance with the conditions of contract, using for that purpose the Performance Security Form included in Section 9 (Contract Forms), or another form acceptable to the Employer. If the institution issuing the performance security is located outside the country of the Employer, it shall have a correspondent financial institution located in the country of the Employer to make it enforceable.

45.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

45.3 The above provision shall also apply to the furnishing of a domestic preference security if so required.