

Section 1 – Instructions to Applicants

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A. General

- 1. Scope of Application**

1.1 In connection with the Invitation for Prequalification indicated in Section 2, Application Data Sheet (ADS), the Employer, as defined in the ADS, issues this Prequalification Document to applicants interested in bidding for the works described in Section 6, Scope of Contract. The number of contracts and the name and identification of each contract as well as the International Competitive Bidding (ICB) number corresponding to this prequalification, are provided in the ADS.
- 2. Source of Funds**

2.1 The Borrower or Recipient (hereinafter called “Borrower”) indicated in the ADS has applied for or received financing (hereinafter called “funds”) from the Asian Development Bank (hereinafter called “ADB”) towards the cost of the project named in the ADS. The Borrower intends to apply a portion of the funds to eligible payments under the contract resulting from the bidding for which this prequalification is conducted (hereinafter called “the Contract”).

2.2 Payments by the ADB will be made only at the request of the Borrower and upon approval by the ADB in accordance with the terms and conditions of the financing agreement between the Borrower and the ADB (hereinafter called the Financing Agreement), and will be subject in all respects to the terms and conditions of that Financing Agreement. No party other than the Borrower shall derive any rights from the Financing Agreement or have any claim to the funds.
- 3. Fraud and Corruption**

3.1 ADB’s Anticorruption Policy requires Borrowers (including beneficiaries of ADB-financed activity), as well as Bidders, Suppliers, and Contractors under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, ADB:

 - (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) “integrity violation” means any act, as defined under ADB’s Integrity Principles and Guidelines, which violates ADB’s Anticorruption Policy including corrupt, fraudulent, coercive, or collusive practice, abuse, and obstructive practice;
 - (vi) “obstructive practice” means (a) deliberately destroying, falsifying, altering or concealing of evidence material to an ADB investigation; (b) making false statements to investigators in order to materially impede an ADB investigation; (c) failing to comply with requests to provide information, documents or records in connection with an OAI investigation; (d) threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (e) materially impeding ADB’s contractual rights of audit or access to information.
- (b) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;
 - (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation; and
 - (d) will sanction impose remedial actions on a firm or an individual, at any time, in accordance with ADB’s Anticorruption Policy and Integrity Principles and Guidelines (both as amended from time to time), including declaring ineligible, either indefinitely or for a stated period of time, to participate¹ in ADB-financed, or administered or supported activities or to benefit from an ADB-financed, administered or supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations.

4. Eligible Applicants

- 4.1 An Applicant may be a natural person, private entity, government-owned entity, subject to ITA Sub-Clause 4.6, 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

¹ Whether as a contractor, nominated subcontractor, consultant, manufacturer or supplier, or service provider; or in any other capacity (different names are used depending on the particular bidding document). A nominated subcontractor is one which either has been: (i) included by the bidder in its prequalification application or bid because it brings specific and critical experience and know-how that are accounted for in the evaluation of the bidder’s prequalification application or the bid; or (ii) appointed by the Employer.

JV,

- (a) all partners shall be jointly and severally liable; and
 - (b) a JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the partners of the JV during the prequalification process and, in the event the JV is prequalified, during the bidding process, and in the event the JV is awarded the Contract, during contract execution.
- 4.2 An Applicant, and all partners constituting the Applicant, shall have the nationality of an eligible country, in accordance with Section 5, Eligible Countries. An Applicant shall be deemed to have the nationality of a country if the Applicant is a citizen of that country; or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country.
- 4.3 The above requirement shall also apply to the determination of the nationality of proposed Subcontractors or Suppliers for any part of the Contract including related services.
- 4.4 At the time of bidding, Bidders shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. Bidders may be considered to be in a conflict of interest with one or more parties in the bidding process if including but not limited to:
- (a) they have controlling shareholders 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 material information about or improperly influence 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, either individually or as a partner in a joint venture, except for alternative offers permitted under ITB Clause 13 of the Bidding Document. This will result in the disqualification of all Bids in which it is involved. However, subject to any finding of a conflict of interest in terms of 4.4 (a)-(d) above, this does not limit the participation of a Bidder as a Subcontractor in another bid or of a firm as a Subcontractor in more than one bid; or
 - (f) a Bidder or any affiliated entity, participated as a consultant in the preparation of the design or technical specifications of the works, plant and services that are the subject of the bid; or
 - (g) a Bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Employer or Borrower as Engineer for the contract.

- 4.5 A firm shall not be eligible to participate in any procurement activities under an ADB-financed or ADB-supported project while under sanction by ADB pursuant to its Anticorruption Policy (see ITA 3), whether such sanction was directly imposed by ADB, or imposed by ADB pursuant to the Agreement for Mutual Enforcement of Debarment Decisions. A bid from a sanctioned or cross-debarred firm will be rejected.
- 4.6 Government-owned enterprises in the Employer's country shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and that they (iii) are not in any way dependent agencies of the Employer.
- 4.7 Applicants shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.
- 4.8 Applicants 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 Materials, Equipment and Services**
- 5.1 The materials, equipment and services to be supplied under the Contract and financed by ADB shall have as their country of origin in an eligible country of ADB (see Section 5, Eligible Countries).

B. Contents of Prequalification Document

- 6. Sections of the Prequalification Document**
- 6.1 The Prequalification Document consists of Parts I and II which include all the sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITA Clause 8.
- PART I Prequalification Procedures**
- Section 1. Instructions to Applicants (ITA)
 - Section 2. Application Data Sheet (ADS)
 - Section 3. Qualification Criteria (QLC)
 - Section 4. Application Forms (APF)
 - Section 5. Eligible Countries (ELC)
- PART II Requirements**
- Section 6. Scope of Contract (SOC)
- 6.2 The Invitation for Prequalification issued by the Employer is not part of the Prequalification Document.
- 6.3 The Employer is not responsible for the completeness of the Prequalification Document and its Addenda, if they were not obtained directly from the source stated by the Employer in the Invitation for Prequalification.

- 6.4 The Applicant is expected to examine all instructions, forms, and terms in the Prequalification Document and to furnish all information or documentation required by the Prequalification Document. The information or documentation shall be complete, accurate, current, and verifiable. The Employer shall have the right to conduct independent checks to determine the completeness and accuracy of the information or documentation provided by the Applicant, and to take remedial actions, including rejection of the Applicant, as appropriate.
- 7. Clarification of Prequalification Document**
- 7.1 A prospective Applicant requiring any clarification of the Prequalification Document shall contact the Employer in writing at the Employer's address indicated in the ADS. The Employer will respond in writing to any request for clarification provided that such request is received no later than 14 days prior to the deadline for submission of Applications. The Employer shall forward copies of its response to all Applicants who have acquired the Prequalification Document directly from the Employer including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Prequalification Document as a result of a request for clarification, it shall do so following the procedure under ITA Clause 8 and in accordance with the provisions of Sub-Clause 17.2.
- 8. Amendment of Prequalification Document**
- 8.1 At any time prior to the deadline for submission of Applications, the Employer may amend the Prequalification Document by issuing addenda.
- 8.2 Any addendum issued shall be part of the Prequalification Document and shall be communicated in writing to all who have obtained the Prequalification Document directly from the Employer in accordance with ITA Sub-Clause 6.3.
- 8.3 To give prospective Applicants reasonable time in which to take an addendum into account in preparing their Applications, the Employer may, at its discretion, extend the deadline for the submission of Applications, pursuant to ITA Sub-Clause 17.2.

C. Preparation of Applications

- 9. Cost of Applications**
- 9.1 The Applicant shall bear all costs associated with the preparation and submission of its Application, and the Employer shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the prequalification process.
- 10. Language of Application**
- 10.1 The Application, as well as all correspondence and documents relating to the prequalification exchanged by the Applicant and the Employer, shall be written in the English language. Supporting documents and printed literature that are part of the Application 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 Application, the translation shall govern.

- 11. Documents Comprising the Application**
- 11.1 The Application shall comprise the following:
- (a) Application Submission Sheet, in accordance with ITA Clause 12;
 - (b) written confirmation authorizing the signatory of the Application to commit the Applicant, in accordance with ITA Sub-Clause 15.3;
 - (c) documentary evidence establishing the Applicant's eligibility to prequalify, in accordance with ITA Clause 13;
 - (d) documentary evidence establishing the Applicant's qualifications, in accordance with ITA Clause 14; and
 - (e) any other document required as specified in the ADS.
- 12. Application Submission Sheet**
- 12.1 The Applicant shall prepare an Application Submission Sheet using the form furnished in Section 4, Application Forms. This form must be completed without any alteration to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.
- 13. Documents Establishing the Eligibility of the Applicant**
- 13.1 To establish its eligibility in accordance with ITA Clause 4, the Applicant shall complete the eligibility declarations in the Application Submission Sheet and Forms ELI 1 and 2, included in Section 4, Application Forms.
- 14. Documents Establishing the Qualifications of the Applicant**
- 14.1 To establish its qualifications to perform the contract in accordance with Section 3, Qualification Criteria, the Applicant shall provide the information requested in the corresponding Information Sheets included in Section 4, Application Forms.
- 15. Format and Signing of the Application**
- 15.1 The Applicant shall prepare one original of the documents comprising the Application as described in ITA Clause 11 and clearly mark it "ORIGINAL". The original of the Application shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Applicant.
- 15.2 The Applicant shall submit copies of the signed original Application, in the number specified in the ADS, and clearly mark them "COPY". In the event of any discrepancy between the original and the copies, the original shall prevail.
- 15.3 The requirements regarding the legal instrument evidencing the authorization to represent and sign on behalf of the Applicant shall be as specified in the ADS. Applications submitted by an existing or intended JV shall include an undertaking signed by all partners
- (a) stating that all partners shall be jointly and severally liable, and
 - (b) nominating a Representative who shall have the authority to conduct all business for and on behalf of any and all the partners of the JV during the prequalification process and, in the event the JV is prequalified, during the bidding process, and in the event the JV is awarded the Contract, during contract execution.

D. Submission of Applications

- 16. Sealing and Marking of Applications**
- 16.1 The Applicant shall enclose the original and the copies of the Application in a sealed envelope which shall
- (a) bear the name and address of the Applicant;
 - (b) be addressed to the Employer, in accordance with ITA 17.1; and
 - (c) bear the specific identification of this prequalification process indicated in the ADS 1.1.
- 16.2 If the envelope is not sealed and marked as required, the Employer will assume no responsibility for the misplacement of the Application.
- 17. Deadline for Submission of Applications**
- 17.1 Applications must be received by the Employer at the address and no later than the deadline indicated in the ADS.
- 17.2 The Employer may, at its discretion, extend the deadline for the submission of Applications by amending the Prequalification Document in accordance with ITA Clause 8, in which case all rights and obligations of the Employer and the Applicants subject to the previous deadline shall thereafter be subject to the deadline as extended.
- 18. Late Applications**
- 18.1 The Employer reserves the right to accept or reject late Applications.
- 19. Opening of Applications**
- 19.1 The Employer shall prepare a record of the opening of Applications that shall include, as a minimum, the name of the Applicant. A copy of the record shall be distributed to all Applicants.

E. Evaluation of Applications

- 20. Confidentiality**
- 20.1 Information relating to the evaluation of Applications, and recommendation for prequalification, shall not be disclosed to Applicants or any other persons not officially concerned with such process until the notification of prequalification is made to all Applicants.
- 20.2 From the deadline for submission of Applications to the time of notification of the results of the prequalification in accordance with ITA Clause 28, if any Applicant wishes to contact the Employer on any matter related to the prequalification process, it may do so in writing.
- 21. Clarification of Applications**
- 21.1 To assist in the evaluation of Applications, the Employer may, at its discretion, ask any Applicant for a clarification of its Application which shall be submitted within a stated reasonable period of time. Any request for clarification and all clarifications shall be in writing.
- 21.2 If an Applicant does not provide clarifications of the information requested by the date and time set in the Employer's request for

- clarification, its Application may be rejected.
- 22. Responsive-ness of Applications** 22.1 The Employer may reject any Application which is not responsive to the requirements of the Prequalification Document.
- 23. Margin of Preference** 23.1 If so indicated in the ADS, a margin of preference shall apply in the bidding process resulting from this prequalification.
- 24. Subcontractors** 24.1 Applicants shall state in the Application Submission Sheet whether they intend to subcontract parts or elements of the Works.
- 24.2 If an Applicant intends to subcontract any of the key activities listed in Section 3, Qualification Criteria, Criteria 4.2, then such key activities and the proposed Subcontractors (Specialist Subcontractors) shall be clearly identified in Section 4, Application Forms, Forms ELI-2 and EXP-2. Such Specialist Subcontractor(s) shall meet the corresponding qualification requirements specified in Section 3, Qualification Criteria. A formal intent to enter into an agreement with the Specialist Subcontractors in the form of a letter jointly signed by the Applicant and the Specialist Subcontractor should be submitted together with the Application. At the time of bidding, the Bidder shall use in its bid only Specialist Subcontractors prequalified during the prequalification exercise.
- 24.3 Unless otherwise specified in the ADS, the Employer does not intend to execute certain specific parts of the Works by Subcontractors selected in advance by the Employer (Nominated Subcontractors).

F. Prequalification of Applicants

- 25. Evaluation of Applications** 25.1 The Employer shall use the criteria and methods defined in Section 3, Qualification Criteria to evaluate the qualifications of the Applicants and proposed Subcontractors.
- 25.2 Only the qualifications of proposed Specialist Subcontractors with respect to "Experience in Key Activities" that have been identified in the Application pursuant to ITA 24.2 will be considered in the evaluation of an Applicant. However, the financial resources of Specialist Subcontractors may not be added to those of the Applicant for purposes of prequalification of the Applicant.
- 25.3 Unless otherwise indicated in the ADS, this prequalification shall be for a single contract.
- 26. Employer's Right to Accept or Reject Applications** 26.1 The Employer reserves the right to accept or reject any Application, and to annul the prequalification process and reject all Applications at any time, without thereby incurring any liability to Applicants

- 27. Prequalification of Applicants** 27.1 All Applicants, including their proposed Specialist Subcontractors, whose Applications have been determined to be substantially responsive to the requirements of the Prequalification Document and who have met or exceeded the specified criteria shall be prequalified by the Employer.
- 28. Notification of Prequalification** 28.1 Once the Employer has completed the evaluation of the Applications it shall notify all Applicants in writing of the names of those applicants who have been prequalified.
- 29. Invitation to Bid** 29.1 Promptly after the notification of the results of the prequalification, the Employer shall invite bids from all the Applicants that have been prequalified.
- 29.2 Bidders may be required to provide bid security in the form of a demand guarantee or other security acceptable to the Employer for an amount as specified in the bidding document.
- 30. Changes in Qualifications of Applicants** 30.1 Any change in the qualification status of an Applicant after being prequalified in accordance with ITA Clause 27 shall be subject to the written approval of the Employer. Any such change shall be submitted to the Employer not later than 14 days after the date of the Invitation to Bid. Such approval shall be denied if as a consequence of any change,
- (a) the prequalified Applicant, after the change, no longer substantially meets the qualification criteria set forth in Section 3, Qualification Criteria; or
 - (b) a new partner that had not been prequalified as an Applicant or a Specialist Subcontractor as per ITA 24.2 is added to a prequalified Applicant.