




The Federal Democratic Republic of Ethiopia

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## **Standard Bidding Document (SBD)**

### **For Procurement of Non-Consultancy Services**

### **For National Competitive Biddings (NCB)**

**Subject of Procurement**

**Procurement Reference Number**

**Project Name**

**Date of Issue of Bidding Document**

**Addis Ababa, April 2011**



The Federal Democratic Republic of Ethiopia

# Bidding Document

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# Part 1 Bidding Procedures

## Section 1. Instructions to Bidders

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## Section I. Instructions to Bidders

### A. General

#### 1. Introduction

- 1.1 The Public Body indicated in the Bid Data Sheet (BDS) is the Contracting Authority for this procurement process and it is bound by the rules governing public procurement in the Federal Democratic Republic of Ethiopia. It has the powers and duties to conclude a Contract for the provision of Services. Accordingly, this procurement process is being conducted in accordance with the recent editions of the Ethiopian Federal Government Procurement and Property Administration Proclamation and Public Procurement Directive under the procurement method indicated in the BDS.
- 1.2 By the issue of this Bidding Document the Public Body invites interested Candidates to submit their bids with a view to entering into Contract with the Public Body for the provision of Services which general description is provided in the BDS. The Services that are subject of this procurement process are more particularly specified in Section 6, Schedule of Requirement upon the basis of the information supplied in and in accordance with this Bidding Document.
- 1.3 The procurement reference number and number of lots of this Bidding Document are provided in the BDS. If Bids are being invited for individual contracts (lots) the Bidder may submit a Bid for one lot only, several or all of the lots. Each lot will form a separate contract and the quantities indicated for different lots will be indivisible. The Bidder must offer the whole of the quantity or quantities indicated for each lot.
- 1.4 Each Bidder may only submit one Bid, either individually or as a partner in 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 Bids with the Bidder's participation to be disqualified.
- 1.5 This Section 1, Instructions to Bidders shall not form a part of the Contract. These instructions are intended to assist prospective Bidders in the preparation of their Bids.
- 1.6 Issuance of this Bidding Document does not in any way obligate the Public Body to award a Contract.
- 1.7 The Public Body retains ownership of all bids submitted in response to this Bidding Document. Consequently, Bidders have no right to have their bids returned to them except late bids.
- 1.8 In submitting a bid, the Bidder accepts in full and without restriction this Bidding Document as the sole basis of this procurement procedure, whatever his own conditions of sale may be, which he hereby waives. Bidders are expected to examine carefully and comply with all instructions, forms, contract provisions and schedule of requirements contained in this Bidding Document. Failure to submit a bid containing all the required information and documentation within the deadline specified may lead to the rejection of the bid. No account can be taken of any reservation in the bid as regards the Bidding Document; any reservation will result in the immediate rejection of the bid without further evaluation.
- 1.9 The permitted method of communication shall be in writing. Throughout these Bidding Documents the term "in writing" means communicated in written form and delivered against receipt.

#### 2. Source of Funds

- 2.1 The Public Body has an approved budget toward the cost of the procurement described in the Section 6, Schedule of Requirement. The Public Body intends to use these funds to place a

Contract for which these Bidding Documents are issued.

- 2.2 Payments will be made directly by the Public Body and will be subject in all respects to the terms and conditions of the resulting Contract placed by the Public Body.

### **3. Fraud, Corruption and Complaints Provisions**

- 3.1 The Government of the Federal Democratic Republic of Ethiopia (herein after called the Government) represented by the Public Procurement and Property Administration Agency (herein after called the Agency) requires Contracting Authorities, as well as bidders to observe the highest standards of ethics during the procurement and the execution of contracts. In pursuance of this policy, the Government:

- (a). Defines, for the purposes of this provision, the terms set forth below as follows:

- (i) “Corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of any thing of value to influence improperly the action of a public official in the procurement process or in contract execution;
- (ii) “Fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
- (iii) “Collusive practices” is a scheme or arrangement between two or more Bidders, with or without the knowledge of the Public Body, designed to establish prices at artificial, non-competitive levels; and
- (iv) “Coercive practices” is harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract.
- (v) Obstructive practice is
  - deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede the Federal Ethics and Anticorruption Commission, the Federal Auditor General and the Public Procurement and Property Administration Agency or their auditors investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent their from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or
  - acts intended to materially impede the exercise of inspection and audit rights provided for under ITB Clause 3.5 below.

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

- (c). Will debar a Bidder from participation in public procurement for a specified period of time if it at any time determines the Bidder has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a contract. The List of Debarred Bidders is available on the Agency's Website <http://www.ppa.gov.et>.

- 3.2 In pursuit of the policy defined in ITB Sub-Clause 3.1, the Public Body may terminate a contract for Services if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the Public Body or of a Bidder during the procurement or the execution of that contract.

- 3.3 Where it is proved that the bidder has given or has offered to give inducement or bribe to an

official or procurement staff of the Public Body to influence the result of the bid in his favor shall be disqualified from the bid, prohibited from participating in any future public procurement and the bid security deposited by them shall be forfeited.

- 3.4 Bidders are required to indicate their acceptance of the provisions on fraud and corruption, as defined in this clause through the statement in the Bid Submission Sheet.
- 3.5 The Agency will have the right to require to inspect the Supplier accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Agency.
- 3.6 Subject to the recent editions of the Public Procurement Proclamation and Procurement Directive, a candidate or a bidder aggrieved or is likely to be aggrieved on account of the Public Body inviting a bid not complying with the provisions of the Proclamation or Procurement Directive in conducting a bid proceeding may present complaint to the head of the Public Body to have the bid proceeding reviewed or investigated. Any complaint must be submitted in writing to the head of the Public Body, within five working days from the date the Bidder knew, or should have known, of the circumstances giving rise to the complaint. If the head of the Public Body does not issue a decision within ten working days after submission of complaint, or the candidate or the Bidder is not satisfied with the decision, it may submit a complaint to the Board within five working days from the date on which the decision has been or should have been communicated to the candidate or the Bidder by the Public Body. The Board's decision is binding for both parties.

#### **4. Eligible Bidders**

- 4.1 A Bidder may be a natural person, private, public or government-owned legal entity, subject to ITB Sub-Clause 4.5, 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), consortium, or association. In the case of a Joint Venture, consortium, or association:
  - (a). All parties to the Joint Venture, consortium or association shall be jointly and severally liable, unless otherwise specified in the BDS; and
  - (b). A Joint Venture, consortium or association shall nominate a Representative who shall have the authority to conduct all businesses for and on behalf of any and all the parties of the Joint Venture, consortium or association during the bidding process and, in the event the Joint Venture, consortium or association is awarded the Contract, during contract execution.
- 4.2 This Invitation for Bids is open to all Bidders (including all members of a joint venture, sub-contractors and personnel) from eligible source countries as defined in Section 5, Eligible Countries. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors for any part of the Contract including related services.
- 4.3 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if they:
  - (a). Are or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Public Body to provide consulting services for the preparation of the Terms of Reference, and any other documents to be used for the

- procurement of the Services to be purchased under this Bidding Document;
- (b). 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 Public Body regarding this bidding process; or
  - (c). Submit more than one bid in this bidding process.
- 4.4 A Bidder that has been debarred from participating in public procurement in accordance with ITB Clause 3.1 (c), at the date of the deadline for bid submission or thereafter, shall be disqualified.
- 4.5 Government-owned enterprises shall be eligible if they can establish that they are legally and financially autonomous and operate under commercial law and that they are not a dependent agency of the Public Body.
- 4.6 Unless otherwise specified in the BDS, Bidders shall provide such evidence of their eligibility satisfactory to the Public Body, to verify that the Bidder:
- (a). Is not insolvent, in receivership, bankrupt or being wound up, not have had their business activities suspended and not be the subject of legal proceedings for any of the foregoing
  - (b). Appropriate documentary evidence demonstrating its compliance, which shall include:
    - (i) Valid business license indicating the stream of business in which the Bidder is engaged,
    - (ii) VAT registration certificate issued by the tax authority (only domestic Bidders in case of contract value as specified in BDS),
    - (iii) Valid Tax clearance certificate issued by the tax authority (domestic Bidders only);
    - (iv) Relevant professional practice certificate, if required in BDS.
  - (c). Foreign bidders must as appropriate submit business organization registration certificate or trade license issued by the country of establishment.
- 4.7 To participate in this public procurement process, being registered in the suppliers list is a prerequisite (mandatory for domestic Bidders only).
- (a). Candidates desiring to participate in public procurement shall have to register themselves using the form made available for this purpose in the website of the Public Procurement and Property Administration Agency.
- 4.8 Bidders shall provide such evidence of their continued eligibility satisfactory to the Public Body, as the Public Body shall reasonably request in BDS.

## **5. Qualification of Bidder**

- 5.1 The qualifications of the Bidder will be assessed in accordance with ITB Clause 35.
- 5.2 Only bids from qualified Bidders will be considered for award of Contract.

## **B. Contents of Bidding Document**

### **6. Bidding Document**

- 6.1 The Bidding Document consist of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB Clause 8.



**Part 1 Bidding Procedures**

- Section 1 Instructions to Bidders (ITB)
- Section 2 Bid Data Sheet (BDS)
- Section 3 Evaluation Methodology and Criteria
- Section 4 Bidding Forms
- Section 5 Eligible Countries

**Part 2 Schedule of Requirements**

- Section 6 Terms of Reference

**Part 3 Contract**

- Section 7 General Conditions of Contract (GCC)
- Section 8 Special Conditions of Contract (SCC)
- Section 9 Contract Forms

6.2 The Invitation to Bid is not part of the Bidding Document. In case of discrepancies between the Invitation to Bid and the Bidding Documents listed in ITB Clause 6.1 above, said Bidding Documents will take precedence.

6.3 The Public Body is not responsible for the incompleteness of the Bidding Documents and their addenda, if they were not obtained directly from the Public Body. Bidders who did not obtain the Bidding Document directly from the Public Body will be rejected during evaluation. Where a Bidding Document is obtained from the Public Body on a Bidder's behalf, the Bidder's name must be registered with the Public Body at the time of sale and issue.

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

**7. Written Questions / Clarification of Bidding Documents**

7.1 A prospective Bidder requiring any clarification of the Bidding Documents shall contact the Public Body in writing at the Public Body's address indicated in the BDS. The Public Body will respond in writing to any request for clarification, provided that such request is received no later than ten (10) days prior to the deadline for submission of bids. The Public Body shall forward copies of its response to all Bidders who have acquired the Bidding Documents directly from it, including a description of the inquiry but without reference to the identity of the prospective Bidder initiating the request. Should the Public Body deem it necessary to amend the Bidding Documents as a result of a clarification, it shall do so following the procedure under ITB Clause 8 and Sub-Clause 24.2.

7.2 Only the written responses will be considered official and carry weight in this procurement process and subsequent evaluation. Any answers received outside the official channels, whether received verbally or in writing, from employees or representatives of the Public Body, or any other party, shall not be considered official responses to questions regarding this Bidding Document.

**8. Modification to Bidding Documents**

8.1 Where Public Body finds it necessary to introduce modification to the Bidding Document on its initiative or on the basis of request for clarification by prospective Bidder, the Public Body may modify the Bidding Document at any time prior to the deadline for submission of bids.

- 8.2 Any alteration to the content of the Bidding Document shall at the same time be communicated in the form of an amendment to all prospective Bidders who purchased the bidding document and will be binding on them. Bidders are required to immediately acknowledge receipt of any such amendment, and it will be assumed that the information contained in the amendment will have been taken into account by the Bidder in its Bid.
- 8.3 The Public Body may, at its discretion, extend the closing date for submission of bids where it modifies a bidding document as per Clause 8.1 above, if it is assumed that the time remaining before the closing date is not sufficient for bidders to prepare adjusted Bid Documents on the basis of such modification.

## **9. Pre-Bid Conference and Site Visit**

- 9.1 If the Public Body deems it to be appropriate, it may hold a Pre-Bid Conference for prospective bidders who purchased a Bidding Document for clarification and discussion on the Bidding Document or modification thereto. The Public Body may also organize a site visit or visits concurrently with the Pre-Bid Conference to allow Bidders to visit and examine the site or sites and obtain for itself, at its own responsibility and risk, all information that may be necessary for preparing the bid and entering into the Contract. The costs of visiting the site or sites shall be at the Bidder's own expense.
- 9.2 The Public Body shall give written notice to all bidders who purchased a bidding document to attend the Pre-Bid Conference and to gain access to the relevant site or sites. Notice will include time, date, and address where Pre-Bid Conference and site visits will be organized.
- 9.3 The Public Body shall welcome all prospective bidders to attend this Pre-Bid Conference and site visits. To give all prospective bidders the opportunity to participate in the pre-bid conference, prospective bidders are limited to sending two representatives to Pre-Bid Conference and site visits. All the costs of attending this conference will be borne by the prospective bidders.
- 9.4 The Public Body invites all prospective bidders to submit their questions / request for clarification by time and date and to the address indicated in BDS.
- 9.5 The Pre-Bid Conference shall be minuted. Copies of the minute shall be delivered to all prospective bidders who purchased the Bidding Document to enable them prepare their bid documents by incorporating the content of clarification or modification.

## **C. Preparation of Bids**

### **10. Cost of Bidding**

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

### **11. Language of Bid**

- 11.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Public Body, shall be written in the language specified in the BDS.
- 11.2 Bids and supporting documents of Bidders prepared in a language other than language of bid shall have to be translated by a legally competent interpreter into language of bid and a copy of the translation has to be submitted together with the original documents, especially where such documents pertain to the fundamental elements of the bid.
- 11.3 If the Public Body detects discrepancy between language of the original document and the

translated version, it shall reject the documents unless such discrepancy constitutes minor deviation from the requirement stated in the Bidding Document.

## **12. Bid Prices and Discounts**

- 12.1 The prices and discounts quoted by the Bidder in the Bid Submission Sheet and in the Price Schedule (forms furnished in Section 4, Bidding Forms) shall conform to the requirements specified below.
- 12.2 All items in the Section 6, Schedule of Requirements must be listed and priced separately in the Price Schedule. If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. Items not listed in the Price Schedule shall be assumed to be not included in the Bid, and provided that the Bid is substantially responsive, the corresponding adjustment shall be applied in accordance with ITB Sub-Clause 31.3.
- 12.3 The price to be quoted in the Bid Submission Sheet shall be the total price of the Bid including taxes, excluding any conditional discounts offered.
- 12.4 The Bidder offering conditional discounts shall indicate the methodology for their application in the Bid Submission Sheet.
- 12.5 The Incoterms and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by The International Chamber of Commerce, at the date of the Invitation for Bids or as specified in the BDS.
- 12.6 Prices quoted by the Bidder shall be fixed during the validity period of the Bid and throughout the Bidder's performance of the Contract and not subject to variation on any account. Bids submitted that are subject to price adjustment will be rejected.
- 12.7 If so indicated in BDS Sub-Clause 1.3, bids are being invited for individual contracts (lots) or for any combination of contracts (packages). Unless otherwise indicated in the BDS, prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Bidders wishing to offer any price reduction for the award of more than one Contract shall specify in their bid the price reductions applicable to each package or, alternatively, to individual Contracts within the package. Price reductions shall be submitted in accordance with ITB Sub-Clause 12.4 and clearly indicated for each lot in such a way that it can be announced during the public Bid opening session.
- 12.8 Where a foreign Bidder uses local inputs to satisfy the required object of procurement under the contract, the portion of the total contract price representing such local expenditure shall be expressed in ETB in the Price Schedule of the Bidder.

## **13. Currencies of Bid and Payment**

- 13.1 For those inputs to the Non-Consultancy Services which the Bidder expects to provide from within Ethiopia, the prices shall be quoted in the Ethiopian Birr, unless otherwise specified in the BDS.
- 13.2 For those inputs to the Non-Consultancy Services which the Bidder expects to provide from outside Ethiopia, the prices shall be quoted in the freely convertible currency. If the Bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but use no more than three currencies different from Ethiopian Birr.

**14. Professional Qualifications and Capability of the Bidder**

- 14.1 If required, in order to proof their professional qualifications and capability Bidders must provide their team skills matrix and personnel statistics for the period specified in the BDS by completing relevant tables in the form entitled Bidders Certification of Compliance furnished in Section 4, Bidding Forms.
- 14.2 For key individuals who actually will be performing the activities described in the Bidding Document, Bidder must provide resumes that identify years of experience, relevant project implementation experience, and relevant education and training.
- 14.3 Bidders must provide references for the proposed personnel, ensuring that references provided will be available to be contacted during the evaluation timeframe for this Bidding Document.

**15. Financial Standing of the Bidder**

- 15.1 If required in BDS, in order to proof that it has adequate financial resources to manage this Contract the bidder must present its financial data by completing relevant table in the form entitled Bidders Certification of Compliance that is furnished in Section 4, Bidding Forms.
- 15.2 Along with the proof referred to in Clause 15.1 the documents that are required as proof of the bidder's financial standing are the following:
- (a). Financial statements certified by an independent auditor;
  - (b). Other documents as stated in the BDS.

**16. Technical Qualifications, Competence, and Experience of the Bidder**

- 16.1 The Bidder must present a description of its company and organization, with appropriate reference to any parent company and subsidiaries. The Bidder shall also include details demonstrating the Bidder's experience and ability in providing the Services listed in Section 6, Schedule of Requirements. Also, each Bidder shall include a description of how it plans to manage the work included in this Bidding Document in addition to its other ongoing projects.
- 16.2 This information shall be included in a separate form entitled Bidders Certification of Compliance that is furnished in Section 4, Bidding Forms.
- 16.3 As a proof of satisfactory execution of contracts the Bidder must provide Certificates of satisfactory execution of contracts, provided by the other contracting party to the contracts concerned in number and within the period specified in the BDS for similar sized/type contracts with a budget of at least that of this contract, unless otherwise specified in the BDS, including contact information for verification and inspection so as to provide due diligence. Contact information should include, at a minimum: name, function, address, e-mail, and phone number. Each reference provided should be the client's responsible project administrator or a senior official of the client who is familiar with the Bidder's performance and with the Bidder's system capabilities, and who may be contacted by the Public Body during the evaluation process.
- 16.4 The Certificate of satisfactory execution of contracts shall include the following data:
- (a). The name and place of establishment of the contracting parties,
  - (b). The subject-matter of the contract,
  - (c). The value of the contract
  - (d). The time and place of performance of the contract,
  - (e). A statement concerning the satisfactory execution of contracts.
- 16.5 If, for objective reasons, such a certificate cannot be obtained from a contracting party, a

statement issued by the bidder concerning satisfactory execution of contracts may also be valid, on presentation of proof that the certificate was requested.

- 16.6 If the Bidder(s) propose a joint venture all of the information listed above must be provided for all of the joint venture members. This information shall be in separate sections, one section per joint venture member. In addition, the Bid shall provide the agreements that support the relationships between joint venture members.
- 16.7 Unless otherwise specified in the BDS, the Public Body reserves the right to undertake physical checking of current Bidder's technical qualifications and competence in order to make sure that the Bidder has adequate qualifications to manage this Contract.

### **17. Joint Venture or Consortium**

- 17.1 If bidder is a joint venture or consortium of two or more entities, the bid must be single with the object of securing a single contract; authorized person must sign the bid and will be jointly and severally liable for the bid and any contract. Those entities must designate one of their members to act as leader with authority to bind the joint venture or consortium. The composition of the joint venture or consortium must not be altered without the prior consent in writing of the Public Body.
- 17.2 The bid may be signed by the representative of the joint venture or consortium only if he has been expressly so authorized in writing by the members of the joint venture or consortium, and the authorizing contract, notarial act or deed must be submitted to the Public Body. All signatures to the authorizing instrument must be certified in accordance with the national laws and regulations of each party comprising the joint venture or consortium together with the powers of attorney establishing, in writing, that the signatories to the bid are empowered to enter into commitments on behalf of the members of the joint venture or consortium. Each member of such joint venture or consortium must prove to the satisfaction of the Public Body that they comply with the necessary legal, technical and financial requirements and have the wherewithal to carry out the contract effectively.

### **18. Alternative Bids**

- 18.1 Unless otherwise indicated in the BDS, alternative Bids shall not be considered.
- 18.2 If permitted in BDS, the Public Body may consider alternative systems or services prior to the notification of the successful Bidder provided that the Bidder:
- (a). Has submitted Bid in accordance with the Bidding Document as issued; and
  - (b). Has submitted Bid based on alternative(s) to the Bidding Document as issued;
  - (c). Has included with the Bid a demonstration of the advantages of the alternative solution over the initial solution, including a quantifiable justification of any economic and/or technical advantages; and
  - (a). Has included with the Bid sufficient descriptive information for a complete evaluation of the proposed alternative(s) by the Public Body, including calculations, technical specifications, breakdown of prices, proposed work methods and other relevant details.
- 18.3 Only the technical alternative(s), if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Public Body.
- 18.4 In evaluating a Bid containing an alternative process or service the Public Body may use any evaluation/award criteria as indicated in the BDS and Section 3, Evaluation Methodology and Criteria.
- 18.5 Alternative Bids not requested by the Public Body shall be rejected.

**19. Period of Validity of Bids**

- 19.1 Bids shall remain valid for the period specified in the BDS after the bid submission deadline prescribed by the Public Body. A bid valid for a shorter period may be rejected by the Public Body as non-responsive.
- 19.2 In exceptional circumstances, prior to expiry of the bid validity period, the Public Body may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing.
- 19.3 Bidders who are not willing to extend their bid validity period for what ever reason shall be disqualified from the bid without having forfeited their bid security.
- 19.4 Bidders agreeing to the Public Body's request for extension of their bid validity period have to express in writing their agreement to such request and for how long they are willing to extend the period. Similarly, they have to amend the validity period of their bid security on the basis of the extension of the bid validity period they have agreed to, or alternatively, furnish new bid security to cover the extended period.
- 19.5 A bidder not agreeing to extend the validity period of his/its bid security shall be treated as a bidder refusing the Public Body's request for extension of bid validity period, and as such, shall be disqualified from further bid proceeding.

**20. Bid Security**

- 20.1 Unless otherwise specified in the BDS, the Bidder shall furnish as part of its bid, a bid security in original form and in the amount and currency specified in the BDS. A copy of bid security, if submitted without original form, shall not be accepted.
- 20.2 The bid security shall be, at the Bidder's option, in any of the following forms:
- (a). An unconditional Bank Guarantee;
  - (b). An irrevocable Letter of Credit;
  - (c). Cash, check certified by a reputable bank or financial institution;  
all from a reputable source from any eligible country. Securities issued by foreign banks or financial institutions shall be counter-guaranteed by an Ethiopian bank. The bid security shall be submitted either using the Bid Security Form included in Section 4, Bidding Forms, or in another substantially similar format approved by the Public Body. 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 end of the validity period of the bid. This shall also apply if the period for bid validity is extended.
- 20.3 The Bid Security of a Joint Venture shall be issued in the name of the Joint Venture submitting the bid provided the Joint Venture has legally been constituted, or else it shall be issued in the name of all partners proposed for the Joint Venture in the bid. Sanctions due to a breach of the terms of a Bid Security pursuant to ITB Clause 20.7 will apply to all partners to the Joint Venture.
- 20.4 Any bid not accompanied by a substantially responsive bid security, if one is required in accordance with ITB Sub-Clause 20.1, shall be rejected by the Public Body as non responsive.
- 20.5 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 Clause 45.
- 20.6 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.

20.7 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 Bid Submission Sheet, except as provided in ITB Sub-Clause 19.2; or
- (b). If the successful Bidder fails to:
  - (i) Sign the Contract in accordance with ITB 44;
  - (ii) Furnish a performance security in accordance with ITB Clause 45; or

20.8 The bid security furnished by foreign bidders from a bank outside of Ethiopia has to be unconditional and counter guaranteed by local banks.

## **21. Documents Comprising the Bid**

21.1 All bids submitted must comply with the requirements in the Bidding Document and comprise the following:

21.2 Mandatory documentary evidence establishing the Bidder's qualification is the following:

- (a). Bid Submission Sheet (form furnished in Section 4, Bidding Forms) including the following mandatory attachments:
  - (i) VAT registration certificate issued by the tax authority (only domestic Bidders in case of contract value as specified in BDS Clause 4.6(b)(ii));
  - (ii) A valid tax clearance certificate issued by the tax authority (domestic Bidders only);
  - (iii) Business organization registration certificate or trade license issued by the country of establishment (foreign Bidders only);
  - (iv) Relevant professional practice certificates, as appropriate.
- (b). Bidder Certification of Compliance (form furnished in Section 4, Bidding Forms) including the following mandatory attachments:
  - (i) Written statement by a power of attorney (or notary statement, etc.) proving that the person, who signed the bid on behalf of the company/joint venture/consortium, is duly authorized to do so, as stipulated in ITB Clause 22.2;
  - (ii) Documents required in the BDS Clause 15.2 as proof of the bidder's financial standing;
  - (iii) Certificates of satisfactory execution of contracts provided by contracting parties to the contracts successfully completed in the course of the period specified in the BDS with a budget of at least that of this contract, unless otherwise specified in the BDS Clause 16.3.
  - (iv) CVs of the Professional staff signed by the staff themselves or by the authorized representative of the Professional Staff.
- (c). Schedule of Requirements + Technical Offer + Compliance Sheet (it should be presented as per template furnished in Section 6, Schedule of Requirements) with detailed description of the proposed Services in compliance with the minimum technical requirements, including, if necessary, separate sheets or documentation for details. Schedule of Requirements + Technical Offer + Compliance Sheet must include the following mandatory attachments:
  - (i) Description of the organization of the warranty offered in accordance with the conditions laid down in GCC Clause 24;
  - (ii) Drawings and Performance Diagrams - Form E of Section 6 (if applicable).

- (d). Bid Security, in accordance with ITB Clause 20;
- (e). Alternative bids, if permissible, in accordance with ITB Clause 18.
- (f). In the case of a bid submitted by a joint venture (JV), the Form Data on Joint Ventures, the Agreement governing the formation of joint venture, or letter of intent to form JV, including a draft agreement, in accordance with ITB Clause 4.1.
- (g). Price Schedule for the Services offered (it should be presented as per template furnished in Section 4, Bidding Forms) and if necessary completed by separate sheets for the details.
- (h). Any other document or information required to be completed and submitted by Bidders, as specified in the BDS.

## **22. Format and Signing of Bid**

- 22.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB Clause 21 and clearly mark it “ORIGINAL.” Alternative bids, if permitted in accordance with ITB 18, 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 each of them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail. If required in BDS, Bidders shall be required to submit bid documents in two envelopes containing the technical and financial proposals separately.
- 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 statement by a power of attorney (or notary statement, etc.) proving that the person, who signed the bid on behalf of the company/joint venture/consortium is duly authorized to do so and it 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, except for non-amended printed literature, shall be signed or initialled by the person signing the bid.
- 22.3 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the bid.

## **D. Submission and Opening of Bids**

### **23. Sealing and Marking of Bids**

- 23.1 The Bidder shall enclose the original and each copy of the bid, including alternative bids, if permitted in accordance with ITB Clause 18, in separate sealed envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” These envelopes containing the original and the copies shall then be enclosed in one single envelope.
- 23.2 The inner and outer envelopes shall:
- (a). Be addressed to the Public Body in accordance with ITB Sub-Clause 24.1;
  - (b). Bear the subject of the procurement or the Project name, and procurement reference number indicated in the BDS;
  - (c). Bear the words **“Not to be opened before the time and date for bid opening”**.
- 23.3 The outer envelopes shall also indicate the name and address of the Bidder to enable the bid to be returned unopened in case it is declared “late” pursuant to ITB Clause 25.1.
- 23.4 If all envelopes are not sealed and marked as required, the Public Body shall assume no responsibility for the misplacement or premature opening of the bid.



**24. Deadline for Submission of Bids**

- 24.1 Bidders may always submit their bids by registered post or by hand. Bids must be received by the Public Body at the address and no later than the date and time indicated in the BDS.
- 24.2 The Public Body may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with ITB Clause 8, in which case all rights and obligations of the Public Body and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

**25. Late Bids**

- 25.1 The Public Body shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB Clause 24. Any bid received by the Public Body 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 Sub-Clause 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). Submitted in accordance with ITB Clauses 22 and 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 Public Body prior to the deadline prescribed for submission of bids, in accordance with ITB Clause 24.
- 26.2 Bids requested to be withdrawn in accordance with ITB Sub-Clause 26.1 shall be returned unopened to the Bidders. Bid withdrawal notices received after the bid submission deadline will be ignored, and the submitted bid will be deemed to be a validly submitted bid.
- 26.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and expiry of the period of bid validity specified by the Bidder on the Bid Submission Sheet or any extension thereof.

**27. Bid Opening**

- 27.1 The Public Body shall conduct the bid opening in the presence of Bidders` designated representatives who choose to attend, and at the address, date and time specified in the BDS. The opening of the bid shall not be affected by the absence of the bidders on their own will.
- 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. Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. 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.

- 27.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the Bid Prices, including any discounts and alternative offers; the presence of a bid security, if required; and any other details as the Public Body may consider appropriate. Only discounts and alternative offers read out at bid opening shall be considered for evaluation. No bid shall be rejected at bid opening except for late bids, in accordance with ITB Sub-Clause 25.1.
- 27.4 The Public Body 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, per lot if applicable, including any discounts and alternative offers; and the presence or absence of a bid security, 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.
- 27.5 Any bid document not opened and read out during the bid opening proceeding shall not be considered for further evaluation.

### **E. Evaluation and Comparison of Bids**

#### **28. Confidentiality**

- 28.1 Information relating to the examination, evaluation, clarification, and comparison 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 effort by a Bidder to influence the Public Body in the examination, evaluation, and comparison of the bids or Contract award decisions may result in the rejection of its bid.
- 28.3 Notwithstanding ITB Sub-Clause 28.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Public Body 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, and comparison of the bids, the Public Body may, at its sole 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 Public Body shall not be considered. The Public Body'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 Public Body in the evaluation of the bids, in accordance with ITB Clause 32.
- 29.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Public Body's request for clarification, its bid may be rejected.

#### **30. Responsiveness of Bids**

- 30.1 The Public Body's determination of a bid's responsiveness is to be based on the contents of the bid itself.
- 30.2 A substantially responsive bid is one that conforms to all the terms, conditions, and schedule of

requirements of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

- (a). If accepted, would,
  - (i) Affects in any substantial way the scope, quality, or performance of the Services specified in the Contract; or
  - (ii) Limits in any substantial way, inconsistent with the Bidding Documents, the Public Body's rights or the Bidder's obligations under the Contract; or
- (b). If rectified would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.

30.3 If a bid is not substantially responsive to salient requirements of the Bidding Documents it shall be rejected by the Public Body and may not subsequently be made responsive by the Bidder by correction of the material deviation, reservation, or omission.

30.4 Decisions to the effect that a bid is not substantially responsive must be duly justified in the evaluation minutes.

30.5 If only one Bid meets all salient requirements of the Bidding Document and is not otherwise disqualified, the Public Body may still complete the full evaluation of that Bid and sign contract with that Bidder if the Bid submitted by such bidder is satisfactory to the Public Body and the price offered by the bidder is comparable to or less than the market price of the required object of procurement.

### **31. Nonconformities and Omissions**

31.1 Provided that a bid is substantially responsive, the Public Body may waive any non-conformity or omissions in the bid that does not constitute a material deviation.

31.2 Provided that a bid is substantially responsive, the Public Body may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions 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.

31.3 Provided that a bid is substantially responsive, the Public Body shall rectify nonmaterial nonconformities or omissions. To this effect, the Bid Price shall be adjusted, for comparison purposes only, by the highest price quoted in this bidding process to reflect the price of the missing or non-conforming item or component.

### **32. Dubious price quotations and errors in calculation**

32.1 Provided that the bid is substantially responsive, the Public Body shall correct 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, unless in the opinion of the Public Body there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit 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 words and figures, the amount in words shall prevail,

unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

32.2 The Public Body shall correct the detected errors in calculation and notify the bidder in writing of the corrections made without any delay, requesting the bidder to confirm that he accepts the correction of the calculation error within the period specified in BDS from the date on which the notice was received. The corrections shall be clearly indicated in the bid.

32.3 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be disqualified.

### **33. Margin of Preference**

33.1 No margin of preference shall apply.

### **34. Preliminary Examination of Bids**

34.1 The Public Body shall examine the bids to confirm that all documentary evidence establishing the Bidder's qualification requested in ITB Clause 21 have been provided, and to determine whether bid comply with administrative requirements of the Bidding Document.

34.2 From the time the Bids are opened to the time the Contract is awarded, the Bidders should not contact the Public Body on any matter related to its Bid. Any effort by Bidders to influence the Public Body in the examination, evaluation, ranking of Bids, and recommendation for award of Contract may result in the rejection of the Bidders' Bid.

34.3 The Public Body may determine bid as not responsive when:

- (a). Bidder has failed to submit Written statement by a power of attorney (or notary statement, etc.) proving that the person, who signed the bid on behalf of the company/joint venture/consortium, is duly authorized to do so (ITB Sub-clause 22.2);
- (b). Original and all copies of the bid are not typed or written in indelible ink and signed by a person duly authorized to sign on behalf of the Bidder (ITB Sub-clause 22.2);
- (c). All pages of the bid, except for non-amended printed descriptive literature, are not signed or initialled by the person signing the bid (ITB Sub-clause 22.2);
- (d). Bid is not written in language specified in the ITB Clause 11.1;
- (e). Bidder has failed to submit signed and dated Bid Submission Sheet Form;
- (f). Bidder has failed to submit signed and dated Price Schedule Form;
- (g). Bidder has failed to submit signed and dated Bidder Certification of Compliance Form;
- (h). Bidder has failed to submit signed and dated Schedule of Requirements + Technical Offer+ Compliance Sheet Form;
- (i). Bidder has failed to submit signed and dated Bid Security;
- (j). The Bid Security is not in accordance with ITB Clause 20.

### **35. Legal, Professional, Technical, and Financial Admissibility of Bids**

35.1 After confirming the bids comprise all mandatory documentary evidence establishing the Bidder's qualification, the Public Body will rule on the legal, technical, professional, and financial admissibility of each bid, classifying it as compliant or non-compliant with qualification requirements set forth in the Bidding Document.

#### **35.2 Legal admissibility**

The Public Body may determine bid as not responsive when:

- (a). Bidder does not have nationality in accordance with ITB Sub-Clause 4.2;
- (b). Bidder is found to have a conflict of interest as described in ITB Sub-Clause 4.3;
- (c). Bidder has failed to submit valid business license indicating the stream of business in which the bidder is engaged, in accordance with ITB Clause 4.6(b)(i);
- (d). Bidder has failed to register itself in the Public Procurement and Property Administration Agency's suppliers list (mandatory for domestic Bidders only), in accordance with ITB Clause 4.7;
- (e). Domestic Bidder has failed to submit VAT registration certificate issued by the tax authority (in case of contract value specified in BDS Clause 4.6(b)(ii), in accordance with ITB Clause 4.6(b)(ii);
- (f). Domestic Bidder has failed to submit a valid tax clearance certificate issued by the tax authority, in accordance with ITB Clause 4.6(b)(iii);
- (g). Foreign Bidder has failed to submit business organization registration certificate or trade license issued by the country of establishment, in accordance with ITB Clause 4.6(c);
- (h). Bidder has been debarred by a decision of the Public Procurement and Property Administration Agency from participating in public procurements for breach of its obligation under previous contracts, in accordance with ITB Clause 4.4.
- (i). In the case of a bid submitted by a joint venture (JV), the Bidder has failed to submit the Form Data on Joint Ventures, the Agreement governing the formation of joint venture, or letter of intent to form JV, including a draft agreement, in accordance with ITB Clause 4.1.

### 35.3 Professional admissibility

The Public Body may determine bid as not responsive when:

- (a). Bidder has failed to submit relevant professional practice certificates if required in BDS Clause 4.6(b)(iv);
- (b). Bidder has failed to provide in the Bidder Certification of Compliance Form personnel statistics for the period specified in the BDS Clause 14.1 in order to proof its professional capacity;
- (c). Bidder has failed to provide in the Bidder Certification of Compliance Form the Team Skill Matrix identifying the skills that are relevant to the role in the contract team and are required for successful execution of the contract; and
- (d). Bidder has failed to provide CVs of the Professional staff signed by the staff themselves or by the authorized representative of the Professional Staff.

### 35.4 Technical admissibility

The Public Body may determine bid as not responsive when:

- (a). Bidder has failed to provide in the Bid Submission Sheet Form the Statement attesting the origin of the Services offered;
- (b). Bidder has failed to provide in the Bidder Certification of Compliance Form information about major relevant contracts successfully completed in the number and period specified in the BDS;
- (c). Bidder has failed to submit Certificates of satisfactory execution of contracts provided by contracting parties to the contracts successfully completed in the period and budget as specified in the BDS Clause 16.3;
- (d). Bidder has failed to complete its Schedule of Requirements + Technical Offer+ Compliance Sheet Form in accordance with Terms of Reference presented as per template in Section 6, Schedule of Requirements

- (e). Bidder has failed to submit Description of the organization of the warranty offered in accordance with the conditions laid down in GCC Clause 24;
- (f). Bidder has failed to submit Drawings and Performance Diagrams - Form E of Section 6 (if applicable).

**35.5 Financial admissibility**

The Public Body may reject any bid when:

- (a). Bidder has failed to submit financial statements certified by an independent auditor as required in ITB Clause 15.2(a) for the period specified in Section 3, Evaluation Methodology and Criteria;
- (b). Bidder has failed to submit other documents proofing its financial standing, as required in the BDS Clause 15.2(b);
- (c). The average annual turnover for the period specified in Section 3, Evaluation Methodology and Criteria does not exceed the amount of the financial proposal of the Bid in value specified in the BDS.
- (d). Bidder has failed to calculate Bid Prices for the Services offered as prescribed in ITB Clause 12; and
- (e). Bidder has failed to quote prices in currency specified in the BDS in accordance with ITB Clause 13.

**36. Evaluation of Bids**

- 36.1 The Public Body shall evaluate each bid that has been determined, up to this stage of the evaluation, to be substantially responsive.
- 36.2 For evaluation and comparison purposes, the Public Body shall convert all bid prices expressed in the amounts in various currencies into a single currency indicated in BDS, using the selling exchange rate established by the National Bank of Ethiopia and on the date of the Bid opening.
- 36.3 To evaluate a bid, the Public Body shall only use all the criteria and methodologies defined in this Clause and in Section 3, Evaluation Methodology and Criteria. No other criteria or methodology shall be permitted.
- 36.4 To evaluate a bid, the Public Body shall consider the following:
- (a). The bid price;
  - (b). Price adjustment for correction of arithmetic errors in accordance with ITB Sub-Clause 32;
  - (c). Price adjustment due to discounts offered in accordance with ITB Sub-Clause 12.4;
  - (d). Converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB Sub-Clause 36.2;
  - (e). Adjustment for nonconformities and omissions in accordance with ITB Sub-Clause 31;
  - (f). Application of all the evaluation factors, if indicated in Section 3, Evaluation Methodology and Criteria. .
- 36.5 The Public Body's cost evaluation of a bid may require the consideration of other factors, in addition to the Bid Price quoted in accordance with ITB Clause 12. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Services. The factors to be used, if any, and the methodology of application shall be indicated in Section 3, Evaluation Methodology and Criteria.

36.6 If these Bidding Documents allow Bidders to submit a Bid for different lots, and the award to a single Bidder of multiple lots, the methodology of evaluation to determine the lowest evaluated lot combinations, including any discounts offered in the Bid Submission Sheet, is specified in the BDS and detailed in Section 3 Evaluation Methodology and Criteria.

### **37. Comparison of Bids**

37.1 The Public Body shall compare all substantially responsive bids to determine the lowest evaluated bid as specified in Section 3: Evaluation Methodology and Criteria.

### **38. Post-qualification Evaluation**

38.1 After identifying the successful bidder by evaluating the bid documents against the criteria set forth in this Bidding Document the Public Body shall conduct post qualification evaluation to establish the current qualification of the successful bidder where it feels that it has to be ascertained.

38.2 Such post qualification evaluation of the successful bidder may relate to submission of the documentary evidence specified in ITB Clause 35, unless satisfactory documents are already included in the Bid, concerning its current legal, professional, technical, and financial standing and conformity to the requirements stated in this Bidding Document.

38.3 If the successful bidder fails to provide this documentary proof within 15 calendar days following the Public Body's request or if the successful bidder is found to have provided false information its Bid shall be disqualified, in which event the Public Body shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.

### **39. Acceptance or Rejection of Bids**

39.1 The Public Body 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.

### **40. Re-advertising bids**

40.1 The Public Body may issue invitation to bid for a second time under the following circumstances:

- (a). Where the Invitation to Bid has been unsuccessful, namely where no qualitatively or financially worthwhile Bids have been received.
- (b). Where the best price offered by a bidder is significantly higher than the market price estimate of the object of procurement made by the Public Body prior to the issuance of the invitation to bid.
- (c). Where it is concluded that non compliance with the rules and procedures governing bids prescribed by the Proclamation and Procurement Directive led to the failure of the invitation to bid to attract more than one bidder, or where it is believed that modifying the bidding document could attract adequate number of bidders.
- (d). Circumstances of Force Majeure render normal implementation of the Contract impossible.

## **F. Award of Contract**

### **41. Award Criteria**

41.1 The Public Body shall award the Contract to the Bidder whose bid has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Documents, provided

further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

41.2 If Bids are being invited for individual contracts (lots) Contracts will be awarded lot by lot, but the Public Body may select the most favorable overall solution after taking account of any discounts offered.

41.3 If the Bidder is awarded more than one lot, a single contract may be concluded covering all those lots.

#### **42. Right to Vary Quantities at Time of Award**

42.1 At the time the Contract is awarded, the Public Body reserves the right to increase or decrease the scope of Services originally specified in Section 6, Schedule of Requirement, provided this does not exceed the percentages indicated in the BDS, and without any change in the unit prices or other terms and conditions of the bid and the Bidding Documents.

#### **43. Announcing and Awarding of the Successful Bidder**

43.1 Prior to expiry of the period of bid validity, the Public Body shall notify in writing the result of a bid evaluation to all bidders alike at the same time.

43.2 The letter of notification to be disclosed to the unsuccessful bidders on the technical evaluation shall state the reason why they did not succeed in their bid and the identity of the successful bidder

43.3 A letter of award to be sent by the Public Body to a successful bidder shall not constitute a contract between him and the Public Body. A contract shall be deemed to have been concluded between the Public Body and the successful bidder only where a contract containing detailed provisions governing the execution of the procurement in issue is signed.

43.4 A letter of contract award to be sent to a successful bidder may contain the following information:

- (a). That the Public Body has accepted his bid;
- (b). The total contract price;
- (c). The list of items and their respective unit price;
- (d). The amount of the performance security the successful bidder is required to furnish and the deadline for providing such security.

#### **44. Signing of Contract**

44.1 Promptly after notification of the proposed contract award the Public Body shall send the successful Bidder the Contract.

44.2 Within fifteen (15) days of receipt of the notification of award, the successful Bidder shall sign, date, and return it to the Public Body the Contract.

44.3 The Public Body shall not sign a contract before seven working days from the date bidders are notified of the result of their bid or of any complaint against the bid proceeding.

#### **45. Performance Security**

45.1 Within fifteen (15) days from signing the Contract the successful Bidder shall furnish the performance security in accordance with the GCC, using for that purpose the Performance Security Form included in Section 9, Contract Forms, or another form acceptable to the Public Body.

45.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign



the Contract shall constitute sufficient grounds for annulment of the award and forfeiture of the bid security.

- 45.3 Small and micro enterprises shall be required to submit a letter of guarantee written by a competent body organizing and overseeing them in lieu of bid security, performance security or advance payment guarantee.
- 45.4 Where the successful bidder can not or is unwilling to sign a contract or submit the above-mentioned Performance Security, the Public Body may either declare the bidder submitting the second lowest evaluated bid the successful bidder or invite such bidder to sign a contract or advertise the bid afresh by assessing the benefit of the two options.

## **Section 2. Bid Data Sheet**

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## Section 2. Bid Data Sheet (BDS)

Instructions for Bidders (ITB) reference	Data relevant to ITB
<b>A. Introduction</b>	
<b>ITB 1.1</b>	The Public Body is: Registered Address:
<b>ITB 1.1</b>	The Bidding Document is issued under Procurement Method:
<b>ITB 1.2 and 23.2(b)</b>	The Project name or is: General description of the Services that are subject of the procurement is:
<b>ITB 1.3 and 23.2(b)</b>	The Procurement Reference Number is:
<b>ITB 1.3</b>	The number and identification of Lots in this Bidding Document is:
<b>ITB 4.1(a)</b>	The individuals or firms in a joint venture, consortium or association jointly and severally liable.
<b>ITB 4.6(b)(ii)</b>	Domestic Bidders shall provide VAT registration certificate issued by the tax authority in case of contract value of and above.
<b>ITB 4.6(b)(iv)</b>	Relevant professional practice certificate required.
<b>ITB 4.8</b>	A Bidder shall amend the evidence of its continued eligibility with the following documents:

<b>B. Bidding Documents</b>																							
<b>ITB 7.1 and 9.4</b>	<p>For <b>questions and/or clarification purposes</b> only, the Public Body's address is:</p> <table border="1" style="width: 100%;"> <tr><td>Public Body:</td><td></td></tr> <tr><td>Attention:</td><td></td></tr> <tr><td>Floor/Room number:</td><td></td></tr> <tr><td>P.O. Box:</td><td></td></tr> <tr><td>Street Address:</td><td></td></tr> <tr><td>Town/City:</td><td></td></tr> <tr><td>Post Code:</td><td></td></tr> <tr><td>Country:</td><td>Ethiopia</td></tr> <tr><td>Telephone:</td><td></td></tr> <tr><td>Facsimile:</td><td></td></tr> <tr><td>E-mail address</td><td></td></tr> </table>	Public Body:		Attention:		Floor/Room number:		P.O. Box:		Street Address:		Town/City:		Post Code:		Country:	Ethiopia	Telephone:		Facsimile:		E-mail address	
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Telephone:																							
Facsimile:																							
E-mail address																							
<b>ITB 7.1 and 9.4</b>	<p><b>The deadline for submission of questions and/or clarifications is:</b></p> <p><b>Date:</b></p> <p><b>Time:</b></p>																						
<b>C. Preparation of Bids</b>																							
<b>ITC 11.1</b>	Language of the Bid shall be .																						
<b>ITB 12.5</b>	The Incoterms edition is:																						
<b>ITB 12.7</b>	<p>Prices quoted for each lot shall correspond to at least percent of the items specified for each lot.</p> <p>Prices quoted for each item of a lot shall correspond to at least percent of the quantities specified for each item of a lot.</p>																						
<b>ITB 13.1</b>	For those inputs to the Non-Consultancy Services that the Bidder expects to provide from inside Ethiopia the prices shall be quoted in																						
<b>ITB 14.1</b>	Bidder must provide in the Bidder Certification of Compliance Form information related to its professional qualification and capability for the current and the previous years in order to proof its professional capacity.																						
<b>ITB 15.2(b)</b>	As a proof of the bidder's financial standing the following documents need to be furnished:																						
<b>ITB 16.3</b>	Bidder must submit at least Certificates of satisfactory execution of contracts provided by contracting parties to the contracts successfully completed in the course of the past years with a budget of at least .																						
<b>ITB 16.7</b>	The Public Body undertake physical checking of current Bidder's technical qualifications and competence.																						

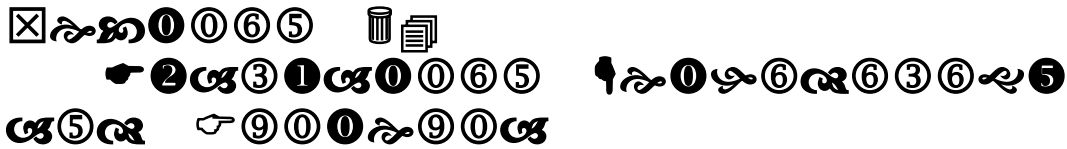
<b>ITB 18.1</b>	Alternative Bids be considered.																
<b>ITB 18.4</b>	If alternative bids are permitted under BDS Clause 18.1 they must meet the following criteria:																
<b>ITB 19.1</b>	The bid validity period shall be: days.																
<b>ITB 20.1</b>	A bid security required. If a bid security is required, the amount of the bid security shall be .																
<b>ITB 22.1</b>	In addition to the original of the bid, the number of copies required is: .																
<b>ITB 22.1</b>	Bidders required to submit bid documents in two envelopes containing the technical and financial proposals separately. <ul style="list-style-type: none"> <li>• Technical proposal shall be consisted of mandatory documentary evidence listed in the ITB Clause 22.2 (a) to (e);</li> <li>• Financial proposal shall be consisted of Price Schedule for the Services offered, as stated in the ITB Clause 22.2 (f).</li> </ul>																
<b>D. Submission and Opening of Bids</b>																	
<b>ITB 24.1</b>	For <b>bid submission purposes</b> only, the Public Body's address is: <table border="1" style="margin-left: 20px;"> <tr> <td>Public Body:</td> <td></td> </tr> <tr> <td>Attention:</td> <td></td> </tr> <tr> <td>Floor/Room number:</td> <td></td> </tr> <tr> <td>P.O. Box:</td> <td></td> </tr> <tr> <td>Street Address:</td> <td></td> </tr> <tr> <td>Town/City:</td> <td></td> </tr> <tr> <td>Post Code:</td> <td></td> </tr> <tr> <td>Country:</td> <td>Ethiopia</td> </tr> </table> <p><b>The deadline for bid submission is:</b></p> <p><b>Date:</b></p> <p><b>Time:</b></p>	Public Body:		Attention:		Floor/Room number:		P.O. Box:		Street Address:		Town/City:		Post Code:		Country:	Ethiopia
Public Body:																	
Attention:																	
Floor/Room number:																	
P.O. Box:																	
Street Address:																	
Town/City:																	
Post Code:																	
Country:	Ethiopia																

<b>ITB 27.1</b>	<p>The <b>bid opening</b> shall take place at:</p> <table border="1" data-bbox="526 296 1385 573"> <tr> <td>Public Body:</td> <td></td> </tr> <tr> <td>Floor/Room number:</td> <td></td> </tr> <tr> <td>Street Address:</td> <td></td> </tr> <tr> <td>Town/City:</td> <td></td> </tr> <tr> <td>Post Code:</td> <td></td> </tr> <tr> <td>Country:</td> <td>Ethiopia</td> </tr> <tr> <td>Date:</td> <td></td> </tr> <tr> <td>Time:</td> <td></td> </tr> </table>	Public Body:		Floor/Room number:		Street Address:		Town/City:		Post Code:		Country:	Ethiopia	Date:		Time:	
Public Body:																	
Floor/Room number:																	
Street Address:																	
Town/City:																	
Post Code:																	
Country:	Ethiopia																
Date:																	
Time:																	
<b>E. Evaluation, and Comparison of Bids</b>																	
<b>ITB 32.2</b>	Bidder has to confirm that he accepts the correction of the calculation error within the period																
<b>ITB 35.4(b)</b>	Bidder must provide in the Bidder Certification of Compliance Form information about major relevant contracts successfully completed in the course of the past years.																
<b>ITB 35.5(b)</b>	The average annual turnover for the last business year of the Bidder must exceed times the amount of the financial proposal of the Bid.																
<b>ITB 36.2</b>	The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is:																
<b>ITB 36.6</b>	<p>Multiple award to one Bidder be permitted.</p> <p>The evaluation methodology to determine the lowest-evaluated combination of lots shall be detailed in Section 3 Evaluation Methodology and Criteria.</p>																
<b>F. Award of Contract</b>																	
<b>ITB 42.1</b>	<p>The percentage by which quantities may be increased is: .</p> <p>The percentage by which quantities may be decreased is: .</p>																

## **Section 3. Evaluation Methodology and Criteria**

### **Table of Contents**

<b>1.</b>	<b>Professional, Technical, and Financial Qualification Criteria</b>	<b>1</b>
<b>2.</b>	<b>Determining the Successful Bid</b>	<b>1</b>
<b>3.</b>	<b>Evaluation of Multiple Contracts</b>	<b>3</b>
<b>4.</b>	<b>Alternative Bids</b>	<b>3</b>



This section, read in conjunction with Section 1, Instructions to Bidders and Section 2, Bid Data Sheet, contains all the factors, methods and criteria that the Public Body shall use to evaluate a bid and determine whether a bidder has the required qualifications. No other factors, methods or criteria shall be used.

**1. Professional, Technical, and Financial Qualification Criteria**

The following qualification criteria will be applied to Bidders. In the case of bids submitted by a consortium, these qualification criteria will be applied to the consortium as a whole :

**1.1 Professional Qualifications and Capability of the Bidder (ITB Clause 14)**

- (a).  At least staff currently work for the Bidder;
- (b).  Among the staff mentioned in sub-clause (a) should be at least ;
- (c).

**1.2 Technical Qualifications, Competence, and Experience of the Bidder (ITB Clause 16)**

- (a).  The Bidder has successfully completed at least contracts with a budget of at least that of this contract in the past years;
- (b).

**1.3 Financial Standing of the Bidder (ITB Clause 15)**

- (a).  The average annual turnover calculated as total certified payments received for contracts in progress or completed within the last years must exceed times the amount of the financial proposal of the Bid;
- (b).

**2. Determining the Successful Bid**

According to the methodology defined in the Public Procurement Proclamation and Directives the Public Body shall select the successful bid by applying the following method:

- A.  The bid that is found to be substantially responsive to the professional, technical, and financial qualification requirements, technically compliant in relation to the technical specifications, and with the lowest price.
- B.  The bid that is found to be substantially responsive to the professional, technical, and financial qualification requirements, technically compliant in relation to the technical specifications, and with the lowest evaluated bid The lowest evaluated bid shall be the bid offering better economic advantage ascertained on the basis of factors affecting the economic value of the bid.

**A. The Bid with the Lowest Price**

- 2.1 The bids shall be examined to confirm that all documentary evidence establishing the Bidders' qualifications requested in ITB Clause 21 have been provided;
- 2.2 After confirming the bids comprise all mandatory documentary evidence establishing the Bidder's qualification the Public Body will rule on the legal, technical, professional, and



financial admissibility of each bid, classifying it as compliant or non-compliant with qualification requirements set forth in the Bidding Document;

- 2.3 The Public Body will then analyze the bids' technical conformity in relation to the technical specifications, classifying them technically compliant or non-compliant.
- 2.4 The Public Body shall continue evaluation of bids that have been determined to be substantially responsive with rectification of nonconformities and omissions in bids, if any.
- 2.5 The Public Body shall examine all bids to ascertain whether there are any arithmetic errors in computation and summation. The Public Body shall notify bidders on adjusted calculation errors and request bidders to confirm that they accept the correction of the calculation error within the time limit of three days from the receiving of the notification.
- 2.6 After evaluation of legal, professional, technical, and financial admissibility of bids the Public Body shall award of the contract the bidder whose bid has been determined to be substantially responsive to the Bidding Documents and with the lowest price.

**B. Determining the Lowest Evaluated Bid Offering the Best Economic Advantage**

2.7 Provided all mandatory legal, professional, technical, and financial requirements have been met all technically compliant Bids shall be evaluated and scored using the two-stage bid evaluation and scoring method. In accordance with ITB Clause 36.4(f), the Public Body's evaluation of the Bid will take into account, in addition to the bid price, the following additional evaluation criteria in order of their importance and their proportional weight in the total system of evaluation, as specified below:

- (a). The additional evaluation criteria and their weighting factor that indicate their level of importance are determined, as follows:

Priority	Name of criteria	Proportional value in %
1.	Criterion I	
2.	Criterion II	
3.	Criterion III	
4.	Criterion IV	
I	Total Additional Criteria (1+2+3+4)	
II	Bid Price	
III	Sum Total (I+II)	100

- (b). The Public Body will evaluate any additional criterion using the following scoring scale:

SCORING		DESCRIPTION
10	Excellent	Exceeds the requirements of the criteria significantly and in beneficial ways/very desirable
9	Very Good	Exceeds the requirements of the criteria in ways which are beneficial to our needs
7-8	Good	Fully meets the requirement of the criteria
5-6	Average	Adequately meets most of the requirements of the criteria. May be lacking in some areas that are not critical.
3-4	Poor	Addresses all of the requirements of the criterion to the minimum acceptable level.
1-2	Very Poor	Minimally addresses some, but not all, of the requirements of the criteria or lacking in critical areas.
0	Unsatisfactory	Does not satisfy the requirements of the criteria in any manner.

- 2.8 Individual weighted scores for all technical criteria shall be weighted according to the set proportional weighting factors. The weighted result shall be calculated by multiplying the score by the proportional weighting factor of the individual criterion. The total score for the Bid determined through this method will be the basis for ranking Bids.
- 2.9 Where two bidders get equal merit points in the evaluation, preference shall be given to local services.
- 2.10 The Public Body may require bidders scoring equal merit points in the evaluation to submit further proposals on certain aspects of the bid with a view to identifying the successful bidder.
- 2.11 Where by reason of the bidders scoring equal merit points not submitting final proposals they are invited to submit, or by reason of the evaluation result of the final proposals submitted by the bidders being still equal, the successful bidder can not be singled out, the successful bidder shall be determined by casting lot in the presence, as far as possible, of the bidders concerned.

### **3. Evaluation of Multiple Contracts**

Since in accordance with ITB Sub-Clause 36.6 the Public Body be allowed to award one or multiple lots to more than one Bidder, the following methodology shall be used for award of multiple contracts:

To determine the lowest-evaluated lot combinations, the Public Body shall:

- (a). evaluate only lots or contracts that include at least the percentages of items per lot and quantity per item as specified in ITB 12.7;
- (b). take into account:
  - (i) the lowest-evaluated bid for each lot that meets the requirement of evaluation criteria;
  - (ii) the price reduction per lot and the methodology for their application as offered by the Bidder in its bid; and
  - (iii) the contract-award sequence that provides the optimum economic combination, taking into account any limitations due to constraints in supply or execution capacity.

### **4. Alternative Bids**

Alternative Bids, if permitted under BDS Clause 18.1, will be evaluated as follows:

The Public Body shall only apply the following criteria for evaluation of Alternative Bids:

## **Section 4. Bidding Forms**

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<b>3.</b>	Technical Qualifications, Competence, and Experience in the Procurement Object	6
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**A. Bid Submission Sheet****Place and Date****Procurement Reference Number:****To:**

**Addis Ababa  
Ethiopia**

**SUBMITTED BY<sup>1</sup>:**

	<b>Complete Legal Name and Address of the Seat of the Bidder</b>	<b>Nationality<sup>2</sup></b>
<b>Leader<sup>3</sup></b>		
<b>Member</b>		
<b>Etc ...</b>		

In response to your Bidding Document for the above Procurement Number:, we, the undersigned, hereby declare that:

- (a) We have examined and accept in full the content of the Bidding Document for the, Procurement Number: We hereby accept its provisions in their entirety, without reservation or restriction.
- (b) We offer to perform in conformity with the Bidding Documents and in accordance with the delivery schedule specified in the Schedule of Requirements the following Services: ;
- (c) Warranty period for offered Services is .
- (d) The total price of our Bid, excluding any discounts offered in item (d) below is: ;
- (e) The discounts offered and the methodology for their application are:  
 Unconditional Discounts: If our bid is accepted, the following discounts shall apply. .  
 Methodology of Application of the Discounts: The discounts shall be applied using the following method: ;  
 Conditional Discounts: If our bid(s) are accepted, the following discounts shall apply. .  
 Methodology of Application of the Discounts: The discounts shall be applied using the following method: ;
- (f) Our bid shall be valid for a period of days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before expiry of that period;

<sup>1</sup> One signed original Bid Submission Form must be supplied together with the number of copies specified in the Instruction to Bidders.

<sup>2</sup> Country in which the legal entity is registered.

<sup>3</sup> Add/delete additional lines for members as appropriate. Note that a subcontractor is not considered to be a member for the purposes of this bidding procedure. If this bid is being submitted by an individual bidder, the name of the bidder should be entered as "leader" and all other lines should be deleted.

- (g) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to:
  - i. Those prices;
  - ii. The intention to submit a bid; or
  - iii. The methods or factors used to calculate the prices offered.
- (h) The prices in this bid have not been and will not be knowingly disclosed by the , directly or indirectly, to any other bidder or competitor before bid opening.
- (i) We, including any subcontractors for any part of the contract resulting from this procurement process, are eligible to participate in public procurement in accordance with ITB Clause 4.1 and have not been debarred by a decision of the Public Procurement and Property Administration Agency from participating in public procurements for breach of our obligation under previous contract ;
- (j) We are not insolvent, in receivership, bankrupt or being wound up, not have had our business activities suspended and not be the subject of legal proceedings for any of the foregoing;
- (k) We have fulfilled our obligations to pay taxes according to Ethiopian Tax laws
- (l) We have read and understood the provisions on fraud and corruption in GCC Clause 5 and confirm and assure to the Public Body that we will not engage ourselves into these evil practices during the procurement process and the execution of any resulting contract;
- (m) We have not committed an act of embezzlement, fraud or connivance with other bidders.
- (n) We have not given or have been offered to give inducement or bribe to an official or procurement staff of the Public Body to influence the result of the bid in our favor.
- (o) We are not participating, as Bidders, in more than one bid in this bidding process, other than alternative bids in accordance with the Bidding Document;
- (p) We do not have any conflict of interest and have not participated in the preparation of the original Schedule of Requirements for the Public Body;
- (q) If our bid is accepted, we commit to submit a performance security in accordance with the GCC Clause 49 of the Bidding Documents, in the amount of for the due performance of the Contract;
- (r) We, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries ];
- (s) Offered Services do not originate in a country in respect of which the Government of the Federal Democratic Republic of Ethiopia has imposed trade ban;
- (t) Offered Services do not originate in a country under trade embargo of the Security Counsel of the United Nations in which transacting with any business organization or individual who is the national of that country is prohibited;
- (u) We will inform the Public Body immediately if there is any change in the above circumstances at any stage during the implementation of the contract. We also fully recognize and accept that any inaccurate or incomplete information deliberately provided in this bid may result in our exclusion from this and other contracts funded by the Government of the Federal Democratic Republic of Ethiopia.
- (v) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall not constitute a binding contract between us, until a formal contract is prepared and executed.

(w) We understand that you reserve the right to reject any or all bids that you may receive.

Name

In the capacity of .

Signed

Duly authorized to sign the bid for and on behalf of .

Dated on [insert day] day of ], 20

**Attachments:**

1. Valid trade license indicating the stream of business in which the is engaged;
2. VAT registration certificate issued by the tax authority
3. A valid tax clearance certificate issued by the tax authority ;
4. Business organization registration certificate or trade license issued by the country of establishment ;
5. Relevant professional practice certificates.
6. Bid Security; and
7. Other documents requested by the Public Body.

*Note to Bidders: This Price Schedule should be signed by a person with the proper authority to sign documents for the Bidder. It should be included by the Bidder in its bid. The Bidder may reproduce this in landscape format but is responsible for its accurate reproduction.*

## B. Price Schedule

**Place and Date**

**Procurement Reference No.:**

**Alternative No.:**

**To:**

**Addis Ababa**

Item No. <sup>4</sup>	Description of Services <sup>5</sup>	Country of Origin	Input Qty	Unit of measure	Unit Price in	Total Price in
<b>Bid Price in</b>						
	<b>Local Inputs to be Used</b>	<b>Ethiopia</b>	<b>Qty</b>	<b>Unit</b>	<b>Unit Price in ETB</b>	<b>Total Price in ETB</b>
<b>Bid Price in ETB</b>						

**Name**

In the capacity of

Signed

Duly authorized to sign the bid for and on behalf of Dated on [insert day] day of ], 20

<sup>4</sup> Insert Item Number from Technical Offer, Column 1, Section 6, Schedule of Requirements

<sup>5</sup> Insert description of the Non-Consultancy Services from Technical Offer, Column 2, Section 6, Schedule of Requirements.

### C. Bidder Certification of Compliance<sup>6</sup>

**Place and Date**

**Procurement Reference Number:**

**To:**

**Addis Ababa  
Ethiopia**

#### 1. General Information About the Bidder

Bidder's Legal Name:	
In case of Joint Venture, legal name of each party:	
Place of Registration:	
Legal Address in Country of Registration:	
Authorized Representative Information	Name: Position: Address: Telephone/Fax: E-mail address:
Attached copies of original documents of:	<input type="checkbox"/> In case of JV, letter of intent to form JV including a draft agreement, or agreement governing formation of JV, in accordance with ITB Sub-Clause 4.1
	<input type="checkbox"/> Form Data on Joint Ventures
	<input type="checkbox"/> In case of government owned entity from the Public Body's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITB Sub-Clause 4.4.

We have attached an official written statement by a power of attorney (or notary statement, etc.) proving that the above person, who signed the bid on behalf of the company/joint venture/consortium, is duly authorized to do so.

#### 2. Financial Standing

has adequate financial resources to manage this Contract as established by our financial statements, audited by an independent auditor, submitted in this Bid. The following table contains our financial data. These data are based on our annual audited accounts. Figures in all columns have been provided on the same basis to allow a direct, year-on-year comparison to be made.

<sup>6</sup> One signed original Bidder Certification of Compliance Form must be supplied together with the number of copies specified in the Instruction to Bidders. If this bid is being submitted by a joint venture/consortium, the data in the tables below must be the sum of the data provided by the joint venture/consortium members.



FINANCIAL DATA	Historic Information for Previous Years in				
	Year 2	Year 1	Last Year	Current Year	Average
<b>A. Information from Balance Sheet</b>					
1. Total Assets					
2. Total Liabilities					
I. Net Value (1-2)					
3. Current Assets					
4. Short-term debts					
II. Working Capital (3-4)					
<b>B. Information from Income Statement</b>					
1. Total Revenue					
2. Pre-tax Profits					
3. Losses					

Along with financial data we provided above we have attached the following documents as proof of our financial standing, as required in the BDS:

- (a).
- (b).

Attached documents comply with the following conditions:

- Documents reflect the financial situation of the Bidder or partner to a Joint Venture, and not sister or parent companies;
- Historic financial statements are audited by a certified accountant;
- Historic financial statements are complete, including all notes to the financial statements;
- Historic financial statements correspond to accounting periods already completed and audited.

Annual Turnover Data	
Year	Amount and Currency
Average Annual Turnover*	

\*Average annual turnover calculated as total certified payments received for contracts in progress or completed over the number of years specified in Section 3, Evaluation and Qualification Criteria, Sub-Factor 1.3(a), divided by that same number of years.

**3. Technical Qualifications, Competence, and Experience in the Procurement Object**

As proof of the technical and professional ability in providing the Services listed in our Bid the tables below summarize the major relevant contracts successfully completed in the course of the past years with a budget of .

Each partner of a Joint Venture should separately provide details of its own relevant contracts.

Name of Bidder or partner in a Joint Venture:	
1. Name of Contract	
Country	

<b>Name of Bidder or partner in a Joint Venture:</b>	
<b>2. Name of client</b>	
Address of client	
Name of contact person	
Function of contact person	
Telephone number	
E-mail address	
<b>4. Nature of Non-Consultancy services relevant to the contract for which the Bidding Documents are issued</b>	
<b>5. Contract role (check one)</b>	<input type="checkbox"/> Prime Contractor; <input type="checkbox"/> Subcontractor; <input type="checkbox"/> Partner in a Joint Venture
<b>6. Overall supply value in</b>	
<b>7. Date of award/completion</b>	
<b>8. Final acceptance issued (check one)</b>	Yes: <input type="checkbox"/> Not Yet <input type="checkbox"/> No: <input type="checkbox"/>
<b>9. Number of staff provided</b>	
<b>10. Indicate the approximate percent of total contract value of Non-Consultancy services undertaken by subcontract, if any, and the nature of such Non-Consultancy services</b>	
<b>11. Other relevant information</b>	

The Clients' Certificates concerning the satisfactory execution of contract are attached to this document

**4. Professional Qualifications and Capabilities**

In order to proof our professional qualifications and capability the following table contains personnel statistics for the current and the two previous years.

Average manpower	Year before last		Last year		This year	
	Overall	Specialists in Technical Area	Overall	Specialists in Technical Area	Overall	Specialists in Technical Area
<b>Permanent</b>						
<b>Temporary</b>						
<b>TOTAL</b>						

The following Team Skill Matrix identifies the skills that are relevant to the role in the contract team and are required for successful execution of the contract:

<b>Expert Name</b>			
<b>Role:</b>	(e.g., Project Manager, Technical Specialist, etc)		
<b>Knowledge</b>	<b>Knowledge Level</b>	<b>Resume Page Reference</b>	<b>Comments</b>
<b>Experience</b>	<b>Knowledge Level</b>	<b>Resume Page Reference</b>	<b>Comments</b>

<b>Additional Knowledge and Experience</b>	<b>Knowledge Level</b>	<b>Resume Page Reference</b>	<b>Comments</b>

Experience indicated in the matrix is backed up in the individual’s resume.

We have used the following ratings in order to accurately reflect the skill ratings of our team:

U	Understanding	Has exposure to education in the subject area but has not used this skill set in practice.
W	Working	Has limited working experience using this skill set.
P	Proficient	Has hands-on experience using this skill set to implement between 2 to 5 projects of various scope/complexity.
X	Expert	Has hands-on experience using this skill set in a key role to implement more than 5 projects of various scope/complexity.

**5. Quality Assurance / Managerial and Control Procedures**

**6. Equipment and Facilities**

**7. The major items of equipment proposed for carrying out the Services are:**

Item of Equipment	Description, make and age (years)	Condition (new, good, poor) and number available	Owned, leased, or to be purchased

**8. Bidder's Audit Agency**

**9. Organization of Firm**

**10. Bank Account Number and Bank Address**

The bank account into which payment should be made is the following:

Name  
In the capacity of .

Signed

Duly authorized to sign the bid for and on behalf of .

Dated on [insert day] day of ], 20

Attachments:

1. Statement issued by a power of attorney authorizing the signatory of the Bid;
2. Audited financial statements;

3. Documents required as proof of the bidder's financial standing, as required in the BDS.
4. Certificates of satisfactory execution of contracts provided by contracting parties to the contracts successfully completed in the course of the past years, as required in the BDS.
5. Individual's resume, as required in the BDS.

**D. Form - Data on Joint Venture/Consortium**

Date:

Procurement Reference Number:

Alternative No:

1.	<b>Name of Joint Venture/Consortium</b>	
2.	<b>Managing Board's Address</b>	
	P.O. Box:	
	Street Address:	
	Town/City:	
	Post Code:	
	Country:	
	Telephone:	
	Facsimile:	
	E-mail address	
3.	<b>Agency in the Federal Democratic Republic of Ethiopia, if any (in the case of a joint venture/consortium with a foreign lead member)</b>	
	P.O. Box:	
	Street Address:	
	Town/City:	
	Post Code:	
	Telephone:	
	Facsimile:	
	E-mail address	
4.	<b>Names of Members</b>	
	Member 1	
	Member 2	
	Etc.	
5.	Name of Lead member	
6.	<b>Agreement governing the formation of the joint venture/consortium</b>	
	Date of signature	
	Place	
7.	Proposed proportion of responsibilities between members (in %) with indication of the type of the works to be performed by each	

Name

In the capacity of .

Signed

Duly authorized to sign the bid for and on behalf of .

Dated            on            [insert            day]            day            of            ],            20

**E. Curriculum Vitae for Proposed Professional Staff**

**1. Proposed Position:** \_\_\_\_\_

**2. Name of Firm:** \_\_\_\_\_

**3. Name of Staff:** \_\_\_\_\_

**4. Date of Birth:** \_\_\_\_\_ **Nationality:** \_\_\_\_\_

**5. Education:** \_\_\_\_\_

**6. Membership of Professional Associations:** \_\_\_\_\_

**7. Other Training:** \_\_\_\_\_

**8. Countries of Work Experience:** \_\_\_\_\_

**9. Languages:** \_\_\_\_\_

**10. Employment Record:** \_\_\_\_\_

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

**Employer:** \_\_\_\_\_

**Positions held:** \_\_\_\_\_

<p><b>11. Detailed Tasks Assigned:</b></p>	<p><b>12. Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned:</b></p> <p>Name of assignment or project: _____</p> <p>Year: _____</p> <p>Location: _____</p> <p>Client: _____</p> <p>Main project features: _____</p> <p>Positions held: _____</p> <p>Activities performed: _____</p>
--	---

**13. Certification:**

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience. I understand that any willful misstatement described herein may lead to my disqualification or dismissal, if engaged.

\_\_\_\_\_ Date: \_\_\_\_\_

Full name of authorized representative: \_\_\_\_\_

*Note to Bidders: This Bid Security should be on the letterhead of the issuing Financial Institution and should be signed by a person with the proper authority to sign the Bid Security. It should be included by the Bidder in its bid.*

## F. Bid Security

**Date:**

**Procurement Reference Number:**

**Alternative No:**

**To:**

Whereas (hereinafter “the Bidder”) has submitted its bid dated for Procurement reference Number for the provision of , hereinafter called “the Bid.”

KNOW ALL PEOPLE by these presents that WE , of having our registered office at (hereinafter “the Guarantor”), are bound unto (hereinafter “the Public Body”) in the sum of , for which payment well and truly to be made to the aforementioned Public Body, the Guarantor binds itself, its successors or assignees by these presents. Sealed with the Common Seal of this Guarantor this ] day of , .

THE CONDITIONS of this obligation are the following:

1. If the Bidder withdraws its bid during the period of bid validity specified by the Bidder in the Bid Submission Sheet, except as provided in ITB Sub-Clause 19.2; or
2. If the Bidder, having been notified of the acceptance of its bid by the Public Body, during the period of bid validity, fails or refuses to:
  - (a) Execute the Contract; or
  - (b) Furnish the Performance Security, in accordance with the ITB Clause 45; or

We undertake to pay the Public Body up to the above amount upon receipt of its first written demand, without the Public Body having to substantiate its demand, provided that in its demand the Public Body states that the amount claimed by it is due to it, owing to the occurrence of one or more of the above conditions, specifying the occurred conditions.

This security shall remain in force up to and including twenty-eight (28) days after the period of bid validity, and any demand in respect thereof should be received by the Guarantor no later than the above date.

Name:

In the capacity of

Signed:

Duly authorized to sign the bid for and on behalf of:

Dated on [insert day] day of ], 20

## **Section 5. Eligible Countries**

### **A. Eligible Countries**

#### **Procurement Reference Number:**

All countries are eligible except countries subject to the following provisions.

A country shall not be eligible if:

- (c). As a matter of law or official regulation, the Government of the Federal Democratic Republic of Ethiopia prohibits commercial relations with that country, provided that the Government of the Federal Democratic Republic of Ethiopia is satisfied that such exclusion does not preclude effective competition for the provision of goods or related services required; or
- (d). 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 Government of the Federal Democratic Republic of Ethiopia prohibits any import of Goods from that country or any payments to persons or entities in that country.



# Part 2      Schedule of Requirement

## Section 6.      Terms of Reference

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**A. Purpose of Assignment****B. Scope of the Services Required****C. Schedule of Requirements**

- 1. List of Outcomes and Output Targets to be Delivered**
- 2. Functional Characteristics Required**
- 3. Required Performance Levels**
- 4. Specific Standards and Targets for the Service**
- 
- 5. Quality Assurance Requirements**
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- 7. Location Constraints and Limitations**
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- 9. Training Requirements**
- 10. Contract Management Requirements**
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- 12. Transition Arrangements**

**D. Documentation Requirements**

## E. Drawings and Performance Diagrams

### 1. List of Drawings Attached

**Procurement Reference Number:**

List of Drawings Attached		
No.	Drawing Title	Purpose

### 2. List of Performance Diagrams and Site Plans

**Procurement Reference Number:**

No	Diagram/Plan No	Diagram/Plan Name	Date
1.			
2.			
3.			
4.			

Drawings and diagrams are available for inspection from at the following address:

**Person in charge:**

**Tel.: Fax:**

**E-mail:**

Name

In the capacity of .

Signed

Duly authorized to sign the Bid for and on behalf of .

Dated on [insert day] day of ], 20

**F. Schedule of Requirements + Technical Offer + Compliance Sheet**

**Place and Date**

**Procurement Reference No.:**

**Alternative No.:**

**To:**

**Addis Ababa  
Ethiopia**

- A. The Bidders are requested to complete the template, as follows:
  - The second column shows the requested minimum requirements of the service(s) to be provided (not to be modified by the Bidder).
  - The fifth column to be filled in by the Bidder shows what services are offered (the words “compliant” or “yes” are not sufficient).
  - The sixth column allows the Bidder to state whether the offered services "comply" or do "not comply" giving details of the areas of non-compliance and to make remarks on his proposed service and to indicate references to the documentation supplied.
- B. The Bidder must be clear enough to allow the evaluators to make an easy comparison between the requested services and the offered services.

Item No.	Minimum Requirements of the Service(s) to be Provided	Unit of Measure	Quant	Services Offered	Remark on Compliance of Services Offered
1	2	3	4	5	6

1. **Technical Approach and Methodology**
2. **Work Plan**
3. **Quality Management and Tools**
- 
4. **Organization and Staffing**
5. **Completion Schedule**

Item No.	Description of Services	Unit of Measure	Qty	Completion Period												Delivery Location/ Site	
				1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>	9 <sup>th</sup>	10 <sup>th</sup>	11 <sup>th</sup>	12 <sup>th</sup>		


Item No.	Description of Services	Unit of Measure	Qty	Completion Period												Delivery Location/ Site	
				1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>	9 <sup>th</sup>	10 <sup>th</sup>	11 <sup>th</sup>	12 <sup>th</sup>		

**6. Team Composition and Task Assignments**

Professional Staff				
Name	Firm	Area of Expertise	Position	Tasks Assigned

**7. Staffing Schedule**

No	Name of Staff	Foreign/ National	Staff Input												Total Staff Input		
			1	2	3	4	5	6	7	8	9	10	11	12	Home	Field	Total
<b>Foreign</b>																	
1																	
2																	
3																	
n																	
<b>Subtotal 1</b>																	
<b>Local</b>																	
1																	
2																	
n																	
<b>Subtotal 2</b>																	
<b>Total</b>																	

 Full time input  
Part-time input

Name  
In the capacity of .

Signed

Duly authorized to sign the bid for and on behalf of .

Dated on [insert day] day of ], 20

**Attachment:**

1. Description of the organization of the warranty offered in accordance with the conditions laid down in GCC Clause 24;
2. Drawings and Performance Diagrams .

# Part 3 Contract

## Section 7. General Conditions of Contract

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## Section 7 General Conditions of Contract

### A. General Provisions

#### 1. Definitions

1.1 The headings and titles of these General Conditions of Contract shall not limit, alter or affect the meaning of the Contract.

1.2 The following words and expressions shall have the meanings hereby assigned to them:

(a). "Authorized Officer"	means a person designated as such by the Public Body from time to time as notified in writing to the Supplier to act as the representative of the Public Body for all purposes connected with the Contract, including any authorized representative of such person;
(b). "Bankrupt"	means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due;
(c). "Completion"	means the fulfilment of the Contract by the Supplier in accordance with the terms and conditions set forth in the Contract;
(d). "Contract Documents"	means the documents listed in the GCC, including all attachments, appendices, and all documents incorporated by reference therein, and shall include any amendments thereto;
(e). "Contract Manager"	means a person designated as such by the Supplier from time to time as notified in writing to the Public Body to act as the duly authorized representative of the Supplier for all purposes connected with the Contract, including any authorized representative of such person;
(f). "Contract Price"	means the money payable by the Public Body to the Supplier based on the Contract Agreement and shall include all royalties, license fees or similar expenses in respect of the making, use or exercise by the Supplier of any Intellectual Property or Intellectual Property Rights for the purpose of performing the Contract;
(g). "Contract"	means the binding Contract Agreement entered into between the Public Body and the Supplier, comprising Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein,
(h). "Day"	means calendar day;
(i). "Delivery"	means the transfer of the Services from the Supplier to the Public Body in accordance with the terms and conditions set forth in the Contract;
(j). "Eligible Countries"	means the countries and territories eligible as listed in Section 5 of the Bidding Document;

(k). "General Conditions of Contract"	hereinafter referred to as "GCC", means the conditions in this section of the Contract, which shall govern the Contract, except where amended by the SCC or Contract Agreement;
(l). "Good Industry Practice"	means the exercise of that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to the Contract and which are in accordance with any codes of practice published by relevant trade associations;
(m). "Government"	means the Government of the Federal Democratic Republic of Ethiopia;
(n). "In writing"	shall be interpreted to include any document which is recorded in manuscript or typescript;
(o). "Insurances"	all or any of the policies of insurance required to be maintained by the Supplier pursuant to this Contract as set out in Clause 43;
(p). "Liquidated damages"	means the compensation stated in the contract as being payable by Supplier to the Public Body for failure to perform the contract or part thereof within the periods under the contract, or as payable by Supplier to the Public Body for any specific breach identified in the contract;
(q). "Location"	means the location for the delivery of the Services as set out in the Contract or as otherwise agreed in writing between the Public Body and the Supplier;
(r). "Party"	means the Public Body or the Supplier and includes their permitted successors and "Parties" means both of them;
(s). "Personal Data"	means data that relates to a living individual who can be identified from such data, and/or from such data and other information which is in the possession of, or is likely to come into the possession of the Supplier and includes any expression of opinion about an individual and any indication of the intentions of the Supplier in respect of an individual;
(t). "Personnel"	means persons engaged by the Supplier or by any Subcontractor as employees and assigned to the performance of the Services or any part thereof;
(u). "Public Body"	means public body, which is partly or wholly financed by the Federal Government Budget, higher education institutions, and public institutions of like nature which has the powers and duties to conclude a Contract for the provision of Services, as named in the SCC;
(v). "Services Purchase Order"	or acronym "SPO" means an individual order for Services issued by Public Body pursuant to the terms, conditions, and pricing established in a Contract. Each individual Service Purchase Order is a binding contractual instrument and will reference and incorporate the terms and conditions of this Contract and specify the scope of work, delivery schedule, and price;
(w). "Services"	mean any object of procurement other than works, goods and consultancy services to be performed by the Supplier as described in the contract;
(x). "Special Conditions of Contract"	hereinafter referred to as "SCC", means the conditions attached to the Contract Agreement, which shall govern the Contract and shall

	prevail over these General Conditions of Contract;
(y). "Sub-contract"	means any contract or agreement or proposed contract or agreement between the Supplier (or any agent, servant or sub-contractor of the Supplier) and any third party whereby that third party agrees to provide to the Supplier (or the relevant agent, servant or sub-contractor of the Supplier) the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof but excluding contracts or agreements between the Supplier (or any agent, servant or sub-contractor of the Supplier) and any third party which relate to the provision of facilities or services in the normal course of operating the Supplier's (or the relevant agent's, servant's or sub-contractor's) business;
(z). "Subcontractor"	means any natural person, private or government entity, or a combination of the above, including its legal successors or permitted assigns, to whom any part of the Services to be performed or execution of any part of the Services is subcontracted by the Supplier;
(aa). "Supplier"	means a natural or juridical person under contract with a Public Body to supply services;;

## 2. Appointment

### 2.1 The Public Body appoints the Supplier to provide the Services:

- (a). Promptly (and in any event within any time targets as may be set out in the Section 6, Schedule of Requirements) and in a professional and courteous manner so as to reflect and promote the image of the Public Body;
- (b). Strictly in accordance with the Schedule of Requirements and all provisions of the Contract; and
- (c). In accordance with all applicable laws and regulations of the Federal Democratic Republic of Ethiopia and Good Industry Practice; and
- (d). In accordance with the policies, rules, and procedures of the appropriate Authority as amended from time to time.
- (e). In accordance with the quality standards set by the Quality and Standards Authority of Ethiopia (QSAE) and applicable international standards;
- (f). In accordance with the terms and conditions of appointment as provided in this Clause in consideration of the Contract Price.

## 3. Relationship of the Parties

- 3.1 The Supplier shall not incur any liabilities on behalf of the Public Body or enter into any contract or obligation on behalf of the Public Body.
- 3.2 The Supplier shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture, or other joint relationship between the parties to the Contract.
- 3.3 Subject to the provisions of the Contract, the Supplier shall be solely responsible for the manner in which the Contract is performed. All employees, representatives, or Subcontractors engaged by the Supplier in connection with the performance of the Contract shall be under the complete

control of the Supplier and shall not be deemed to be employees of the Public Body, and nothing contained in the Contract or in any subcontract awarded by the Supplier shall be construed to create any contractual relationship between any such employees, representatives, or Subcontractors and the Public Body.

#### **4. Due Diligence**

4.1 The Supplier acknowledges that it:

- (a). Has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Public Body;
- (b). Has raised all relevant due diligence questions with the Public Body before the Effective Date; and
- (c). Has entered into this Contract in reliance on its own due diligence alone.

4.2 The Supplier acknowledges that it has inspected the Operating Environment and has advised the Public Body of any aspect of the Operating Environment that is not suitable for the provision of the Services and that the specified actions to remedy the unsuitable aspects of the Operating Environment, together with a timetable for and the costs of those actions, have been specified in the relevant parts of the Contract for the Pre-Operational Phase.

4.3 If the Supplier has either failed to inspect the Operating Environment or failed to notify the Customer of any required remedial actions in accordance with Clause 4.2 then the Supplier shall not be entitled to recover any additional costs or charges from the Public Body relating to any unsuitable aspects of the Operating Environment nor shall the Supplier be entitled to seek relief in respect of any Default arising from such failure. The responsibility shall be on the Supplier to prove to the Public Body that any work to Public Body's Premises is required in respect of a latent structural defect and the additional costs or charges are reasonable and necessary. The Supplier shall not incur such additional costs or charges without obtaining the Public Body's prior written consent.

4.4 Any disputes relating to due diligence shall be resolved in accordance with the Ethiopian Law.

#### **5. Fraud and Corruption**

5.1 It is the Government of the Federal Democratic Republic of Ethiopia's policy to require that Public Body, as well as bidders/suppliers, to observe the highest standards of ethics during the procurement and the execution of contracts. In pursuance of this policy, the Government of the Federal Democratic Republic of Ethiopia represented by the Public Procurement and Property Administration Agency (herein referred to as the Agency) requires that Contracting Authorities shall include in bidding documents, provisions against corrupt practices.

5.2 The Agency defines, for the purposes of these provisions, the terms set forth below as follows:

- (a). "Corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of any thing of value to influence the action of a public official in the procurement process or in contract execution, and
- (b). "Fraudulent practice" is any act or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation.
- (c). "Collusive practices" is a scheme or arrangement between two or more Suppliers, with or without the knowledge of the Public Body, designed to establish prices at artificial, non competitive levels, and
- (d). "Coercive practices" is harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a

contract.

(e). "Obstructive practice" is

(i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede the Federal Ethics and Anticorruption Commission, the Federal Auditor General and the Public Procurement and Property Administration Agency or their auditors' investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent their from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or

(f). acts intended to materially impede the exercise of inspection and audit rights provided for under GCC Sub-clause 45.2.

5.3 The Agency will debar a Supplier from participation in public procurement for a specified period of time if it at any time determines that the Supplier has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a contract.

5.4 The Agency reserves the right, where a Supplier has been found by a national or international entity to have engaged in corrupt or fraudulent practice, to declare that such a Supplier is ineligible, for a stated period of time, to be awarded a Government funded contract.

5.5 The Agency will have the right to require that, in contracts funded by the Government of Ethiopia, a provision be included requiring suppliers to permit the Agency to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Agency, if the supplier engages in any corrupt practice.

5.6 Any communications between the Supplier and the Public Body or the Agency related to matters of alleged fraud or corruption must be made in writing.

## **6. Interpretation**

6.1 If the context so requires it, singular means plural and vice versa.

6.2 In these terms and conditions, words referring any particular gender include all other genders.

6.3 Entire Agreement

The Contract constitutes the entire agreement between the Public Body and the Supplier and supersedes all communications, negotiations and agreements of parties with respect thereto made prior to the date of Contract.

6.4 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

6.5 Nonwaiver

(a). Subject to GCC Sub-Clause 6.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

(b). Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must

specify the right and the extent to which it is being waived.

#### 6.6 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

### **B. The Contract**

#### **7. Contract Documents**

7.1 The documents forming the Contract shall be interpreted in the following order of precedence in the event of any conflict between the documents comprising this Contract:

- (a). Agreement;
- (b). The Special Conditions of Contract;
- (c). The General Conditions of Contract;
- (d). Bid Submission Sheet with Annexes;
- (e). Price Schedule;
- (f). List of accepted items including their unit price;
- (g). Bidder Certification of Compliance with Annexes;
- (h). Schedule of Requirements + Technical Offer + Compliance Sheet with Annexes;
- (i). Any other document listed in the SCC as forming part of the Contract.

7.2 All documents forming the Contract are intended to be correlative, complementary, and mutually explanatory.

7.3 Any action required or permitted to be taken, and any document required or permitted to be provided, under the Contract by the Public Body or the Supplier may be taken or provided by the authorized representatives specified in the SCC.

7.4 The Contract constitutes the entire agreement between the Public Body and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

#### **8. Governing Law**

8.1 The Contract shall be governed by and interpreted in accordance with the laws of the Federal Democratic Republic of Ethiopia, unless otherwise stated in SCC.

#### **9. Language**

9.1 The Contract as well as all written and oral communication and documents relating to the Contract exchanged by the Supplier and the Public Body, shall be in language specified in the SCC. Supporting documents and printed literature that are part of the Contract may be in another language, but any documents provided in another language must be accompanied by an accurate translation into language specified in the SCC. For purposes of interpretation of the Contract, this translation shall govern.

9.2 The Supplier shall bear all costs of translation to the governing language and all risks of the

accuracy of such translation.

## **10. Notices and written communications**

- 10.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. The term “in writing” means communicated in written form with proof of receipt.
- 10.2 Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SCC.
- 10.3 A Party may change its address for notice hereunder by giving the other Party notice in writing of such change to the address specified in the SCC.

## **11. Authorized Officers**

- 11.1 Any notice, information or communication given to or made by an Authorized Officer shall be deemed to have been given or made by the Public Body.
- 11.2 The Supplier shall decline from supplying the Services to any of the Public Body's staff who are not Authorized Officers.

## **12. Assignment**

- 12.1 An assignment is a written agreement by which the Supplier transfers its contract or part thereof to a third party.
- 12.2 The Supplier shall not, without the prior written consent of the Public Body, assign the Contract or any part thereof, or any benefit or interest thereunder, except in the following cases.
- (a). A charge, in favor of the Supplier's bankers, of any monies due or to become due under the Contract; or
  - (b). Assignment to the Supplier's insurers of the Supplier's right to obtain relief against any other person liable in cases where the insurers have discharged the Supplier's loss or liability.
- 12.3 For the purpose of GCC Clause 12.2 the approval of an assignment by the Public Body shall not relieve the Supplier of its obligations for the part of the Contract already performed or the part not assigned.
- 12.4 If the Supplier has assigned his Contract without authorization, the Public Body may, without giving formal notice thereof, apply as of right the sanctions for breach of Contract provided for in GCC Clauses 18 and 20.
- 12.5 Assignees must satisfy the eligibility criteria applicable for the award of the Contract and they can not be in any of the situations excluding them from participating in Contract.
- 12.6 Every assignment shall be subject to the provisions of this Contract and shall incorporate the terms and conditions of this Contract.

## **13. Subcontracting**

- 13.1 A sub-contract shall be valid only if it is a written agreement by which the Supplier entrusts performance of a part of the Contract to a third party.

- 13.2 In the event the Supplier requires the services of sub-contractors that are not included in the Contract, the Supplier shall obtain the prior written approval and clearance of Public Body for all sub-contractors. The services to be sub-contracted and the identity of the subcontractors shall be notified to the Public Body. The Public Body shall with due regard to the provisions of GCC Clause 10 within 15 days of receipt of the notification, notify the Supplier of its decision, stating reasons should he withhold such authorization.
- 13.3 The terms of any sub-contract shall be subject to and conform to the provisions of this Contract.
- 13.4 The Public Body shall have no contractual relations with the Sub-Contractors.
- 13.5 Sub-contractors must satisfy the eligibility criteria applicable to the award of the contract and they can not be in any of the situations excluding them from participating in contract.
- 13.6 The Supplier shall be responsible for the acts, defaults and negligence of his Sub-Contractors and their agents or employees, as if they were the acts, defaults or negligence of the Supplier, his agents or employees. The approval by the Public Body of the sub-contracting of any part of the contract or of the Sub-Contractor to perform any part of the services shall not relieve the Supplier of any of his obligations under the contract.
- 13.7 If the Supplier enters into a subcontract without approval, the Public Body may apply, as of right without giving formal notice thereof, the sanctions for breach of contract provided for in GCC Clauses 18 and 20.
- 13.8 If a Sub-Contractor is found by the Public Body to be incompetent in discharging its duties, the Public Body may request the Supplier forthwith, either to provide a Sub-Contractor with qualifications and experience acceptable to the Public Body as a replacement, or to resume the implementation of the tasks itself.

#### **14. Modifications and Contract Amendments**

- 14.1 The Public Body may at any time request the Supplier through notice in accordance GCC Clause 10, to make changes within the general scope of the Contract.
- 14.2 If any such change causes increase or decrease in the time required for the Supplier's performance of any provisions under the Contract an equitable adjustment shall be made in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Public Body's change order.
- 14.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties.
- 14.4 Any change to the terms of the Contract must be recorded in writing and executed by authorized signatory of the Supplier and the Authorized Officer. Such record of the change in question must address all consequential amendments required to be made to the Contract as a result of such change.
- 14.5 Changes will take effect as from the date specified in the signed record of change and shall not have retrospective effect unless expressly provided for in such record.
- 14.6 Each record of change must be dated and sequentially numbered. Each of the Public Body and the Supplier will be entitled to an original executed counterpart of the record of variation.
- 14.7 Except as provided in any such record of variation, the Contract will continue in full force and effect.



**15. Change in Laws and Regulations**

15.1 Unless otherwise expressly agreed in the SCC, if, after the deadline for submission of the Bid, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the Federal Democratic Republic of Ethiopia where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Contract Price shall not be correspondingly increased or decreased and/or the Delivery Date shall not be adjusted to the extent that Supplier has thereby been affected in the performance of any of its obligations under the Contract.

**16. Taxes and Duties**

16.1 The Supplier shall bear and pay all taxes, duties, and levies imposed on the Supplier, by all municipal, state or national government authorities, both within and outside the Federal Democratic Republic of Ethiopia, in connection with the provision of the Services to be supplied under the Contract, unless otherwise specified in the SCC.

**17. Force Majeure**

17.1 For the purposes of the Contract, “Force Majeure” shall mean an event or events which are beyond the reasonable control of a Supplier, and which makes a Supplier’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes:

- (a). An official prohibition preventing the performance of a contract,
- (b). A natural catastrophe such as an earthquake, fire, explosion lightening, floods, or other adverse weather conditions, or
- (c). International or civil war, or
- (d). The death or a serious accident or unexpected serious illness of the supplier, or
- (e). Other instances of Force Majeure identified as such by the civil code.

17.2 The following occurrences shall not be deemed to be cases of Force Majeure:

- (a). A strike or lock-out taking of a party or affecting the branch of business in which he carries out his activities, or
- (b). An increase or reduction in the price of raw materials necessary for the performance of the contract, or
- (c). The enactment of new legislation where by the obligations of the debtor becomes more onerous, or
- (d). Any event which is caused by the negligence or intentional action of a Supplier or such Supplier’s Subcontractors or agents or employees; or
- (e). Any event which a diligent Party could reasonably have been expected to both:
  - (i) Take into account from the effective date of the Contract; and
  - (ii) Avoid or overcome in the carrying out of its obligations; or
- (f). Insufficiency of funds or failure to make any payment required hereunder.

17.3 The failure of a Supplier to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, the Contract insofar as such inability arises from an event of Force Majeure, provided that the Supplier affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out

the terms and conditions of the Contract.

- 17.4 A Supplier affected by an event of Force Majeure shall take all reasonable measures to
- (a). Remove such Supplier's inability to fulfill its obligations hereunder with a minimum of delay; and
  - (b). Minimize the consequences of any event of Force Majeure.
- 17.5 A Supplier affected by an event of Force Majeure shall notify the Public Body of such event as soon as possible, and in any event not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- 17.6 During the period of their inability to perform the Services as a result of an event of Force Majeure, the Supplier shall be entitled to continue to be paid under the terms of the 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 Services after the end of such period.
- 17.7 Not later than thirty (30) days after the Supplier, as the result of an event of Force Majeure, has become unable to provide the Services, the Parties shall consult with each other in good faith and use all reasonable endeavors to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Contract..

## **18. Breach of Contract**

- 18.1 Either party commits a breach of contract where it fails to discharge any of its obligations under the specific contract.
- 18.2 Where a breach of contract occurs, the party injured by the breach shall be entitled to the following remedies:
- (a). Compensation / Claim for liquidated damages as specified in GCC Clause 26; and/or
  - (b). Termination of the contract.
- 18.3 In any case where the Public Body is entitled to damages, it may deduct such Suspension damages from any sums due to the Supplier or call on the appropriate guarantee.

## **19. Suspension of Assignment**

- 19.1 The Public Body may, by written notice of suspension of the assignment to the Supplier, suspend all payments to the Supplier hereunder if the Supplier fails to perform any of its obligations under the Contract provided that such notice of suspension shall:
- (a). Specify the nature of the failure; and
  - (b). Request the Supplier to remedy such failure within a period not exceeding thirty (30) days after receipt by the Supplier of such notice of suspension.

## **20. Termination**

- 20.1 Termination shall be without prejudice to any other rights or powers under the contract of the Public Body and the Supplier.
- 20.2 In addition to the grounds for termination defined in these General Conditions, the Public Body may, by not less than thirty days written notice of termination to the Supplier stating the reason for termination of the contract and the date on which such termination becomes effective. (except

in the event listed in paragraph (o) below, for which there shall be a written notice of not less than sixty days), such notice to be given after the occurrence of any of the events specified in GCC Sub-Clause 20.2 (a) to (p), terminate the Contract if:

- (a). The supplier fails to provide any or all of the Services within the period specified in the Contract, or within any extension thereof granted by the Public Body pursuant to GCC Clause 62 or if the Services do not meet the Schedule of Requirements stated in the Contract;
  - (b). The Supplier fails to remedy a failure in the performance of their obligations as specified in a notice of suspension of assignment pursuant to GCC Clause 19 within thirty days of receipt of such notice of suspension of assignment or within such period other agreed between the Parties in writing;
  - (c). The Supplier becomes insolvent or bankrupt or enters into any agreements with its creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary, other than for a reconstruction or amalgamation;
  - (d). The Supplier fails to comply with any final decision reached as a result of direct informal negotiation pursuant to GCC Sub-Clause 25.2 hereof;
  - (e). The Supplier is unable as the result of Force Majeure, to perform a material portion of the Services for a period of not less than sixty days;
  - (f). The Supplier assigns the contract or sub-contracts without the authorization of the Public Body;
  - (g). The Supplier has been guilty of grave professional misconduct proven by any means which the Public Body can justify;
  - (h). The Supplier has been declared to be in serious breach of contract financed by the Federal Democratic Republic of Ethiopia's budget for failure to comply with its contractual obligations.
  - (i). The Supplier has been engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
  - (j). Any organizational modification occurs involving a change in the legal personality, nature or control of the Supplier, unless such modification is recorded in an addendum to the Contract;
  - (k). Any other legal disability hindering performance of the Contract occurs;
  - (l). The Supplier fails to provide the required guarantees or insurance, or the person providing the underlying guarantee or insurance is not able to abide by its commitments.
  - (m). Where the procurement requirement of the Public Body changes for any apparent or obvious reason;
  - (n). Where it emerges that the gap between the value of the Contract and the prevailing market price is so wide that allowing the implementation of the contract to proceed places the Public Body concerned at a disadvantage;
  - (o). The Public Body, in its sole discretion and for any reason whatsoever, decides to terminate the Contract.
  - (p). The accumulated liquidated damage reached its maximum as stated in GCC Clause 26.1(b).
- 20.3 The Supplier may, by not less than thirty days written notice to the Public Body, of such notice to be given after the occurrence of any of the events specified in GCC Sub-Clause 20.3 (a) to (d) terminate the Contract if:
- (a). The Public Body fails to pay any money due to the Supplier pursuant to the Contract and not subject to dispute pursuant to Clause 25, within forty-five days after receiving written notice

- from the Supplier that such payment is overdue;
- (b). The Public Body is in material breach of its obligations pursuant to the Contract and has not remedied the same within forty-five days (or such longer period as the Supplier may have subsequently approved in writing) following the receipt by the Public Body of the Supplier's notice specifying such breach;
  - (c). The Supplier is unable as the result of Force Majeure, to perform a material portion of the Services for a period of not less than sixty days; or
  - (d). The Public Body fails to comply with any final decision reached as a result of settlement of disputes pursuant to GCC Clause 25 hereof.
- 20.4 If either Party disputes whether an event specified GCC Sub-Clauses 20.2 (a) to (n) or GCC Sub-Clause 20.3 has occurred, such Party may, within forty-five days after receipt of notice of termination from the other Party, refer the matter to settlement of disputes pursuant to GCC Clause 25 and the Contract shall not be terminated on account of such event except in accordance with the terms of any resolution award.
- 20.5 In the event the Public Body terminates the Contract pursuant to the GCC Sub-Clause 20.2 (a) to (n) the Public Body may procure, upon such terms and in such manner as it deems appropriate, Services similar to those undelivered or not performed, and the Supplier shall be liable to the Public Body for any additional costs for such similar Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.
- 20.6 If the Public Body terminates the Contract in the event specified in GCC Sub-Clause 20.2 (o) the notice of termination shall specify that termination is for the Public Body's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- 20.7 If the Public Body terminates the Contract in the event specified in GCC Sub-Clause 20.2 (o) Public Body shall reimburse the Supplier for all reasonable costs incurred by the Supplier prior to receipt of the notice of termination.
- 20.8 In the event the Public Body terminates the Contract pursuant to the GCC Sub-Clause 20.2 (c) termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Public Body.
- 20.9 In the event of any termination by the Public Body under this Clause, for the avoidance of doubt, the Supplier will not be restricted from making any claim in respect of the Contract Price to the extent the Contract Price is outstanding and due and payable.

## **21. Arrangements on Termination**

- 21.1 The Public Body and the Supplier agree that termination or expiry of the Contract shall not affect either Party's obligations which the Contract provides shall survive the expiration or termination of the Contract.
- 21.2 After termination or expiry all data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the provided Services shall be delivered by the Supplier to the Public Body provided that the Supplier shall be entitled to keep copies thereof to the extent that the information contained therein does not relate solely to the Services or to the extent that the Supplier is required by law to maintain copies thereof or to the extent that the Supplier was possessed of such data documents and records prior to the date of the Contract. In addition, the Supplier shall co-operate fully with the Public Body during the handover leading to the termination of the Contract. This co-operation shall extend to full access to all documents, reports,

summaries and any other information required to achieve an effective transition without disruption to routine operational requirements.

## **22. Cessation of Rights and Obligations**

- 22.1 Upon termination of the Contract pursuant to GCC Clauses 20, or upon completion of the Contract, all rights and obligations of the Parties hereunder shall cease, except
- (a). Such rights and obligations as may have accrued on the date of termination or expiration;
  - (b). The Supplier's obligation to permit inspection, copying and auditing of their accounts and records set forth in GCC Clause 45; and
  - (c). Any right which a Party may have under the Governing Law
  - (d). The warranty right provided for under Clause 24.

## **23. Cessation of Services**

- 23.1 Upon termination of the Contract by notice of either Party to the other pursuant to GCC Clause 20 the Supplier shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum.

## **24. Warranty**

- 24.1 The Supplier warrants to the Public Body that it has all necessary corporate standing and authorization to enter into and be bound by the terms of the Contract. At all times in connection with the Contract, the Supplier shall be an independent Supplier and nothing in the Contract shall create a relationship of agency or partnership or a joint venture as between the Supplier and the Public Body and accordingly the Supplier shall not be authorized to bind the Public Body.
- 24.2 The Supplier warrants that the Contract Price payable by the Public Body in respect of Service under this Contract and the price charged by the Supplier for items which are used in the provision of a Service (where those items are charged separately), will be no less favorable than the price paid by any other purchasers of a substantially similar product or service from the Supplier in similar circumstances and using substantially the same terms and conditions.
- 24.3 The Supplier shall, on request from the Public Body, provide to the Public Body all documents and other information reasonably required to substantiate the prices of the separately charged items claimed.
- 24.4 Unless otherwise specified in the SCC, the warranty shall remain valid for twelve (12) months after the Services have been provided to and accepted at the location indicated in the GCC Clause 50.2.

## **25. Settlement of Disputes**

- 25.1 During any dispute, including a dispute as to the validity of the Contract, it is mutually agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Public Body requests in writing that the Supplier does not do so).
- 25.2 The Public Body and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement, controversy or dispute arising between them under or in connection with the Contract or interpretation thereof.

- 25.3 If a dispute arises between the Public Body and the Supplier in relation to any matter which cannot be resolved by the Authorized Officer and the Supplier's Contract Manager either of them may refer such dispute to the procedure described in ITB Sub-Clause 25.4.
- 25.4 In the second instance each of the Public Body and the Supplier shall appoint more senior representatives than those referred to in Sub-Clause 25.3 to meet solely in order to resolve the matter in dispute. Such meeting(s) shall be minuted and shall be chaired by the Public Body (but the chairman shall not have a casting vote). Such meeting(s) shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question at the discretion of the chairman.
- 25.5 If the Parties fail to resolve such a dispute or difference amicably within twenty-eight (28) days from the commencement of such procedure, either party may require that the dispute be referred for resolution through the courts in accordance with Ethiopian Law.
- 25.6 Only those Public Bodies that are allowed by law to proceed to arbitration can do so.

## **26. Liquidated Damages**

- 26.1 Except as provided under GCC Clause 17, if the Supplier fails to perform any or all of the Services within the period specified in the Contract, the Public Body may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages the following:
- (a). A penalty of 0.1% or 1/1000 of the value of undelivered item for each day of delay until actual delivery or performance,
  - (b). The cumulative penalty to be paid by the supplier shall not exceed 10% of the contract price.
- 26.2 If the delay in performing the contract affects its activities, the Public Body may terminate the contract by giving advance notice to the Supplier pursuant to GCC Clause 20 without any obligation to wait until the penalty reaches 10% of the value of the Contract.

## **27. Commencement of Services and Supplier's Program**

- 27.1 The Supplier shall commence the Services within the time period from the date the Contract is signed by both parties as specified in the SCC.
- 27.2 If the Contract has not become effective within such time period after the date of Contract stated in GCC Sub-Clause 27.1, either Party may, by not less than four weeks' written notice to the other Party, declare the Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.
- 27.3 Before commencement of the Services, the Supplier shall submit to the Public Body for approval its Program of implementation of the tasks, broken down by activity and by month and include the following information:
- (a). the order and timing of the operations the Supplier plans to do in order to provide the Services;
  - (b). a general description of the method including the sequence, by month and by nature which the Supplier proposes to carry out the Services;
  - (c). an organization chart containing the names and qualifications of the staff responsible for the Site
  - (d). a plan for the setting out and organization of the Site
  - (e). such further details and information as the Public Body may reasonably require.

- 27.4 The Public Body may, at any time, instruct the Supplier to change the Program for any reason.
- 27.5 The Public Body reserves the right to change any of the dates in the Program from time to time by providing written notice of such changes to the Supplier. If the Supplier objects to any changes it shall promptly notify the Public Body of its reasonable objections to such changes.
- 27.6 If at any time the Supplier is delayed or becomes aware of any circumstance which may prevent him from meeting program requirements he shall forthwith inform the Public Body and propose any measures which may be practicable to recover the delay or to avoid or reduce the anticipated delay.
- 27.7 The Supplier shall comply at his own cost with all reasonable instructions of the Public Body given for the purpose of achieving program requirements or minimizing or recovering any cost overrun or delay.

## **28. Intended Completion Date**

- 28.1 Unless terminated earlier pursuant to GCC Clause 20, the Supplier shall complete the activities by the Intended Completion Date, as specified in the SCC.

## **29. Confidentiality**

- 29.1 The Public Body and the Supplier shall keep confidential and shall not disclose to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract if their disclosure would be contrary to law, would impede law enforcement, would not be in public interest, would prejudice legitimate commercial interest of the parties or would inhibit fair competition.. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Public Body to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under this Clause.
- 29.2 The Public Body shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the Contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Public Body for any purpose other than providing the Services required for the performance of the Contract.
- 29.3 The obligation of a party under this Clause, however, shall not apply to any Confidential Information that:
- (a). The Public Body or Supplier need to share with any other institutions participating in the financing of the Contract;
  - (b). Now or hereafter enters the public domain other than by breach of the Contract or other act or omissions of that Party;
  - (c). Is obtained by a third party who is lawfully authorized to disclose such information;
  - (d). Can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
  - (e). Is authorized for release by the prior written consent of the other party.
- 29.4 The Parties shall not be prevented from using any general knowledge, experience or skills which were in their possession prior to the commencement of the Contract;
- 29.5 The Supplier authorizes the Public Body to disclose the Confidential Information to such

person(s) as may be notified to the Supplier in writing by the Public Body from time to time to the extent only as is necessary for the purposes of auditing and collating information so as to ascertain a realistic market price for the services performed in accordance with the Contract, such exercise being commonly referred to as "benchmarking". The Public Body shall use all reasonable endeavors to ensure that such person(s) keeps the Confidential Information confidential and does not make use of the Confidential Information except for the purpose for which the disclosure is made. The Public Body shall not without good reason claim that the lowest price available in the market is the realistic market price.

29.6 The Supplier agrees that:

- (a). Subject to Sub-Clause 29.6 (b), the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Public Body;
- (b). Where the Public Body is managing a request as referred to in Sub-Clause 29.6 (a), the Supplier shall co-operate with the Public Body making the request and shall respond within five (5) working days of any request by it for assistance in determining how to respond to a request for disclosure.

29.7 The Supplier shall procure that its Subcontractors shall provide the Public Body with a copy of all information in its possession or power in the form that the Public Body requires within five (5) working days (or such other period as the Public Body may specify) of the Public Body requesting that Information.

29.8 The Public Body may consult the Supplier in relation to any request for disclosure of the Supplier's Confidential Information in accordance with all applicable guidance.

29.9 The above provisions of this Clause shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract.

29.10 This Clause 29 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data. Except as aforesaid and unless otherwise expressly set out in the Contract, this Clause 29 shall remain in force for a period of 3 years after the termination or expiry of this Contract.

29.11 In the event that the Supplier fails to comply with this Clause 29, the Public Body reserves the right to terminate the Contract by notice in writing with immediate effect.

### **30. Miscellaneous**

30.1 Any decision, act or thing that the Public Body is required or authorized to take or do under the Contract may be taken or done by any person authorized, either generally or specifically, by the Public Body to take or do that decision, act or thing, provided that upon receipt of a written request the Public Body shall inform the Supplier of the name of any person so authorized.

30.2 The Supplier may from time to time upon the request of the Public Body, execute any additional documents and do any other acts or things which may reasonably be required to implement the provisions of the Contract.

30.3 Any provision of the Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

30.4 The failure by the Public Body and Supplier to insist upon the strict performance of any provision, term or condition of the Contract or to exercise any right or remedy consequent upon the breach



thereof shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.

- 30.5 Each Party shall bear its own expenses in relation to the preparation, execution and implementation of the Contract including all costs legal fees and other expenses so incurred.
- 30.6 The Supplier warrants represents and undertakes to the Public Body that there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier and that there are no material contracts existing to which the Supplier is a party which prevent it from entering into the Contract; and that the Supplier has satisfied itself as to the nature and extent of the risks assumed by it under the Contract and gathered all information necessary to perform its obligations under the Contract and all other obligations assumed by it.
- 30.7 The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies provided by any other contract or document. In this provision "right" includes any power, privilege, remedy, or proprietary or security interest.

### **C. Obligations of the Public Body**

#### **31. Provision of Information and Assistance**

- 31.1 Unless otherwise indicated in SCC, the Public Body shall supply the Supplier with any information or documentation at its disposal which may be relevant to the performance of the contract. Such documents shall be returned to the Public Body at the end of the period of the Contract.
- 31.2 The Public Body shall issue to its employees, agents and representatives all such instructions as may be necessary or appropriate to facilitate the prompt and effective performance of the Services.
- 31.3 The Public Body shall give the Supplier access to its premises, where required for the performance of the Services, and assist the Supplier with any security documentation necessary at the premises where the Services are to be performed in accordance with the Contract.

### **D. Payment**

#### **32. Contract Price**

- 32.1 The Contract Price shall be as specified in the Agreement subject to any additions and adjustments thereto, or deductions therefrom, as may be made pursuant to the Contract.
- 32.2 The Contract Price shall include the total cost for performing the Services and shall include payments for all Personnel, materials and supplies used for the Services and any other overhead or incidental costs.
- 32.3 The Contract Price shall be paid in accordance with Clause 34.
- 32.4 Prices charged by the Supplier for the Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid.
- 32.5 Except as provided in GCC Sub-Clause 15.1, the Contract price may only be increased above amounts stated in GCC Sub-Clause 32.4 if the Parties have agreed to additional payments in accordance with GCC Clause 14.

**33. Price Adjustments**

- 33.1 Contracts Prices shall be fixed throughout the Supplier's performance of the Contract and not subject to adjustment on any account.
- 33.2 This provision remains in effect for the duration of the contract once it becomes effective.
- 33.3 Any discount offered by the Supplier under this Contract cannot be reduced during the Term of this Contract without the agreement in writing of the Public Body.

**34. Mode of Billing and Terms of Payment**

- 34.1 In consideration of the Supplier's due and proper performance of its obligations under the Contract, the Supplier may charge the Public Body the Contract Price in accordance with this Clause.
- 34.2 The Supplier's request for payment shall be made to the Public Body in writing, accompanied by an invoice. Invoices shall not be rendered by the Supplier until completion of delivery of all of the Services which are the subject of the Service Purchase Order unless otherwise agreed in writing.
- 34.3 The only sums payable by the Public Body to the Supplier for the provision of the Services shall be the Contract Price. All other costs, charges, fees and expenses of whatever kind arising out of or in connection with the Contract shall be the responsibility of the Supplier.
- 34.4 In accordance with the Contract, where the Supplier is required to provide Deliverables, the Public Body shall be entitled to withhold payment of the Contract Price pending receipt and acceptance of the Deliverables in accordance with the Terms of Reference.
- 34.5 Unless otherwise agreed in writing by the Public Body and the Supplier, at the end of each calendar month, the Supplier shall invoice the Public Body for any Services provided by the Supplier in that calendar month. Such invoice shall be correctly rendered if:
- (a). The invoice is addressed to the Public Body's officer specified in the Service Purchase Order to receive invoices and identifies the number of relevant Service Purchase Order and Contract;
  - (b). The invoice includes date of issuance and its serial number;
  - (c). The amount claimed in the invoice is due for payment;
  - (d). The amount specified in the invoice is correctly calculated in accordance with the Contract;
  - (e). The invoice is set out in a manner that enables the Public Body's to ascertain which Service the invoice covers (description, quantity, and unit of measure) and the respective Price, or Charge payable in respect of that Service;
  - (f). The invoice is accompanied by the relevant Certificate of Acceptance signed by the Public Body's official representative certifying that the amount specified in the invoice is in accordance with the Contract and delivered Services meet all Service Purchase Order and acceptance criteria requirements;
  - (g). The invoice includes the name and address of Supplier to whom payment is to be sent;
  - (h). The invoice includes the name, title, and phone number of person to notify in the event of defective invoice;
  - (i). The invoice includes Supplier's bank account information, and
  - (j). The invoice is, where appropriate, certified as sales tax exempt.

Failure to provide such information will entitle the Public Body's to delay payment of the Contract

Price until such information is provided.

- 34.6 The Public Body shall pay any invoice submitted by the Supplier in accordance with GCC Clause 34.5 within the period specified in the SCC and upon receipt by the Public Body of such invoice.
- 34.7 All payment to the Supplier under this Contract shall be made in currency specified in the SCC.
- 34.8 Where the performance of the Supplier does not meet the required standard then a deduction as set out in the Terms of Reference or as agreed by the Parties may be made.
- 34.9 The invoice provided to the Public Body by the Supplier in accordance with this Clause shall show appropriate taxes separately.
- 34.10 The Supplier will keep accurate books and records in relation to the provision of the Services in accordance with sound and prudent financial management. All such books and records shall be made available to the Public Body at regular intervals of not less than quarterly.
- 34.11 If the Supplier requests an advance payment the advance payment may be paid by the Public Body in an amount not exceeding 30% of the total contract price.
- 34.12 As a prerequisite for such advance payment Supplier shall submit advance payment security in an amount equal to the advance payment it receives in the form of a certified cheque or unconditional bank guarantee at its option from a reputable bank, together with its request for advance payment as per the contract.
- 34.13 Should the advance payment security cease to be valid and the Supplier fails to re-validate it, a deduction equal to the amount of the advance payment may be made by the Public Body from future payments due to the Supplier under the Contract.
- 34.14 If a Contract is terminated for any reason, the guarantee securing the advance payment may be invoked in order to recover the balance of the advance payment still owed by the Supplier.

### **35. Resources**

- 35.1 The Contract Price includes payment in full for all facilities and resources required by the Supplier to provide the Services in accordance with the Contract. Any facilities or resources needed or used by the Supplier to perform the Services shall be provided by the Supplier without additional cost to the Public Body.
- 35.2 The Supplier confirms its satisfaction of its abilities and experience in all respects to perform the Services pursuant to the Contract to the reasonable satisfaction of the Public Body.

## **E. Obligations of the Supplier**

### **36. Supplier's Responsibilities**

- 36.1 The Supplier shall perform the Services under the contract with due care, efficiency and diligence, in accordance with best professional practices.
- 36.2 The Supplier shall respect and abide by all laws and regulations in force. The Supplier shall indemnify the Public Body against any claims and proceedings arising from any infringement by the Supplier, its subcontractors or their employees of such laws and regulations.
- 36.3 The Supplier shall ensure that services conform to applicable environmental and quality standards, that no chemical or other product/equipment is used in such a way as to cause negative impact on the environment in general and occupational health hazards for the personnel of the Public Body in particular, and shall employ the most recent technology, safe and effective equipment,

machinery, materials and methods, as necessary. The Supplier shall always act, in respect of any matter relating to this Contract, to safeguard the Public Body's legitimate interests, pursuant to Conditions of this Contract

- 36.4 The Supplier shall obtain the Public Body'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, it being understood that the Supplier shall remain fully liable for the performance of the Services by the Subcontractor and its Personnel pursuant to the Contract;
  - (b). Any other action that may be specified in the SCC.
- 36.5 The Supplier shall furnish the Public Body with any personnel data or information required by the Public Body to arrange the provision of documentation required in accordance with GCC Clause 31.3.
- 36.6 The Supplier shall comply with administrative orders given by the specific contract manager. Where the Supplier considers that the requirements of an administrative order go beyond the authority of the specific contract manager or of the scope of the contract, it shall, on pain of being time-barred, notify the specific contract manager, explaining its opinion, within 15 days after receipt thereof. Execution of the administrative order shall not be suspended because of this notice.
- 36.7 The Supplier shall treat all documents and information received in connection with the contract as private and confidential, and shall not, save in so far as may be necessary for the purposes of the performance thereof, publish or disclose any particulars of the contract without the prior consent in writing of the Public Body or the specific contract manager after consultation with the Public Body. If any disagreement arises as to the necessity for any publication or disclosure for the purpose of the contract, the decision of the Public Body shall be final.

### **37. Joint Venture, Consortium or Association**

- 37.1 If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Public Body for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Public Body.

### **38. Eligibility**

- 38.1 The Supplier and its Subcontractors shall have the nationality of an eligible country. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.
- 38.2 The Supplier and its Subcontractors shall provide Personnel who shall be citizens of eligible countries and use goods with their origin from an eligible country.

### **39. Code of Conduct**

- 39.1 The Supplier shall, at all times, act loyally and impartially and as a faithful adviser to the Public Body in accordance with the rules and/or code of conduct of its profession as well as with appropriate discretion. The Supplier shall, in particular, at all times refrain from making any public statements concerning the Services without the prior approval of the Public Body, and from

engaging in any activity which conflicts with its obligations towards the Public Body under the contract. It shall not commit the Public Body without its prior written consent, and shall, where appropriate, make this obligation clear to third parties.

- 39.2 If the Supplier or any of its Subcontractors, personnel, agents or servants offers to give or agrees to offer or to give or gives to any person, any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any act in relation to the contract or any other contract with the Public Body, or for showing favor or disfavor to any person in relation to the contract or any other contract with the Public Body, then the Public Body may terminate the contract, without prejudice to any accrued rights of the Supplier under the contract.
- 39.3 The payments to the Supplier under the contract shall constitute the only income or benefit it may derive in connection with the contract and neither it nor its personnel shall accept any commission, discount, allowance, indirect payment or other consideration in connection with, or in relation to, or in discharge of, its obligations under the contract.
- 39.4 The Supplier shall not have the benefit, whether directly or indirectly, of any royalty, gratuity or commission in respect of any patented or protected article or process used in or for the purposes of the contract or the project, without the prior written approval of the Public Body.
- 39.5 The Supplier and its staff shall maintain professional secrecy, for the duration of the contract and after completion thereof. In this connection, except with the prior written consent of the Public Body, neither the Supplier nor the personnel employed or engaged by it shall at any time communicate to any person or entity any confidential information disclosed to them or discovered by them, or make public any information as to the recommendations formulated in the course of or as a result of the services. Furthermore, they shall not make any use prejudicial to the Public Body, of information supplied to them and of the results of studies, tests and research carried out in the course and for the purpose of performing the contract.
- 39.6 The execution of the contract shall not give rise to unusual commercial expenses. If such unusual commercial expenses emerge, the contract will be terminated. Unusual commercial expenses are commissions not mentioned in the contract or not stemming from a properly concluded contract referring to the contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commission paid to a company which has every appearance of being a front company.
- 39.7 The Supplier shall supply to the Public Body on request supporting evidence regarding the conditions in which the contract is being executed. The Public Body may carry out whatever documentary or on-the spot checks it deems necessary to find evidence in case of suspected unusual commercial expenses.

#### **40. Conflict of Interests**

- 40.1 The Supplier shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests, which could arise during performance of the Contract, must be notified in writing to the Public Body without delay.
- 40.2 The Public Body reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. The Supplier shall ensure that its staff, including its management, is not placed in a situation, which could give rise to conflict of interests. Without prejudice to Clause 24, the Supplier shall replace, immediately and without compensation from the Public Body, any member of its staff exposed to such a situation.

- 40.3 The Supplier shall refrain from any contact, which would compromise its independence or that of its personnel. If the Supplier fails to maintain such independence, the Public Body may, without prejudice to compensation for any damage, which it may have suffered on this account, terminate the contract forthwith, without giving formal notice thereof.
- 40.4 The Supplier shall, after the conclusion or termination of the contract, limit its role in connection to the provision of the Services. Except with the written permission of the Public Body, the Supplier and any other supplier with whom the Supplier is associated or affiliated shall be disqualified from the execution of works, goods or other services for the Public Body in any capacity.

#### **41. Indemnification and Limitation of Liability**

- 41.1 At its own expense, the Supplier shall indemnify, protect and defend, the Public Body, its agents and employees, from and against all actions, claims, losses or damage arising from any act or omission by the Supplier in the performance of the Services, including any violation of any legal provisions, or rights of third parties, in respect of patents, trade marks and other forms of intellectual property such as copyrights.
- 41.2 At its own expense, the Supplier shall indemnify, protect and defend the Public Body, its agents and employees, from and against all actions, claims, losses or damages arising out of the Supplier's failure to perform its obligations provided that:
- (a). The Supplier is notified of such actions, claims, losses or damages not later than 30 days after the Public Body becomes aware of them;
  - (b). The ceiling on the Supplier's liability shall be limited to an amount equal to total Contract Price as stated in the SCC, but such ceiling shall not apply to actions, claims, losses or damages caused by the Supplier's willful misconduct;
  - (c). The Supplier's liability shall be limited to actions, claims, losses or damages directly caused by such failure to perform its obligations under the contract and shall not include liability arising from unforeseeable occurrences incidental or indirectly consequential to such failure.
- 41.3 The aggregate liability of the Supplier to the Public Body shall not exceed the total contract value.
- 41.4 The Supplier shall have no liability whatsoever for actions, claims, losses or damages occasioned by:
- (a). The Public Body omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Supplier, or requiring the Supplier to implement a decision or recommendation with which the Supplier disagrees or on which it expresses a serious reservation; or
  - (b). The improper execution of the Supplier's instructions by agents, employees or independent suppliers of the Public Body.
- 41.5 The Supplier shall remain responsible for any breach of its obligations under the contract for such period after the Services have been performed as may be determined by the law governing the contract.

#### **42. Insurance to be Taken Out by the Supplier**

- 42.1 Upon execution of this Framework Agreement and prior to beginning work under a Service Purchase Order the Supplier shall take out, maintain and shall cause any Subcontractors to take out, maintain, and keep in force at their own cost insurance coverage against the following risks

and terms and conditions:

- (a). Medical insurance for itself and other persons employed or contracted by it under the Contract. The Public Body shall be under no liability in respect of the medical expenses of the Supplier.
  - (b). The Supplier's liability in respect of sickness or industrial accident affecting its employees;
  - (c). Loss of, or damage to, the Public Body equipment used to perform the Contract;
  - (d). Civil liability in the event of accidents caused to third parties or to the Public Body and any employee of that Entity arising out of the performance of the Contract;
  - (e). Accidental death or permanent disability resulting from bodily injury incurred in connection with the Contract.
- 42.2 By requiring such insurance, Public Body shall not be deemed or construed to have assessed the risk that may be applicable to the Supplier under this Contract. The Supplier shall assess its own risks and if deemed to be appropriate and/or prudent, should maintain adequate limits and/or broader insurance coverage than that stipulated above. The Supplier is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.
- 42.3 Insurance shall be provided at the Supplier's expense and shall not be charged directly to the Public Body.
- 42.4 Insurance policies required by this clause shall be written by an Insurance Carrier licensed to do business in the Federal Democratic Republic of Ethiopia.
- 42.5 The insurance coverage shall be maintained for the entire duration of the Contract. The Public Body shall be notified by the Supplier or its Insurance Carrier at least 30 days prior to any material change to or cancellation of any of insurance coverage.
- (a). Upon execution of this Contract and prior to beginning work under a Service Purchase Order, the Supplier or its Insurance Carrier shall provide a Certificate(s) of Insurance (COI) evidencing compliance with all requirements for insurance coverage. The COI shall be submitted to the Public Body for review and approval. For the duration of the Contract, the Supplier or its Insurance Carrier shall provide updated COI's to evidence renewals or other changes to insurance policies or coverage.

### **43. Health and Safety**

- 43.1 While providing services, the Supplier shall comply, and shall ensure that its employees comply with, the requirements of relevant Health and Safety and other relevant legislation, including regulations and codes of practice issued thereunder, and with the Public Body's own policies and procedures.
- 43.2 The Supplier shall at all times maintain a specific Health and Safety at Work policy relating to the employment of his own staff whilst carrying out their duties in relation to the Contract on the Public Body's premises.
- 43.3 The Supplier will be required to nominate a Health and Safety Representative to liaise with the Authorized Officer on all Health and Safety matters.
- 43.4 The Supplier's staff shall follow a system of accident recording in accordance with the Public Body's accident recording procedure and the Supplier's own accident reporting procedures.
- 43.5 All notifiable accidents shall immediately be brought to the attention of the Authorized Officer.
- 43.6 The Supplier shall ensure the co-operation of its employees in all prevention measures designed

against fire, or any other hazards, and shall notify the Public Body of any change in the Supplier's working practices or other occurrences likely to increase such risks or to cause new hazards.

- 43.7 The Supplier's staff shall be trained to recognize situations which involve an actual or potential hazard including:
- (a). danger of personal injury to any person on the Public Body's premises and
    - (i) where possible, without personal risk, make safe any such situation; or
    - (ii) report any such situation to the Authorized Officer;
  - (b). fire risks and fire precautions and procedures including attendance at fire lectures/drills in accordance with the Public Body's policies;
  - (c). security;
  - (d). risk management;
  - (e). major incident;
- 43.8 The Supplier shall provide such first aid facilities and ensure that his staffs abide by such first aid procedures as shall be required by the Public Body.
- 43.9 The Supplier shall at any time ensure that the equipment used and procedures operated conform to the Public Body's Fire Policy.
- 43.10 The Supplier shall co-operate with the Public Body's Fire, Security and Safety Advisors and shall comply with their reasonable instructions.

#### **44. Intellectual and industrial property rights**

- 44.1 All reports and data such as maps, diagrams, drawings, specifications, plans, statistics, calculations, databases, software and supporting records or materials acquired, compiled or prepared by the Supplier in the performance of the contract shall become and remain the absolute property of the Public Body. The Supplier shall, upon completion of the contract, deliver all such documents and data to the Public Body. The Supplier may not retain copies of such documents and data and shall not use them for purposes unrelated to the Contract without the prior written consent of the Public Body.
- 44.2 The Supplier shall not publish articles relating to the services or refer to them when carrying out any services for others, or divulge information obtained from the Public Body, without the prior written consent of the Public Body.
- 44.3 Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be the absolute property of the Public Body, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where intellectual or industrial property rights already exist.
- 44.4 The Supplier agrees to indemnify and keep indemnified the Public Body against any costs, claims, proceedings, expenses and demands arising from the use, application, supply or delivery of any Deliverable, process, article, matter or thing supplied under the Contract that would constitute or is alleged to constitute any infringement of any person's Intellectual Property Rights.

#### **45. Service Information**

- 45.1 The Supplier shall provide the Public Body the Service Information in such manner and upon such media as agreed between the Supplier and the Public Body for the sole use by the Public Body.
- 45.2 The Supplier warrants that the Service Information is complete and accurate as at the date upon



which it is delivered to the Public Body and that the Service Information does not contain any data or statement which gives rise to any liability on the part of the Public Body following publication of the same in accordance with this Clause 44.

- 45.3 In the event the Service Information ceases to be complete and accurate, the Supplier shall promptly notify the Public Body in writing of any modification or addition to or any inaccuracy or omission in the Service Information.
- 45.4 The Supplier grants the Public Body a non-exclusive royalty free license in perpetuity to use and exploit the Service Information and any Intellectual Property therein for the purpose of illustrating the range of the Services available pursuant to the Public Body contracts from time to time. No right to illustrate or advertise the Service Information is granted to the Supplier by the Public Body as a consequence of the license conferred by this Clause 44.4 or otherwise under the terms of this Contract.
- 45.5 The Public Body may reproduce for its sole use the Service Information provided by the Supplier in the Public Body's catalogue from time to time which shall be made available on the Federal Government of Ethiopia internal communications network in electronic format or made available on the Public Body's external website or any other electronic media of the Public Body from time to time.
- 45.6 Before any publication of the Service Information (electronic or otherwise) is made by the Public Body, the Public Body will submit a copy of the relevant sections of the Public Body's catalogue to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Public Body to exhibit the Service Information in any service catalogue as a result of the approval given by it pursuant to this Clause 44.6 or otherwise under the terms of this Contract.
- 45.7 Subject to Clauses 13 and 44.8, the Supplier agrees to indemnify and keep indemnified the Public Body against any liability, loss, costs, expenses, claims or proceedings whatsoever arising out of or in connection with any statement relating to the Services or information or material on or description of the Services provided by or on behalf of the Supplier which is included in the Public Body's catalogue from time to time or any associated material produced by the Public Body for the purpose of illustrating the range of the Services available pursuant to the Public Body contracts from time to time.
- 45.8 The Supplier shall not be required to indemnify or keep indemnified the Public Body against any liability, loss, costs, expenses, claims or proceedings whatsoever arising under Clause 44.7 as a result of the Public Body's willful or negligent misrepresentation of any statement relating to the Services or information or material on or description of the Services provided by or on behalf of the Supplier which is included in the Public Body's catalogue from time to time or any associated material produced by the Public Body for the purpose of illustrating the range of the Services available pursuant to the Public Body contracts from time to time.

#### **46. Accounting, Inspection and Auditing**

- 46.1 The Supplier shall keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and costs.
- 46.2 For the purpose of the examination and certification of the Public Body's accounts; or any examination of the economy, efficiency and effectiveness with which the Public Body has used its resources, the Federal Auditor General and the Public Procurement and Property Administration Agency or its auditors may examine such documents as he may reasonably require which are

owned, held or otherwise within the control of the Supplier and may require the Supplier to produce such oral or written explanation as he considers necessary. The Supplier acknowledges that it will fully cooperate with any counter fraud policy or investigation carried out by authorized body at any time.

#### **47. Data Protection**

- 47.1 The Supplier shall comply with all applicable data protection legislation. In particular the Supplier agrees:
- (a). To maintain appropriate technical and organizational security measures;
  - (b). To only process Personal Data for and on behalf of the Public Body, in accordance with the instructions of the Public Body and for the purpose of performing its obligations under the Contract;
  - (c). To allow the Public Body to audit the Supplier's compliance with the requirements of this Clause on reasonable notice and/or to provide the Public Body with evidence of its compliance with the obligations set out in this Clause.
- 47.2 The Supplier agrees to indemnify and keep indemnified the Public Body against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by the Public Body as a result of any claim made or brought by any individual or other legal person in respect of any loss, damage or distress caused to that individual or other legal person as a result of the Supplier's unauthorized processing, unlawful processing, destruction of and/or damage to any Personal Data processed by the Supplier, its employees or agents in the Supplier's performance of the Contract or as otherwise agreed between the Parties.

#### **48. Review**

- 48.1 The Supplier shall attend formal review meetings (each such meeting being a "Review"), as required by the Authorized Officer, to discuss the Public Body's levels of satisfaction in respect of the Services provided under the Contract and to agree any necessary action to address areas of dissatisfaction. The Supplier will not obstruct or withhold its agreement to any such necessary action. Such Reviews shall be attended by duly authorized and sufficiently senior employees of both the Public Body and the Supplier together with any other relevant attendees. The Parties shall agree a standing agenda for such Reviews.

#### **49. Performance Security**

- 49.1 The Supplier shall, within fifteen (15) days from signing the contract, provide a Performance Security for the due performance of the Contract in the amount specified in the SCC.
- 49.2 The proceeds of the Performance Security shall be payable to the Public Body as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 49.3 The Performance Security shall be denominated in currency specified in the SCC, and shall be in the form of cash, cheque certified by a reputable bank, letter of credit, or Bank Guarantee in the format specified in the SCC.
- 49.4 The Performance Security shall be discharged by the Public Body and returned to the Supplier not later than twenty-eight (28) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.

- 49.5 Notwithstanding the provision of GCC Sub-Clause 49.2 above, the Performance Security may be returned to the Supplier where the Procurement Endorsing Committee ascertains that the noncompliance of the Supplier does not affect the interest of, or entail additional cost on the Public Body and is not due to the fault of the Supplier.
- 49.6 The Public Body shall be required to submit any document in its possession in relation to a procurement in which it authorizes the return of the Performance Security to the Supplier and account for its action under the preceding GCC Sub-Clause 49.5 of this GCC to the Public Procurement and Property Administration Agency or other competent body if and when required to do so.

## **F. Performance of the Contract**

### **50. Scope of Services**

- 50.1 Subject to the SCC, the Services to be provided shall be as specified in the Section 6, Schedule of Requirements.
- 50.2 The Services shall be performed at Public Body's locations in accordance with any delivery instructions in the SCC, Service Purchase Order or as agreed by the Parties in writing.

### **51. Deliverables**

- 51.1 Wherever the Services require the Supplier to provide a Deliverable:
- (a). Such Deliverable will be delivered in the form prescribed and in accordance with the Terms of Reference. If no such form is prescribed in the Terms of Reference, the Supplier will provide Deliverables in a professional form to the requirements (including as to time of delivery) notified to the Supplier by the Authorized Officer;
  - (b). The Public Body may accept such Deliverable or reject it in its reasonable discretion on the grounds that such Deliverable is (in whole or in part) not of satisfactory quality and/or does not meet the brief set out in the Terms of Reference or the requirements otherwise made known to the Supplier by the Public Body;
  - (c). The Public Body will not reject any Deliverable (wholly or in part) without providing written reasons to the Supplier as to why such Deliverable has been rejected;
  - (d). Any dispute as to whether the Public Body has exercised its right to reject any Deliverable reasonably shall be resolved by the Settlement of Disputes Procedure; and
- 51.2 Any Deliverables which are rejected shall be replaced by the Supplier (at no extra charge to the Public Body) by Deliverables which are reasonably satisfactory to the Authorized Officer.

### **52. Performance of the Services**

- 52.1 Subject to GCC Clause 56.1, the Supplier shall provide at its own expense all staff, equipment, tools, appliances, materials or items required for the provision of the Services to the Contract Standard.
- 52.2 To the extent that the Terms of Reference include the date, format and method of delivery of the Services and Deliverables and/or the applicable performance measures, performance due-by dates, minimum performance levels and methods of performance measurement in respect of the Services, the Supplier will abide by the same.
- 52.3 Time shall be of the essence with regard to the obligations of the Supplier under the Contract.

- 52.4 If the Terms of Reference provides for performance of the Services in stages, the Supplier undertakes to perform the Services in strict compliance with the timetable for stages as provided in the Terms of Reference.
- 52.5 The Public Body and the Supplier will co-operate with each other in good faith and will take all reasonable action as is necessary for the efficient transmission of information and instructions and to enable the Public Body to derive the full benefit of the Contract. At all times in the performance of the Services, the Supplier will co-operate fully with any other Suppliers appointed by the Public Body in connection with other services at the Locations.
- 52.6 In addition to any more specific obligations imposed by the terms of the Contract, it shall be the duty of the Supplier to notify the Public Body of all significant changes to staffing, rates of pay or conditions of employment, or hours of work or other technological changes at least one month prior to the implementation of any such revised arrangements.
- 52.7 The Supplier shall provide information in a format, medium and at times specified by the Public Body, related to the performance of the Services as may be reasonably required.
- 52.8 If at any time the Supplier becomes aware of any act or omission or any proposed act or omission by the Public Body or by any member, official or employee of the Public Body which prevents or hinders or may prevent or hinder the Supplier from providing the Services in accordance with the Contract then the Supplier shall immediately inform the Authorized Officer of that fact. For the avoidance of doubt, the Supplier's compliance with this Clause shall not in any way relieve the Supplier of any of its obligations under the Contract.
- 52.9 The Public Body shall provide the Supplier with copies of its policies, rules, procedures and quality standards (and shall promptly inform the Supplier of any amendments to such documents) to enable the Supplier to comply with its obligations under the Contract.
- 52.10 The Public Body may, where necessary, require the Supplier to set up and maintain appropriate policies, rules, procedures and quality standards in relation to the employment of his own staff whilst carrying out their duties in relation to the Contract at the Location. This shall include, but not be limited to, disciplinary and grievance procedures. The Supplier shall provide the Public Body with copies of such policies, rules, procedures and quality standards (and shall promptly inform the Public Body of any amendments to such documents).
- 52.11 The Supplier will immediately notify the Public Body of any actual or potential problems relating to the Supplier's own suppliers that affects or might affect his ability to provide the Services.
- 52.12 The Supplier will be responsible for providing and maintaining the Services to the Contract Standard at all times and will ensure continuity of supply (at no extra cost to the Public Body) in accordance with the Terms of Reference. The Supplier must have in place contingency plans and arrangements which are approved by the Public Body to ensure continuity of supply.
- 52.13 The Supplier will immediately notify the Public Body of any actual or potential industrial action, including strike action, whether such action is of his own staff or others that affects or might affect his ability at any time to provide the Services.
- 52.14 The Supplier will be responsible for providing and maintaining the Services to the Contract Standard during industrial action, at no additional cost to the Public Body. The Supplier must have in place contingency plans and arrangements which are approved by the Public Body.
- 52.15 In the event of the Supplier being unable to maintain the Services to the Contract Standard, the Supplier shall without prejudice to the remedies of the Public Body permit the staff of the Public Body to have access to and unrestricted use of such machinery, equipment and materials which being the property of the Supplier deemed necessary to maintain the Services by the Public Body

during industrial action, or any other such occurrence, without additional charge.

### **53. Performance Measurement**

- 53.1 In addition to any more specific obligations imposed by the terms of the Contract, it shall be the duty of the Supplier to provide the Services to the Contract Standard which in all respects shall be to the satisfaction of the Authorized Officer.
- 53.2 The Supplier shall institute and maintain a properly documented system of quality control as set out in the Terms of Reference and which is to the satisfaction of the Authorized Officer to ensure that the Contract Standard is met.
- 53.3 In addition to any other rights of the Public Body under the Contract, the Authorized Officer shall be entitled to inspect the Supplier's quality control system referred to in Clause 53.2 above.
- 53.4 During the Contract Period, the Authorized Officer may inspect and examine the provision of the Services being carried out without notice at any time. The Supplier shall provide to the Public Body all such facilities as the Public Body may require for such inspection and examination.
- 53.5 If any part of any Service is found to be defective or different in any way from the Terms of Reference or otherwise has not been provided to the Contract Standard other than as a result of a default or negligence on the part of the Public Body, the Supplier shall at its own expense re-perform the Services in question (without additional remuneration) within such time as the Public Body may reasonably specify failing which the Public Body shall be entitled to procure performance of the defective Services from a third party or to execute the tasks in question itself. If the cost to the Public Body of executing or procuring such Services exceeds the amount that would have been payable to the Supplier for such Services, the excess shall be paid by the Supplier to the Public Body on demand in addition to any other sums payable by the Supplier to the Public Body in respect of the breach of Contract.
- 53.6 If the performance of the Contract by the Supplier is delayed by reason of any act or default on the part of the Public Body or, by any other cause that the Supplier could not have reasonably foreseen or prevented and for which it was not responsible, the Supplier shall be allowed a reasonable extension of time for completion of the Services so affected.
- 53.7 For each Service, the Public Body shall ascertain whether the Supplier's provision of the Service in question meets any performance criteria as specified in the Terms of Reference or, if the criteria are not so specified, meets the standards of a professional provider of the Services. On or before the fifteenth working day of each calendar month during the Contract Period and within 14 days after termination of the Contract, the Public Body may:
- (a). in respect of each of the Services during the preceding calendar month, provide to the Supplier a notice (each called a "Performance Notice") which shall set out a statement of the Public Body's dissatisfaction with the Supplier's performance and provision of the Services;
  - (b). each Performance Notice issued by the Public Body shall include a proposed rebate of the Contract Price commensurate to the under-performance of the Supplier as recorded in the Performance Notice;
  - (c). if the Supplier disputes any matter referred to in any Performance Notice and/or the proposed rebate of the Contract Price, the Supplier may raise this objection with the Public Body and if this matter is not resolved within 7 days the matter shall be referred to the Settlement of Disputes Procedure; and
  - (d). if the Supplier has not raised any objection to the Performance Notice within 7 days of receipt (or such other period as agreed between the Parties) then that Performance Notice shall be deemed to have been accepted by the Supplier and the rebate on the Contract Price referred to

therein shall become immediately effective.

- 53.8 The Public Body's rights under Clause 53 are without prejudice to any other rights or remedies the Public Body may be entitled to.
- 53.9 On request, the Supplier shall submit to the Public Body progress reports detailing its adherence to the timetable (if any) as set out in the Terms of Reference in a format approved by the Public Body. The submission and acceptance of such reports shall not prejudice any other rights or remedies of the Public Body under the Contract.
- 53.10 If required by the Public Body, the Parties shall co-operate in sharing information and developing performance measurement criteria with the object of improving the Parties' efficiency. Any such agreements shall be fully recorded in writing by the Public Body.

#### **54. Location**

- 54.1 Subject to satisfactory agreement between the Parties on price, the Public Body reserves the right to increase or reduce the number of Locations under the Contract at any time during the Contract Period.
- 54.2 Without prejudice to any other right or remedy the Public Body will endeavor to give as much notice as possible of increases or reductions to the number of Locations under the Contract, although a minimum period of time is not specified in these conditions.

#### **55. Use of Public Body's Sites**

- 55.1 The Public Body shall during the Contract Period permit the Supplier to use in connection with the provision of the Services certain Sites at the Location as set out in the Terms of Reference.
- 55.2 The Supplier shall use the Sites only in connection with the provision of the Services and shall ensure that the Supplier's staff uses the Sites only for that purpose.
- 55.3 The Supplier shall ensure that the Sites have a clean, tidy and professional appearance at all times.
- 55.4 The permission given to the Supplier to use the said Sites is personal to the Supplier and the Supplier's staff. Only the Supplier's own staff and persons making deliveries to the Supplier in connection with the provision of the Services may enter or use any part of the Sites without the prior written permission of the Public Body.
- 55.5 For the avoidance of doubt it is hereby declared that the permission to enter and use the said Sites is not the grant of a tenancy of any part of the Sites. The Public Body retains full possession and control over such Sites at all times and the Supplier shall not receive exclusive possession of or any estate or interest in, any such Sites.
- 55.6 The Public Body reserve the right at all times to permit third parties to use the Sites, subject to the rights granted to the Supplier pursuant to the Contract.
- 55.7 The Supplier shall keep the said Sites clean, tidy and properly secure.
- 55.8 The Public Body will provide a sufficient supply of water, gas and electricity to operate equipment used to provide the Services.
- 55.9 The Public Body will arrange for the disposal of refuse from authorized collection points as set out in the Terms of Reference.
- 55.10 The Supplier will not alter or modify any part of the Sites without the written permission of the Public Body, unless alteration or modification is part of the Services to be provided by the

Supplier.

**56. Equipment and Materials**

- 56.1 The Supplier shall be responsible for the provision and installation of all equipment and materials used in connection with the Contract except where these are transferred into the ownership of the Supplier under Clause 56.13 and 56.14.
- 56.2 Where equipment and materials are supplied by the Public Body these will be serviced and maintained by the Public Body.
- 56.3 The Contract Manager shall forthwith inform the Authorized Officer of any defects appearing in or losses of, or damage, occurring to the Public Body's equipment. The Supplier shall be liable to pay to the Public Body the cost of any replacement necessary as a result of loss or damage caused deliberately or negligently by the Supplier's staff.
- 56.4 In accordance with the Terms of Reference, the Supplier will, at his own expense, install all necessary equipment for the provision of the Services.
- 56.5 The Supplier shall ensure that all equipment used in connection with the Contract is maintained in good working order in compliance with manufacturer's instructions and current legislation.
- 56.6 All equipment and materials used by the Supplier shall comply with latest relevant Ethiopian Standards or International equivalent specifications where such exist and the Supplier shall upon request furnish the Authorized Officer with evidence to prove that such equipment and materials comply with this condition.
- 56.7 The Supplier shall:
- (a). establish effective planned maintenance programs; and
  - (b). make adequate arrangements for emergency remedial maintenance, to ensure continuity of the Services; and
  - (c). agree all equipment purchases with the Public Body; and
  - (d). ensure compliance with all regulations covering the inspection and testing of all equipment used at the Location in the provision of the Services; and
  - (e). maintain records, open for inspection by the Public Body of maintenance testing and certification.
- 56.8 Any communication or electrical equipment used by the Supplier in connection with the Contract shall not cause any interference with or damage to any equipment used by the Public Body.
- 56.9 Any communication or electrical equipment proposed to be used by the Supplier in connection with the Contract shall, at the discretion of the Public Body be tested and approved by the Public Body before use on the Public Body's premises.
- 56.10 Notwithstanding Clause 56.9 the Supplier shall be liable for any damage caused by any communication or electrical equipment used in connection with the Contract
- 56.11 The Public Body reserves the right to inspect equipment used by the Supplier in or about the provision of the Services at any time and the Supplier shall comply with any directions of the Authorized Officer as to the manner in which such equipment shall be used.
- 56.12 The Public Body shall not be responsible, charged or chargeable for any equipment or materials brought on site by the Supplier.
- 56.13 At the entering into force of the Contract all equipment transferred to the Supplier shall be valued by an independent expert appointed jointly by the Public Body and the Supplier. Ownership of

this equipment shall be transferred to the Supplier without charge.

- 56.14 On conclusion of the Contract, all equipment, whether provided by the Supplier or transferred into the ownership of the Supplier by the Public Body will be re-valued and transferred into the ownership of the Public Body as set out in the Terms of Reference. Where there is any increase or decrease in value of the equipment, this shall be added to or deducted from the Supplier's final payment. Transfer of the equipment to the Public Body shall be without charge excepting any change in value.

### **57. Supplier's Personnel**

- 57.1 The Supplier shall be entirely responsible for the employment and conditions of service of his staff employed in the Contract.
- 57.2 The Supplier will employ sufficient employees to ensure that all of the Services are provided at all times and in all respects in complete conformity with the Terms of Reference. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent staff to provide the Services during staff holidays or absence due to sickness or voluntary absence. In relation to the Services, the Supplier will employ only such persons as are careful, skilled and experienced in the duties required of them, and will ensure that every such person is properly and sufficiently trained and instructed (at the Supplier's expense) and carries out the Services with regard to
- (a). the task or tasks that person has to perform;
  - (b). all relevant provisions of the Contract and the Terms of Reference;
  - (c). all relevant policies, rules, procedures and standards of the Public Body;
  - (d). the need for those working in an health service environment to observe the highest standards of hygiene, customer care, courtesy and consideration;
  - (e). the need to keep confidential all information howsoever acquired whether relating to the Public Body and its business.
- 57.3 The Supplier will, when recruiting potential employees for the purpose of the Contract, act in accordance with the Terms of Reference.
- 57.4 The Supplier shall ensure that employees of appropriate levels of experience and expertise perform the Services to achieve cost efficiency.
- 57.5 The Public Body reserves the right to reject staff who they consider to be unsuitable for the duties proposed. Where staff is rejected the Supplier shall supply alternative staff. In addition, the Authorized Officer may (but not unreasonably) instruct the Supplier to take disciplinary action against or to remove from work in or about the provision of the Services any person employed by the Supplier and the Supplier shall immediately comply with such instruction, and in the case of a removal from work shall, as soon as it is reasonably practicable thereafter provide a substitute.
- 57.6 The Supplier shall ensure that any employees to whom reference is made by name in the Terms of Reference are actively involved in the provision of the Services or are replaced with employees acceptable to the Authorized Officer. The Supplier acknowledges that if it is ever the wish of the Supplier to change the partners and/or employees committed to provide the Services as provided for in the Terms of Reference it shall first give notice of such wish to the Authorized Officer explaining the reasons for such wish together with full details of any proposed replacement partner and/or employee. The Public Body shall be under no obligation to approve or accept any such replacement. If any of the partners or employees referred to in the Terms of Reference cease, in the reasonable opinion of the Public Body, to provide and be responsible for the



provision of the Services and the quality of those Services then the Public Body may terminate the Contract in accordance with Clause 20 paying only for the Services provided up to the date of such termination.

- 57.7 The Supplier shall ensure that it complies with all current employment legislation or any other relevant legislation relating to discrimination in the employment of employees for the purpose of providing the Services. The Supplier shall take all reasonable steps (at its own expense) to ensure that any employees employed in the provision of the Services do not unlawfully discriminate within the meaning of this Clause 57.7 and shall impose on any sub-Supplier obligations substantially similar to those imposed on the Supplier by this Clause 57.7.
- 57.8 The Supplier shall procure that the Public Body is kept advised at all times of any:
- (a). Disciplinary incident relating to his staff involving visitors, or the Public Body's staff or property; and
  - (b). Incidence of serious misconduct involving his staff.
- 57.9 The Supplier shall only employ staff for the purposes of the Contract who:
- (a). Fulfill any minimum training and qualification requirements of the Public Body as set out in the Terms of Reference and also all training and qualification requirements that may be deemed necessary by the Authorized Officers, legislation, or any special bodies or associations;
  - (b). Are in good health and have a standard of oral and personal hygiene acceptable to the Public Body;
  - (c). Are medically and physically fit in so far as the requirements of the work are concerned.
- 57.10 The Supplier shall not employ in or about the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially place the health of the Public Body's staff. In all such cases, the Supplier is required to notify the Authorized Officer of each particular incident. The Supplier may receive and will accept such instruction as to the immediate and future working capability of the affected employee, upon the Public Body's premises. Such instruction may necessitate the need for further investigation, which shall be the duty and responsibility of the Supplier at his own expense.
- 57.11 The Authorized Officer may, but not unreasonably, require any person employed by the Supplier in or about the provision of the Services to be medically examined at any time during their employment.
- 57.12 Any medical examination or certification of any member of the Supplier's staff required by the Contract shall be arranged by and shall be at the expense of the Supplier provided always that the Public Body shall be entitled at their own expense, to require any medical examination to be carried out by a Medical Practitioner nominated by the Public Body.
- 57.13 As a condition of employment in the contract, Supplier's staff:
- (a). shall not corruptly solicit or receive any bribe or other consideration from any person, or fail to account for monies or property received in connection with duties under the Contract assignments
  - (b). shall not act in a manner reasonably likely to bring discredit upon the Public Body;
  - (c). shall be properly and presentably dressed as is detailed in the Terms of Reference or agreed between the Parties;
  - (d). shall not wear the Supplier's uniform, or identification, or use his equipment on the Public

- Body's premises unless fulfilling the terms of the Contract;
- (e). shall maintain proper standards of appearance and deportment whilst at work;
  - (f). shall not at any time be on duty under the influence of alcohol or drugs;
  - (g). shall on being charged with any criminal offence, notify the Supplier immediately;
  - (h). shall not neglect, nor without due and sufficient cause omit, to discharge promptly and diligently a required task within the terms of the Contract;
  - (i). shall not misuse or abuse the Public Body's property;
  - (j). shall not smoke while on the Public Body's premises, except in those areas where smoking is expressly permitted.
- 57.14 The Supplier shall provide its employees with a form of identification that is acceptable to the Public Body and which employees shall display on their clothing at all times when they are providing services.
- 57.15 The Public Body shall not be liable for loss of, or damage to, the personal property of Supplier's staff, howsoever caused.
- 57.16 It is the joint responsibility of the Supplier and his employees to ensure that the employees supplied to carry out the Services have not worked excessive hours which could prejudice the standards of service. It is the responsibility of the Supplier to keep records of hours worked for each employee.

## **58. Key Personnel**

- 58.1 The Parties have agreed to the appointment of the Key Personnel as at the Effective Date. The Supplier shall and shall procure that any Sub-contractor shall obtain the prior written consent of the Public Body before removing or replacing any member of the Key Personnel from their corresponding role during the Term, and, where possible, at least three months written notice must be provided by the Supplier of its intention to replace any member of Key Personnel from their corresponding role.
- 58.2 The Public Body shall not unreasonably delay or withhold its consent to the appointment of a replacement to any relevant member of Key Personnel by the Supplier or Sub-contractor. The Public Body may interview the candidates for Key Personnel roles before such candidate is appointed to such role.
- 58.3 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Services to the Public Body. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than [10] Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent of such role and is fully competent to carry out the tasks assigned to the role of the member of Key Personnel whom he or she has replaced.
- 58.4 The Supplier shall ensure that each of the Key Personnel shall work for such a period of time in the performance of the Services that is commensurate with and sufficient to perform the obligation of that person's role unless the Public Body otherwise gives its prior written consent. To the extent that it can do so without disregarding its statutory obligations, the Supplier shall take all reasonable steps to ensure that it retains the services of all the Key Personnel.
- 58.5 The Public Body may nominate additional roles performed by Supplier Personnel in respect of which individuals should be identified as additional Key Personnel. The Supplier shall not unreasonably withhold or delay approval of any such additional Key Personnel nominated by the Public Body who will, following approval, be included on the list of Key Personnel by the Supplier. The Public Body may also require the Supplier to remove any member of the Key

Personnel that the Public Body (acting reasonably) considers in any respect unsatisfactory.

- 58.6 The Public Body shall not be liable for the cost of replacing any member appointed to a Key Personnel role and the Supplier shall indemnify the Public Body against all Employee Liabilities that may arise in this respect.
- 58.7 Any Key Personnel assigned to performance of the Services shall be listed in the Contract, stating their name, title, job description, and estimated period of engagement.

### **59. Control and Supervision of Staff**

- 59.1 Any notice, information, instruction or other communication given or made to the Contract Manager shall be deemed to have been given or made to the Supplier.
- 59.2 The Contract Manager shall be suitably qualified in accordance with the Terms of References. In addition a work history/biography will be submitted to the Authorized Officer for approval prior to interview.
- 59.3 The Supplier shall forthwith give notice in writing to the Authorized Officer of the identity of the person appointed as Contract Manager and of any subsequent appointment. Until notice of a subsequent appointment shall have been given the Public Body shall be entitled to treat as Contract Manager the person last notified to the Authorized Officer as being the Contract Manager.
- 59.4 The Supplier shall ensure that the Contract Manager, or a competent deputy who is duly authorized to act on his behalf, is available to the Public Body at all times when any employee of the Supplier is on duty for the provision of the specified Services.
- 59.5 The Supplier shall inform the Authorized Officer of the identity of any person authorized to act for any period as deputy for the Contract Manager before the start of that period.
- 59.6 The Contract Manager or his deputy shall consult with the Authorized Officer and such other of the Public Body's own supervisory staff as may from time to time be specified by the Authorized Officer as often as may reasonably be necessary for the efficient provision of the Services in accordance with the Contract.
- 59.7 The Supplier shall provide a sufficient complement of supervisory staff in addition to the Contract Manager, to ensure that the Supplier's staff engaged in and about the provision of the Services at the Location are adequately supervised and properly perform their duties at all times.
- 59.8 All persons appointed to managerial and supervisory positions in accordance with the Terms of Reference must be to the acceptance of the Authorized Officer who will have the right to veto the appointment of any candidate who is deemed to be unsuitable.
- 59.9 The Supplier's staff engaged in and about the provision of the Services shall primarily be under the control and direction of the Supplier's own supervisory staff but nevertheless while on the Public Body's premises will obey all reasonable instructions given to them by the Public Body's supervisory staff in any matter occasioned by the operational needs of the relevant Service.
- 59.10 The Supplier shall ensure that his staff carry out their duties and behave while on the Public Body's premises in an orderly manner and in as quiet a manner as may reasonably be practicable having regard to the nature of the duties being performed by them. The Supplier's staff shall not cause any unreasonable or unnecessary disruption to the routines, practices, and procedures of the Public Body's staff, or visitors, or any of the staff of any other Suppliers

**60. Working hours of the Personnel**

60.1 Where the Services are performed on a regular basis at the premises of the Public Body, the Supplier shall work the hours agreed with the Public Body where not specified in the Terms of Reference or the SCC.

**61. Replacement of Personnel**

61.1 The Supplier shall not make changes to the agreed personnel without the prior written approval of the Public Body. The Supplier must on its own initiative propose a replacement in the following cases:

- (a). In the event of death, in the event of illness or in the event of accident of a member of staff.
- (b). If it becomes necessary to replace a member of staff for any other reasons beyond the Supplier's control (e.g. resignation, etc.).

61.2 Moreover, in the course of performance, and on the basis of a written and justified request, the Public Body can ask for a replacement if it considers that a member of staff is inefficient or does not perform its duties under the contract.

61.3 If the Public Body requests the Supplier to remove a person who is a member of the Supplier's staff or work force, stating the reasons, the Supplier shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

**62. Extensions of Time**

62.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely completion of Services pursuant to GCC Clause 52, the Supplier shall promptly notify the Public Body in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Public Body shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

62.2 Except in case of Force Majeure, as provided under GCC Clause 17, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 62.1.

## **Section 8. Special Conditions of Contract**

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GCC Clause Reference	Section 8. Special Conditions of Contract	
	Public Body: Attention: Floor/Room number: P.O. Box: Street Address: Town/City: Post Code: Country: Ethiopia Telephone: Facsimile: E-mail address	
	For <b>notices</b> , the Supplier's address shall be:	
	Supplier: Attention: Floor/Room number: P.O. Box: Street Address: Town/City: Post Code: Country: Ethiopia Telephone: Facsimile: E-mail address	
GCC 15.1	In case of change of laws and regulation after the deadline for submission of the Bid Contract Price be correspondingly increased or decreased and/or the Delivery Date be reasonably adjusted to the extent that Supplier has thereby been affected in the performance of any of its obligations under the Contract.	
GCC 16.1	The Supplier shall be responsible for all import duties and taxes except for the following:	
GCC 24.4	The period of validity of the Warranty shall be:	
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<b>C. Obligations of the Public Body</b>		
GCC 31.1	The Public Body shall supply the Supplier with the following information or documentation at its disposal which may be relevant to the performance of the Contract:	
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GCC Clause Reference	Section 8. Special Conditions of Contract
GCC 34.6	The Public Body shall pay the Contract Price to the Supplier, within the period of the .
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GCC 40.2 (b)	The amount of aggregate liability shall be:
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GCC 49.3	The types of acceptable Performance Securities are: . The currency shall be: .
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## A. Contract Agreement

### for the Procurement of

#### Procurement Reference No:

This Contract Agreement is made on the day of the month of , **BETWEEN**

**of the Federal Democratic Republic of Ethiopia**, and having its principal place of business (hereinafter called the “Public Body”),

**and**

a corporation incorporated under the laws of and having its principal place of business at (hereinafter called the “Supplier”), of the other part

#### WHEREAS

- (a). The Public Body invited bids for certain Services (hereinafter called the “Services”), and has accepted a Bid by the Supplier for the provision of those Services in the sum of (hereinafter called “the Contract Price”) in the manner and on the terms described herein
- (b). The Supplier having represented to the Public Body that it has the required skills, personnel and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;

**NOW THEREFORE** the parties hereto hereby agree as follows:

#### 1. The Agreement

- 1.1 In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
- 1.2 The following documents shall constitute the Contract between the Public Body and the Supplier, and each shall be read and construed as an integral part of the Contract:
  1. This Contract Agreement;
  2. The Special Conditions of Contract;
  3. The General Conditions of Contract;
  4. The Bid Submission Sheet with Annexes;
  5. Price Schedule;
  6. List of accepted items including their unit price;
  7. Bidder Certification of Compliance with Annexes;
  8. Schedule of Requirements + Technical Offer + Compliance Sheet with Annexes;
  - 9.
- 1.3 This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.
- 1.4 In consideration of the payments to be made by the Public Body to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Public Body to provide the Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
- 1.5 The Public Body hereby covenants to pay the Supplier in consideration of the provision of the Services and the remedying of defects therein, the Contract Price or such other sum as may

become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

**2. Term of Contract Agreement**

- 2.1 The Contract shall enter into force on the date on which it is signed by the last contracting party.
- 2.2 Under no circumstances may implementation commence before the date on which the Contract Agreement enters into force.

**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.

**SIGNED** for and on behalf of  
**Signature:**  
**Name:**  
**Position:**  
**Date:**

**WITNESS** to signature on behalf of  
**Signature:**  
**Name:**  
**Position:**  
**Date:**

**SIGNED** for and on behalf of  
**Signature:**  
**Name:**  
**Position:**  
**Date:**

**WITNESS** to signature on behalf of  
**Signature:**  
**Name:**  
**Position:**  
**Date:**

**B. Performance Security  
(Bank Guarantee)**

**Date:**

**Procurement Reference No:**

**To:**

WHEREAS (hereinafter “the Supplier”) has undertaken, pursuant to Contract No. dated , to supply (hereinafter “the Contract”).

AND WHEREAS it has been stipulated by you in the aforementioned Contract that the Supplier shall furnish you with a security issued by a reputable guarantor for the sum specified therein as security for compliance with the Supplier’s performance obligations in accordance with the Contract.

AND WHEREAS the undersigned , legally domiciled in [insert complete address of Guarantor], (hereinafter the” Guarantor”), have agreed to give the Supplier a security:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the Supplier, up to a total of and we undertake to pay you, upon your first written demand declaring the Supplier to be in default under the Contract, 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 or the sum specified therein.

This security is valid until the day of , .

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No 458.

Name:

In the capacity of

Signed:

Duly authorized to sign the Security for and on behalf of:

Dated on [insert day] day of ], 20

**C. Advance Payment Security  
(Bank Guarantee)**

**Date:**

**Procurement Reference No:**

**To:**

In accordance with the payment provision included in the Contract, in relation to advance payments, (hereinafter called “the Supplier”) shall deposit with the Public Body a security consisting of , to guarantee its proper and faithful performance of the obligations imposed by said Clause of the Contract, in the amount of .

We, the undersigned , legally domiciled in (hereinafter “the Guarantor”), as instructed by the Supplier, agree unconditionally and irrevocably to guarantee as primary obligor and not as surety merely, the payment to the Public Body on its first demand without whatsoever right of objection on our part and without its first claim to the Supplier, in the amount not exceeding .

This security shall remain valid and in full effect from the date of the advance payment received by the Supplier under the Contract until , [insert year].

Name:

In the capacity of

Signed:

Duly authorized to sign the Security for and on behalf of:

Dated on [insert day] day of ], 20