

TENDER CONDITIONS FOR CONTRACTORS

1. GENERAL

- 1.1 The Tender must comply with the following conditions and instructions.
Failure to do so is liable to result in the rejection of the Tender.
- 1.2 "Tenderer" means any person or persons, partnership, firm or company being prequalified and submitting a fully priced Bill of Quantities in accordance with the Tender.
- 1.3 All recipients of the Tender Documents shall, whether they submit a Tender or not, treat the details of these documents as confidential.

2. TENDER DOCUMENTS

- 2.1 The Tender must be made out on the forms provided in the Tender Documents duly completed in ink or in print. The Bill of Quantities must be fully priced, totalled, checked arithmetically, and the grand total must be in compliance with the sum entered in the Letter of Tender. Tender and Contract Documents must be kept intact.

The Tender Documents and accompanying documents shall be signed by the Tenderer or his legally authorized representative and be returned to the address according to the "Invitation to Tender for Contractors".

- 2.2 Any missing document may result in the rejection of the Tender.

- 2.3 Prices must be quoted for all items in the Bill of Quantities.

2.4 Requirements for the Administrative Evaluation

- A. Provide copies of original documents defining the constitution or legal status, place of registration (Company Certificate) in Iraq or KRI, principal place of business, and written power of attorney of the signatory (ID of Ministry of Planning), all documents should be updated. Provide copies of original documents showing registration with Contractor Union.
- B. Valid Grading of Contractor (Construction Company) from ministry of planning.
- C. Private Bank data with all details from a local bank (Bank Name, Account Holder Name, Account Holder number, IBAN, SWIFT Code). The account must be on the company name. Governorate bank account not acceptable.
- D. Provide a letter directed to GIZ exploring:
 - i. Name of the Construction
 - ii. Company Name.
 - iii. Full names of owner and representatives.

iv. Signed by Authorized Person/Manager

- E. Provide a copy of the Annex A Bidders Information Form (filled and signed).
- F. Provide minimum annual turnover of the Last Three Years.

Interested companies must submit the above-mentioned documents and the full contact details of their company within specified.

Failure to submit all required documents could result in the disqualification of the whole bid.

3. EXAMINATION OF SITE

Tenderers shall visit the site of the Works only by prior approval of the Employer and obtain for themselves all information that may be necessary for completing their Tenders and for entering a contract with the Employer. Tenderers shall acquaint themselves with the requirements of the contract, e.g. characteristics of the site and its surroundings, hydrological and climatic conditions.

In particular, Tenderers shall acquaint themselves with the conditions of

- A. existing access roads or other means of communication and access to the site of works, incl. police regulations concerned therewith,
- B. available land for storage, workshops, toilets, and site office(s),
- C. available connections to electricity and water for construction,
- D. the soil and subsoil to be excavated stored or removed from the site.

The availability of local labor, their quarters on-site (if necessary), local materials and other local resources, as well as any local technical and legal requirements, shall also be considered by the Tenderers.

4. MODIFICATIONS / ADDITIONAL OFFERS

4.1 The Tender may contain only the prices and statements required in the Tender Documents and shall be signed by a duly authorized person. Any addition to, deletion or alteration of the Tender Documents may result in the rejection of the Tender.

4.2 Additional offers/proposals for modifications that, from the technical point of view, deviate from the Engineer's Specification or such which entail a demand for other conditions of payment, execution deadlines or price reserves, shall only be admitted in connection with the submission of the base Tender.

Proposals for modifications and additional offers shall be made in a separate annex and must be clearly marked as such.

Modifications by the Tenderer concerning prices quoted or statements made shall be unambiguous. Samples and patterns submitted with the Tender must be clearly marked as appertaining to the Tender.

5. PRICES

5.1 All prices (unit prices, lump-sum prices, settlement rates, hourly wages, bonuses) shall be stated **without** taxes (turnover tax, value-added tax, or alike). The amount of applicable taxes shall be based on the locally valid tax rate and shall be added as the last item on the summary sheet of the Tender.

5.2 The offer of a discount shall apply to all amendments to the contract.

5.3 The Employer will not be held responsible if the local bank in the recipient country converts the payments to the Contractor into local currency before crediting the same to the Contractor's account. The Contractor is not entitled to claim for any charges or fees deducted by the bank due to the exchange and/or transfer of payments.

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

5.5 The financial offer must be in USD currency.

6. AMBIGUITIES

If, in the Tenderer's opinion, the Tender Documents contain ambiguities which might influence the calculation of the prices, the Tenderer shall indicate this to the Employer by E-Mail, letter or telefax before submitting his Tender within 5 days after the receipt of the Tender Documents. Necessary clarification will be made by Circular Letter(s).

7. CIRCULAR LETTER

7.1 In the event that the Employer sends Circular Letters to the Tenderers during the tendering period in order to comment, clarify, or modify the Contract Documents, these Circular Letters shall become an integral part of the Contract Documents and it shall be assumed that they have been taken into account by the Tenderers in drawing up their Tender.

7.2 The Tenderer shall confirm the receipt of a Circular Letter to the Employer immediately. No Circular Letter shall be dispatched within 5 days before the submission date for the Tender, except one that confirms a due postponement of the original submission date.

8. PROHIBITED AGREEMENTS

Agreements restricting the competition are not permitted, especially arrangements and negotiations with other Tenderers in respect of

- submitting or not submitting a tender.

- the prices to be demanded and profit rates,
- binding arrangements for other compensation,
- processing cost margins and other price components,
- terms of payment and delivery and other conditions of contract insofar as they influence the prices directly or indirectly,
- indemnity or compensation payments for non-participation or limited participation in the competition, and profit-sharing.

9. SUBCONTRACTORS

9.1 If parts of the Works are intended to be executed by subcontractor(s), the Tenderer shall indicate the nature and scope of such parts of the works and state name and address of the subcontractor(s) considered.

9.2 Engaging any subcontractors by subletting of the Works hereunder by the Tenderer, or of any part thereof, shall require the express written and prior consent of the Employer. This approval may be revoked at any time in case serious complaints arise. The Tenderer shall be liable for all services performed by his subcontractors in the same manner as for his own services.

10. JOINT VENTURES

Tenders submitted by Joint Ventures or other Bidding Combinations shall be accepted only if the following information is provided with the Tender:

- A. A list of the members of the Joint Venture/Bidding Combination designating the duly authorized representative(s).
- B. A declaration, signed by duly authorized representatives of all members, stating the lead member of their Joint Venture, stating that the duly authorized representatives shall represent the members specified in the list in a legally binding manner vis-a-vis the Employer, and that all members are jointly and severally liable for the performance of the contract with the Employer.
- C. It will be the same lead member that shall provide any security/bank guarantee in favour of the Employer that might be required by the relevant construction contracts, when and if their Tender is selected as the best.

11. SUBMISSION OF TENDER

11.1 The Tender shall be submitted to the email address stated in and prior to the time and date specified in the Invitation to Tender.

11.2 Submission

- A1 Invitation to Tender for Contractors.
- A3 Bill of Quantities (BOQ).
- A4 Tender Conditions for Contractors.
- A5 Letter of Tender.
- Annex A: Bidder Information Form.
- Technical package.

11.3 Tenders received after the date and time of submission might not be considered.

12. OPENING OF TENDERS

12.1 Tenderers shall not be permitted to attend the opening session of the Tenders.

12.2 The session shall be held for opening and reading out the Tenders. Until this session all Tenders received shall be kept in the inbox of the secured email, unopened and marked with the date of receipt only. For the Opening Session the following procedure shall be observed and laid down in the minutes of the meeting, stating the place, date, and time of the opening:

- A. The chairman of proceedings shall establish whether the received emails are intact.
- B. Samples and patterns submitted with any Tender shall be on hand and duly marked.
- C. The Tenders shall be opened one after another and all major parts marked. The names and addresses of the Tenderers and the final amounts of their Tenders or of individual sections as well as other particulars concerning the price shall be read out. It shall be announced if and by whom proposals for modifications and/or additional offers have been submitted. Other details of the contents shall not be made known.
- D. The minutes shall be signed by the chairman of proceedings and secretary.

12.3 Tenders that were not received prior to the submission time and date shall be specified separately in the minutes or addendum thereto. The time of receipt and the reason for the delay of the receipt shall be noted. Envelopes and other means of proof shall be kept in safe custody.

12.4 The minutes of the opening session shall not be published.

13. EVALUATION OF TENDERS

13.1 The following Tenders shall be excluded:

- A. Tenders received after submission date and time.
- B. Tenders submitted by Tenderers who have entered into an agreement which constitutes a prohibited restriction of competition.

13.2 In selecting the Tenders to be considered for the award of contract, only those Tenderers who offer the necessary security for the performance of the contractual obligations will be taken into account. This shall entail the necessary expertise and experience, performance capacity and capability, the reliability as well as technical and financial means and resources.

- 13.3 Tenders, of which the prices are obviously disproportionate to the Works concerned, will be disregarded. Only such Tenders from which proper execution and covering of the defect liability period can be expected with due regard to rational and thrifty construction operations and efficient management will be considered. From those Tenders the award will be made to the one which appears to be the most acceptable with regard to all technical, functional, environmental, and economical aspects.
- 13.4 Any arithmetical error by the Tenderer in pricing the Bill of Quantities or in the additions or in carrying forward subtotals to the summary or to the Tender shall be corrected during the evaluation of the Tenders. In such cases the Tender sum shall be adjusted accordingly, and the Tenderer shall be informed. It shall be assumed that the unit price rates entered in the Bill of Quantities are correct.
- 13.5 Proposals for modifications and additional offers which the Employer has admitted or requested for the tendering action shall be evaluated in the same way as the base tender. Other proposals for modifications and additional offers may be considered.
- 13.6 The Employer does neither bind himself to accept the lowest Tender or any Tender, nor will he be responsible or pay for expenses or losses which may be incurred by any Tenderer with the preparation of his Tender.
- 13.7 Evaluation process is based on financial offer 100%, after full filling the requirements in Clause 2.
- 13.8 Only technically compliant offers will be considered in financial evaluation and the most compliant and economical offer will be selected.
- 13.9 The GIZ will examine the bids to determine whether they are complete, whether the documents have been properly signed, and whether the bids are substantially compliant to all terms and conditions of the bidding documents.

A bid determined as substantially non-compliant will be rejected by the GIZ

14. AWARDING OF THE CONTRACT

- 14.1 Upon the properly completed evaluation and comparison of all duly received Tenders by the Employer, the Employer will award the contract to the most successful Tenderer.
- 14.2 Such Tenderer, whose Tender has been accepted, will be required to enter into the relevant contract, which has been presented to all Tenderers together with the Tender Documents and that in form of the template of the contract. Only technical details may be modified therein, as well as that the therein missing data may be entered into it as well. No further changes of that template of the contract will be acceptable unless the parties to it agree under mutual consent.
- 14.3 The same successful Tenderer, who has been awarded with the herein above stated contract, has to initiate immediately the necessary procedures with its reputable bank, so that he could present to the Employer the necessary Advance

Payment Guarantee on time, and that latest within 21 calendar days upon the signing of the same contract.

14.4 If such successful Tenderer fails to sign the contract – based on the above-mentioned template of the contract – within 14 calendar days after the Employer requests its signing, in such case may the Employer cancel his decision on the awarding of the contract, this being without prejudice to any claims, rights or remedies that the Employer may have towards such Tenderer in respect to such failure.

15. SANCTION LIST

15.1 The GIZ's Anticorruption Policy requires bidders, suppliers, and contractors under GIZ-financed contracts to observe the highest standards of ethics during the procurement and implementation of contracts. In pursuance of this policy, GIZ:

- Carefully checks whether the company and the relevant persons have been committed for: Formation of criminal organizations, Formation of terrorist groups, Terrorist financing, Money-laundering and concealment of unlawful earnings, Fraud, Subsidy Fraud, Bribery and corruptibility in commercial transactions, Bribery and corruption in general, Granting of advantages and Human trafficking; forced prostitution, forced labour, exploitation of labour, exploitation by means of deprivation of liberty
- Would reject the whole bid, if it determines that the bidder has (directly or through an agent) engaged in corrupt, fraudulent, collusive, or coercive practices.
- Will sanction a party and declare as ineligible, either indefinitely or for a stated period, to participate in GIZ-financed activities, if the firm has (directly or through an agent) engaged in corrupt, fraudulent, collusive, or coercive practices.

15.2 The Bidder shall, upon request, certify and provide evidence to the GIZ that none of these circumstances mentioned in this clause under a) apply.

15.3 The bidder, and/or business associates, project partners, target groups and interested members of the general public are invited to participate in clarifying any corruption-related circumstances.

15.4 A list of all relevant key personnel of the bidding company and/or consortium involved in this tender including the authorised manager and/or representants of the bidding company and/or consortium with the power of attorney, each with a sample of signatures and a copy of the ID, must be provided.

16. ELIGIBLE BIDDERS

Bidders shall not be eligible for the award of contracts and GIZ may reject the whole bid or may terminate a contract in whole or in part, without compensation, if:

- The company has demonstrably infringed applicable environmental, social or labour law obligations in the performance of public contracts.
- The company is insolvent, if insolvency proceedings or similar proceedings have been initiated against the assets of the company, if the initiation of such

proceedings has been refused for lack of assets, if the company is in liquidation or has ceased its activities

- The company demonstrable has been committed a gross misconduct which questions the integrity of the company.
- GIZ has enough evidence that the company has entered into agreements or concerted practices with other companies which purpose or effect the prevention, restriction, or distortion of a competition.
- There is a conflict of interest in the process of the award procedure which could affect the impartiality and independence of a person working for GIZ in the process of the award procedure and which cannot be effectively eliminated by other less restrictive measures.
- A distortion of competition results from the fact that the company was already involved in the preparation of the award procedure and this distortion of competition cannot be eliminated by other, less restrictive measures.
- The organization has substantially or persistently inadequately fulfilled services or deliveries during an earlier contract which resulted in premature termination, damages, or an equivalent legal consequence.
- The company has committed serious fraud or withheld information or is unable to provide the necessary/supporting evidence/documents.
- The company has attempted to improperly influence the decision-making of GIZ, has attempted to obtain confidential information through which it could obtain improper advantages in the award procedure, or has negligently or intentionally transmitted misleading information which could significantly influence the award decision of the GIZ, or has attempted to transmit such information.

The Bidder shall, upon request, certify and provide evidence to the GIZ that none of these circumstances mentioned in this clause apply.

17. PAYMENT TERMS

- Payment for the Contractor's services shall be made within 30 days period after the receipt and acceptance of invoice and shall be concluded in a manner consistent with the written agreement of both parties.
- The company's bank account details must be submitted with the Invoice. GIZ will only transfer payments to the bank account which is on company's name."
- All payments shall be made in USD, GIZ will not be responsible if the local bank of the contractor converts the payments into another currency. The contractor is not entitled to claim for any charges or fees deducted by the bank due to the exchange and/or transfer of payments.

18. CANCELLATION OF THE TENDER

18.1 The tender can be canceled, if:

- A. no bids have been received which corresponds to the bidding conditions,
- B. there have been substantial changes during the tender, or
- C. there are other serious reasons for such cancellation.

18.2 The bidders will be informed about the reasons of the cancellation of the tender without any delay by GIZ.

By signing these bidding conditions, the bidder acknowledges that it has received, read, understood and accepted all conditions. Please add these signed and accepted bidding conditions.

place, date

Signature of the bidder and stamp