

Section 1: Instructions to Bidders

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Section I. Instructions to Bidders

A. General

1. Scope of Bid

1.1 The Employer indicated in the Special Conditions of Contract (SCC), invites bids for the construction of Works, as described in Section 6, Schedule of Requirements. The subject and procurement reference number are provided in the SCC.

1.2 The successful Bidder will be expected to complete the Works by the Intended Completion Date specified in the SCC.

- 1.3 Throughout these Bidding Documents: (a) The term “Employer” means “Procuring Entity” as defined in the Public Procurement Proclamation; and
- (b) The term “Contractor” means “Supplier” as defined in the Public Procurement Proclamation.

2. Source of Funds

- 2.1 The Employer indicated in the SCC has an approved budget towards the cost of the procurement described in Section 6, Schedule of Requirements and intends to use these funds to cover eligible payments under the Contract for the Works. Payments will be made directly by the Employer and will be subject in all respects to the terms and conditions of the resulting contract placed by the Employer.

3. Eligible Bidders

- 3.1 A bidder shall:

- (a) Have the legal capacity to enter into a contract;
- (b) Not be 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; and
- (c) Have fulfilled their obligations to pay taxes according to the laws of the Federal Democratic Republic of Ethiopia.

- 3.2 Unless otherwise specified in the SBD, in order to demonstrate compliance with the criteria in ITB Sub-Clause 3.1, a Bidder shall submit with its Bid either:

- (a) In the case of Ethiopian Bidders only, its certificate of registration from the mandated public body specified in the SBD demonstrating its registered contractor status; or
- (b) Appropriate documentary evidence demonstrating its compliance, which shall include:.
 - (i) Its trading licence and suppliers registration certificate
 - (ii) Its tax clearance certificate and VAT registration, if required; and
 - (iii) Any relevant professional practice certificates.

- 3.3 A bidder shall be required to obtain a certificate of registration from the mandated public body referred to in ITB Sub-Clause 3.2, demonstrating registered contractor status, as a condition of contract award.

- 3.4 Bidding is open to all bidders from eligible countries as defined in Section 5, Eligible Countries. Any materials, equipment and services to be used in the performance of the Contract shall have their origin in an eligible country, as defined in Section 5, Eligible Countries.

- 3.5 All bidders shall provide in Section 4, Bidding Forms, a statement that the Bidder (including all members of a joint venture and subcontractors) is not associated, nor has been associated in the past, directly or indirectly, with the consultant or any other entity that has prepared the design, specifications, and other documents for the Project or being proposed as Engineer for the

Contract. A firm that has been engaged by the Employer to provide consulting services for the preparation or supervision of the Works, and any of its affiliates, shall not be eligible to bid.

3.6 Government-owned enterprises in the Federal Democratic Republic of Ethiopia may only participate if they are legally and financially autonomous, operate under commercial law, and are not a dependent agency to the Employer.

3.7 A Bidder that has been debarred from participating in public procurement in accordance with ITB Sub-Clause 35.1(c), at the date of the deadline for bid submission or thereafter, shall be disqualified.

4. Qualification of the Bidder

4.1 All bidders shall provide in the Qualification Information Form in Section 4, Bidding Forms, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.

4.2 In the event that prequalification of potential bidders has been undertaken, only bids from prequalified bidders will be considered for award of Contract. These qualified bidders should submit with their bids any information updating their original prequalification applications or, alternatively, confirm in their bids that the originally-submitted prequalification information remains essentially correct as of the date of bid submission. The update or confirmation should be provided in the Qualification Information Form in Section 4, Bidding Forms.

4.3 If the Employer has not undertaken prequalification of potential bidders, all bidders shall include the following information and documents with their bids, using the Qualification Information Form in Section 4, Bidding Forms, unless otherwise stated in Section 3, Evaluation and Qualification Criteria:

- (a) Copies of original documents defining the constitution or legal status, place of registration, and principal place of business or a copy of the Bidder's registration certificate where such documents have been provided to obtain registered contractor status; written power of attorney of the signatory of the Bid to commit the Bidder;
- (b) Total monetary value of construction work performed for each of the last five years;
- (c) Experience in works of a similar nature and size for each of the last five years, and details of work under way or contractually committed; and clients who may be contacted for further information on those contracts;
- (d) Major items of construction equipment proposed to carry out the Contract;
- (e) Qualifications and experience of key site management and technical personnel proposed for the Contract;
- (f) Reports on the financial standing of the Bidder, such as profit and loss statements and auditor's reports for the past five years;
- (g) Evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
- (h) Authority to seek references from the Bidder's bankers;

- (i) Information regarding any litigation, current or during the last five years, in which the Bidder is involved, the parties concerned, and disputed amount; and
 - (j) Proposals for subcontracting components of the Works amounting to more than 10 percent of the Contract Price.
- 4.4 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in Section 3, Evaluation and Qualification Criteria:
- (a) The Bid shall include all the information listed in Sub-Clause 4.3 above for each joint venture partner;
 - (b) The Bid shall be signed so as to be legally binding on all partners;
 - (c) All partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
 - (d) One of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
 - (e) The execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.
- 4.5 To qualify for award of the Contract, bidders shall meet the minimum qualifying criteria specified in Section 3, Evaluation and Qualification Criteria.
- 4.6 Bidders applying for eligibility for a margin of preference in bid evaluation shall supply all information to satisfy the criteria for eligibility as described in Section 3, Evaluation and Qualification Criteria.

5. One Bid per Bidder

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

6. Cost of Bidding

- 6.1 The Bidder shall bear all costs associated with the preparation and submission of his Bid.

7. Site Visit

- 7.1 The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine the Site of Works and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense and the Employer will in no case be responsible or liable for those costs.
- 7.2 Details of any Pre-Bid Meeting or Site Visit to be held by the Employer are given in the BDS.

B.Bidding Documents

8. Content of Bidding Documents

8.1 The set of bidding documents comprises the documents listed in the table below and addenda issued in accordance with Clause 10:

PART 1 Bidding Procedures

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

PART 2 Schedule of Requirements

- Section 6(A) - Scope of Works
- Section 6(B) - Technical Specifications
- Section 6(C) - Drawings
- Section 6(D) - Bills of Quantities (or Activity Schedule)

PART 3 Contract

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

9. Clarification of Bidding Documents

9.1 According to the proclamation a candidate Bidder requiring any clarification of the bidding documents may notify the Employer in writing at the Employer's address indicated in the BDS. The Employer will respond to any request for clarification received earlier than 10 days prior to the deadline for submission of bids. Copies of the Employer's response will be forwarded to all purchasers of the bidding documents, including a description of the inquiry, but without identifying its source.

10. Amendment of Bidding Documents

10.1 Before the deadline for submission of bids, the Employer may modify the bidding documents by issuing addenda.

10.2 Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing to all purchasers of the bidding documents. Prospective bidders shall acknowledge receipt of each addendum in writing to the Employer.

10.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer shall extend, as necessary, the deadline for submission of bids, in accordance with Sub-Clause 20.2 below.

C. Preparation of Bids

11. Language of Bid

11.1 All documents relating to the Bid shall be in English. Any printed literature furnished by the Bidder may be written in another language, as long as such literature is accompanied by a translation of its pertinent passages into English; in which case, for purposes of interpretation of the Bid, the translation shall govern.

12. Documents Comprising the Bid

12.1 The Bid submitted by the Bidder shall comprise the following, in the format indicated in Section 4, Bidding Forms, where appropriate:

- (a) Bid Submission Form;
- (b) Bid Security;
- (c) Priced Bill of Quantities or Activity Schedule;
- (d) Qualification Information Form and Documents and the documents evidencing eligibility in accordance with ITB Sub-Clause 3.2;
- (e) Alternative offers where invited; and
- (f) Any other document or information required to be completed and submitted by bidders, as specified in the BDS.

13. Bid Prices

13.1 The Contract will be an Admeasurement or Lump Sum Contract, as indicated in the BDS.

13.2 The Contract shall be for the whole Works, as described in ITB Sub-Clause 1.1, based on the:

- (a) Priced Bill of Quantities submitted by the Bidder in the case of an Admeasurement Contract;
- or
- (b) Priced Activity Schedule submitted by the Bidder in the case of a Lump Sum Contract.

13.3 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities (or in the case of a lump sum contract, for all items of the Works described in the drawings and specifications and listed in the Activity Schedule). Items for which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities or Activity Schedule. If so specified in the BDS, the Bidder shall provide a breakdown of rates and prices, showing equipment, materials and labour, for all items whose cost is greater than the percentage of the Bid Price specified in the BDS.

13.4 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates, prices and total Bid price (or in the case of a lump sum contract, in the total bid price) submitted by the Bidder.

13.5 The rates and prices (or in the case of a lump sum contract, the lump sum price) quoted by the Bidder shall be subject to adjustment during the performance of the Contract if provided for in Clause 47 of the Conditions of Contract. The Bidder shall submit with the Bid all the information required under Clause 47 of the Conditions of Contract.

14. Currencies of Bid and Payment

14.1 The unit rates and prices (or in the case of a lump sum contract, the lump sum price) shall be quoted by the Bidder entirely in Ethiopian Birr and shall be paid in Ethiopian Birr only.

15. Bid Validity

15.1 Bids shall remain valid for the period specified in the BDS.

15.2 In exceptional circumstances, the Employer may request that the bidders extend the period of validity for a specified additional period. The request and the bidders' responses shall be made in writing. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid, but will be required to extend the validity of Bid Security for the period of the extension, and in compliance with Clause 16 in all respects.

15.3 In the case of contracts in which the Contract Price is fixed (not subject to price adjustment), if the period of bid validity is extended beyond 60 days, the amount payable to the Bidder selected for award, shall be increased by applying the factor specified in the BDS or in the request for extension, for the period of delay beyond 60 days after the expiry of the initial bid validity, up to the notification of award. Bid evaluation will be based on the Bid prices without taking the above correction into consideration.

16. Bid Security

16.1 The Bidder shall furnish, as part of the Bid, a Bid Security in original form in Ethiopian Birr in the amount specified in the BDS.

16.2 The Bid Security shall, at the Bidder's option, be in the form of cash, a certified cheque or payable order, bank draft, letter of credit, or an unconditional bank guarantee. Securities issued by foreign banks or financial institutions shall be counter-guaranteed by an Ethiopian bank. The format of the Bid Security should be in accordance with the form of Bid Security included in Section 4, Bidding Forms or another form acceptable to the Employer. Bid Security shall be valid for 28 days beyond the validity of the Bid.

16.3 Any bid not accompanied by an acceptable Bid Security shall be rejected by the Employer. The

Bid Security of a joint venture must define as "bidder" all joint venture partners and list them in the following manner: a joint venture consisting of "____," "____," and "____".

16.4 The Bid Security of unsuccessful bidders will be returned within one week after concluding the contract and after a contract security has been furnished by the successful Bidder.

16.5 The Bid Security of the successful Bidder will be discharged when the Bidder has signed the contract and furnished the required Contract Security.

16.6 The Bid Security may be forfeited:

(a) If the Bidder withdraws the Bid after Bid opening during the period of Bid validity; (b) If the Bidder does not accept the correction of the Bid price, pursuant to Clause 27; or

(c) In the case of a successful Bidder, if the Bidder fails within the specified time limit to:

(i) Sign the contract; or

(ii) Furnish the required Contract Security.

17. Alternative Proposals by Bidders

17.1 Bidders shall submit offers that comply with the requirements of the bidding documents, including the basic technical design as indicated in the drawings and specifications. Alternatives will not be considered, unless specifically allowed in the BDS.

18. Format and Signing of Bid

18.1 The Bidder shall prepare one original of the documents comprising the Bid as described in Clause 12 of these Instructions to Bidders, bound with the volume containing the Bid Submission Form, and clearly marked "ORIGINAL." In addition, the Bidder shall submit copies of the Bid, in the number specified in the BDS, and clearly marked as "COPIES." In the event of discrepancy between them, the original shall prevail.

18.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder, pursuant to SubClauses 4.3(a) or 4.4(b), as the case may be. All pages of the Bid where entries or amendments have been made shall be initialled by the person or persons signing the Bid.

18.3 The Bid shall contain no alterations or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialled by the person or persons signing the Bid.

18.4 The Bidder shall furnish information as described in the Bid Submission Form on commissions or gratuities, if any, paid or to be paid to agents relating to this Bid, and to contract execution if the Bidder is awarded the contract.

D.Submission of Bids

19. Sealing and Marking of Bids

19.1 The Bidder shall seal the original and all copies of the Bid in two inner envelopes and one outer envelope, duly marking the inner envelopes as "ORIGINAL" and "COPIES".

19.2 The inner and outer envelopes shall:

- (a) Be addressed to the Employer at the address provided in the BDS;
- (b) Bear the name and procurement reference number of the Contract as defined in the SCC; and
- (c) Provide a warning not to open before the specified time and date for Bid opening as defined in the BDS.

19.3 In addition to the identification required in Sub-Clause 19.2, the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to Clause 21.

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

20. Deadline for Submission of Bids

20.1 Bids shall be delivered to the Employer at the address specified in ITB Sub-Clause 19.2(c) above no later than the time and date specified in the BDS.

20.2 The Employer may extend the deadline for submission of bids by issuing an amendment in accordance with Clause 10, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will then be subject to the new deadline.

21. Late Bids

21.1 Any Bid received by the Employer after the deadline prescribed in Clause 20 will be returned unopened to the Bidder.

22. Withdrawal, Substitution and Modification of Bids

22.1 Bidders may withdraw, substitute or modify their bids by giving notice in writing before the deadline prescribed in Clause 20.

22.2 Each Bidder's withdrawal, substitution or modification notice shall be prepared, sealed, marked, and delivered in accordance with Clauses 18 and 19, with the outer and inner envelopes additionally marked "WITHDRAWAL", "SUBSTITUTION" or "MODIFICATION" as appropriate. The corresponding substitution or modification of the bid must accompany the written notice.

22.3 No Bid shall be modified after the deadline for submission of Bids.

22.4 Withdrawal of a Bid between the deadline for submission of bids and the expiration of the period of Bid validity specified in the BDS or as extended pursuant to Sub-Clause 15.2 may result in the forfeiture of the Bid Security pursuant to Clause 16.

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

E. Bid Opening and Evaluation

23. Bid Opening

23.1 The Employer will open the bids, including substitutions and modifications made pursuant to Clause 22, in the presence of the bidders' representatives who choose to attend at the time and in the place specified in the BDS.

23.2 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause 22 shall not be opened.

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.

23.3 The bidders' names, the Bid prices, the total amount of each Bid and of any alternative Bid (if alternatives have been requested or permitted), any discounts, Bid modifications and withdrawals, the presence or absence of Bid Security, will all be announced by the Employer at the bid opening. Further, any such other details as the Employer may consider appropriate, will also be announced.

23.4 Bids, substitutions or modifications that are not opened and read out at bid opening shall not be considered for further evaluation, irrespective of the circumstances. In particular, any discount offered by a Bidder which is not read out at bid opening shall not be considered further.

23.5 The Employer will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with Sub-Clause 23.3.

23.6 No bid will be rejected at bid opening except for late bids, which will be returned unopened to the bidder, pursuant to ITB Clause 21.

24. Process to be Confidential

24.1 Information relating to the examination, clarification, evaluation and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful Bidder has been announced. Any effort by a Bidder to influence the Employer's processing of bids or award decisions may result in the rejection of his Bid.

25. Clarification of Bids and Contacting the Employer

25.1 To assist in the examination, evaluation and comparison of bids, the Employer may, at the Employer's discretion, ask any Bidder for clarification of the Bidder's Bid, including breakdowns of unit rates (or in the case of a lump sum contract, the prices in the Activity Schedule). The request for clarification and the response shall be in writing, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as

required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids in accordance with Clause 27.

25.2 Subject to sub-clause 25.1 no Bidder shall contact the Employer on any matter relating to its bid from the time of the bid opening to the time the contract is awarded. If the Bidder wishes to bring additional information to the notice of the Employer, it should do so in writing.

25.3 Any effort by the Bidder to influence the Employer in the Employer's bid evaluation, bid comparison or contract award decisions may result in the rejection of the Bidder's bid.

26. Examination of Bids and Determination of Responsiveness

26.1 Prior to the detailed evaluation of bids, the Employer will determine whether each Bid (a) meets the eligibility criteria defined in ITB Clause 3; (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the bidding documents.

26.2 A substantially responsive Bid is one, which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Works; (b) which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

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

27. Correction of Errors

27.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors.

27.2 In the case of admeasurements contracts, errors will be corrected by the Employer as follows:

- (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 employer 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.

27.3 In the case of admeasurements contracts, the amount stated in the Bid will be adjusted by the Employer in accordance with the above

procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security may be forfeited in accordance with Sub-Clause 16.6(b).

27.4 In the case of lump sum contracts, if there is a discrepancy between the words and figures, the amount in words shall prevail.

28. Evaluation and Comparison of Bids

28.1 The Employer will evaluate and compare only the bids determined to be substantially responsive in accordance with Clause 26.

28.2 In evaluating the bids, the Employer will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:

- (a) Making any correction for errors pursuant to Clause 27;
- (b) Excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities or Activity Schedule, but including Day work, where priced competitively;
- (c) Making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with Clause 17; and
- (d) Making appropriate adjustments to reflect discounts or other price modifications offered in accordance with Sub-Clause 22.5.

28.3 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the bidding documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in Bid evaluation.

28.4 The estimated effect of any price adjustment conditions under Clause 47 of the Conditions of Contract, during the period of implementation of the Contract, will not be taken into account in Bid evaluation.

29. Domestic Preference

29.1 No margin of preference shall apply.

F. Award of Contract

30. Award Criteria and Notification of Proposed Award

30.1 Subject to Clause 31, the Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest evaluated Bid price, provided that such Bidder has been determined to be (a) eligible in accordance with the provisions of Clause 3, and (b) qualified in accordance with the provisions of Clause 4.

30.2 Prior to expiry of the period of bid validity, the Employer shall notify all Bidders in writing of the successful bid, but this notification shall not constitute a contract award. This notification shall be made at least five working days prior to the award of contract in accordance with ITB Clause 32.

31. Employer's Right to Accept any Bid and to /or Reject any or all Bids

31.1 Notwithstanding Clause 30, the Employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Employer's action.

32. Notification of Award and Signing of Agreement

32.1 The Bidder whose Bid has been accepted will be notified of the award in writing by the Employer prior to expiration of the Bid validity period and following the elapse of the notification period in accordance with ITB Sub-Clause 30.2. This notification (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") will state the sum that the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").

32.2 The notification of award will constitute the formation of the Contract, subject to the Bidder furnishing the Contract Security in accordance with Clause 33 and signing the contract in accordance with Sub-Clause 32.3.

32.3 The contract will incorporate all agreements between the Employer and the successful Bidder. It will be signed by the Employer and sent to the successful Bidder following the notification of award. Within 15 days of receipt, the successful Bidder will sign the contract and deliver it to the Employer.

33. Contract Security

33.1 Within 15 days after receipt of the Letter of Acceptance, the successful Bidder shall deliver to the Employer a Contract Security in the form of a Bank Guarantee, or in the case of Ethiopian contractors only, in the form of a Performance Bond, in the amount and denominated in the type and proportions of currencies specified in the Conditions of Contract.

33.2 Contract Securities issued by foreign banks or financial institutions shall be counter-guaranteed by an Ethiopian bank.

33.3 Failure of the successful Bidder to comply with the requirements of Sub-Clause 33.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security.

34. Adjudicator

34.1 The Employer proposes the person named in the BDS to be appointed as Adjudicator under the Contract, at an hourly fee specified in the BDS, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in the Bid. If, in the Notice of Acceptance, the Employer has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the SCC at the request of either party.

34.2 The Adjudicator shall act as an impartial expert to resolve disputes between the Parties as rapidly and economically as is reasonably possible. Unless otherwise specified in the contract or in any applicable rules for adjudication:

- (a) The Adjudicator's role may include, but not be limited to, requiring and examining any relevant documents and written statements, making site visits, using his own specialist knowledge and holding a hearing; and
- (b) The Adjudicator's decision shall reflect the legal entitlements of the Parties and his fair and reasonable view of how the dispute should be resolved.

35. Corrupt or Fraudulent Practices

35.1 The Government of the Federal Democratic Republic of Ethiopia (hereinafter called "the Government") requires that Employers, as well as Bidders and Contractors under government financed contracts, observe the highest standard of ethics during the procurement and execution of such 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" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution;
 - (ii) "Fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
 - (iii) "Collusive practices" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Employer, designed to establish prices at artificial, noncompetitive levels; and
 - (iv) "Coercive practices" means 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.
- (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 or coercive 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 that the firm has engaged in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, a contract.

35.2 Furthermore, Bidders shall be aware of the provision stated in sub-clause 59.2 of the General Conditions of Contract.

35.3 Any Bidder may seek administrative review, in accordance with Section 51 of the Public Procurement Proclamation, of an act or omission by an Employer, which it considers to be in breach of the Proclamation. Any application for review must be submitted in writing to the head of the Employer, 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 Employer does not issue a decision within fifteen days, or the Bidder is not satisfied with the decision, the Bidder may submit a complaint to the Public Procurement Agency.

