

# Section I: Instructions to Participants

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## A. General

### 1. Scope of Procurement Process and Applicable Procurement Rules

- 1.1 The Client, stated in Section II, Data Sheet (the “DS”), issues this procurement document (the “Procurement Document”) for the procurement of the contract(s) described in Section VI, Requirements, in accordance with the conditions and contract terms prescribed in Section VII, Contract Terms and Conditions (the “Contract”) that will be implemented within the framework of the project as specified in the DS (the “Project”).
- 1.2 The process applicable to the procurement of the Contract (the “Procurement Process”) will be conducted in the manner as specified in the DS.
- 1.3 The title and identification of the Procurement Process as well as the number of contracts (lots), where applicable, and their titles are provided in the DS.
- 1.4 The Procurement Process shall be carried out in accordance with the Procurement Policies and Rules (the “PPR”) of the European Bank for Reconstruction and Development (the “Bank”), which are published on the Bank’s website. The applicable version of the PPR is stated in the DS.
- 1.5 Definitions and interpretations used throughout the Procurement Document shall have the meaning as prescribed in Section VII, Contract Terms and Conditions, unless otherwise stated in Section I, Instructions to Participants (the “ITP”), the PPR or the Bank’s Enforcement Policy and Procedures (the “EPPs”), which are published on the Bank’s website. The applicable version of the EPPs is specified in the DS. In case of discrepancies, the definitions and interpretations in the PPR and EPPs prevail.
- 1.6 The Client invites eligible participants (the “Participants”) to submit proposals under the Procurement Process.

### 2. Source of Funds

- 2.1 The borrower or the grant recipient (the “Borrower” or the “Grant Recipient”, as appropriate) indicated in the DS has applied for or received financing from or via the Bank towards the costs of the Project (the “Funds”). The Borrower or the Grant Recipient, as appropriate, if different from the Client, intends to make available to the Client a portion of the Funds and/or the Client will use the Funds for eligible payments under the Contract for which this Procurement Document is issued.
- 2.2 Unless otherwise stated in the DS, payments by the Bank will be made only at the request of the Borrower or the Grant Recipient, as appropriate, and upon approval by the Bank in accordance with the terms and conditions of the financing agreement between the Borrower or the Grant Recipient, as appropriate, and the Bank (the “Loan Agreement” or the “Grant Agreement”, respectively) and will be subject in all respects to the terms and conditions of that Loan Agreement or Grant Agreement. No party other than the Borrower or the Grant Recipient, as appropriate, shall derive any rights from the Loan Agreement or the Grant Agreement or have any claim to the Funds.

### 3. Prohibited Practices and Anti-Competitive Conduct

- 3.1 The Bank requires that the Borrowers or the Grant Recipients, as appropriate, including beneficiaries of loans provided by or grants administered by the Bank, as well as Participants, and their suppliers, contractors, consultants, subsuppliers, subcontractors, or subconsultants (the “Subcontractors”) as well as concessionaires

- under Bank-financed contracts, observe the highest standard of ethical conduct, transparency and integrity and act in a manner that is fair, accountable and honest during the procurement, execution and implementation of such contracts.
- 3.2 The Borrower or the Grant Recipient, as appropriate, including beneficiaries of the Funds, as well as Participants and their Subcontractors, shall not, and shall not authorise or permit any of their officers, directors, authorised employees, Affiliates, agents or representatives, to engage in Anti-Competitive Conduct or Prohibited Practices with respect to the procurement, award, or execution of the Contract.
- 3.3 The Bank may declare any contract subsequently awarded to be ineligible for financing and the Bank may take any of the Enforcement Actions and Disclosure Actions set out in the EPPs, if in accordance with the EPPs, the Bank determines that:
- (a) the Borrower or the Grant Recipient, as appropriate (including beneficiaries of the Funds), Participants or Subcontractors, agents or representatives have engaged in Prohibited Practices with respect to the procurement, award, or execution of the Contract; or
  - (b) a Third Party Finding has sufficient relevance and seriousness for the Bank to warrant Enforcement Actions and Disclosure Actions against entities or individuals.
- 3.4 In accordance with the EPPs, the Bank may enforce debarments from Mutual Enforcement Institutions by declaring entities or individuals ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract.
- 3.5 The Participants shall require and make available their officers, directors, employees, agents or representatives and Subcontractors, as well as their Subcontractors' officers, directors, employees, agents or representatives with knowledge of the Procurement Process or the Contract to meet with and respond to questions from the Bank's representatives and to provide to the Bank promptly any information or documents necessary for:
- (a) the Bank's investigation of allegations of Prohibited Practices, or
  - (b) the Bank's monitoring and evaluation of the Contract and to enable the Bank to examine and address any Project related complaints made under the Bank's Independent Project Accountability Mechanism.

The Participants and Subcontractors shall permit the Bank or persons appointed by the Bank to inspect the Site (as defined in the Contract), as well as their assets, books, accounts, records, and other documents (on any media or in any format) relating to the Procurement Process or the Contract and to have such assets, books, accounts, records, and other documents audited by auditors appointed by the Bank, if required by the Bank.

The Participants and Subcontractors shall maintain all books, documents, records, and other documents related to the Contract in accordance with applicable law but in any case for at least six years from the date of substantial performance of the Contract.

- 3.6 Anti-competitive conduct constitutes practices by Participants and/or the Client with the intent or effect of preventing, restricting or distorting competition during the Procurement Process (the "Anti-Competitive Conduct").

These may include, inter alia:

- (a) entering in a formal or informal non-compete agreement;

- (b) agreeing to share or sharing information with other Participants or the Client that might lead to reduced competition (for example, price fixing, proposal rigging, market sharing, or abusing a dominant position);
- (c) submission of a non-responsive proposal by a Participant with the aim to support another Participant to be awarded the Contract;
- (d) consultations amongst Participants on whether to submit a proposal;
- (e) the Participant having a relationship with other Participants or the Client that directly or indirectly, grants the Participant access to information about, or the ability to influence the proposal of another Participant; or
- (f) the Participant or a related party has influenced the decisions of the Client regarding the Procurement Process.

Communications relating to the subcontracting of a part of the Contract will not be considered Anti-Competitive Conduct, provided that such communication is limited to the information required to facilitate that particular subcontract.

- 3.7 In the event that the Bank identifies reasonable grounds to suspect that a Participant has engaged in Anti-Competitive Conduct during the Procurement Process, the Bank may declare the Contract to be ineligible for Bank financing.

#### **4. Eligible Participants**

- 4.1 A Participant can be a natural person, legal entity or any combination thereof in the form of a joint venture, consortium, or association (the "JVCA").

In the case of a JVCA:

- (a) the members of the JVCA shall be jointly and severally liable in respect of their proposal;
- (b) the JVCA shall nominate a representative (the "Lead Partner"), who shall have the authority to conduct all business for and on behalf of the Participant and each of the members of the JVCA during the Procurement Process and in the course of the implementation of the Contract; and
- (c) the JVCA shall not alter its composition or legal status after submitting its proposal.

- 4.2 Unless stated otherwise in the DS, a Participant from any country may participate in the Procurement Process.

A Participant, or in the case of a JVCA, any member thereof, shall be deemed to have the nationality of a country, if the Participant is a citizen of, or is constituted, incorporated or registered in such country.

The same criterion shall apply to the determination of the nationality of any Subcontractor, proposed for any part of the Contract.

- 4.3 A natural person or a legal entity may participate in only one proposal for the Contract (or an individual lot, where applicable), either individually or as a member of a JVCA. Submission of, or participation by a Participant, or in the case of a JVCA, any member thereof, in more than one proposal for the Contract will result in the rejection of all proposals for the Contract, in which the party is involved. However, this does not prohibit participation in proposals for separate lots under a Procurement Process, where applicable.

Subcontractors are not deemed to be Participants in the Procurement Process and may be included in more than one proposal.

- 4.4 No Affiliate of the Client, the Borrower, or the Grant Recipient, as appropriate, or of a procurement agent, or consultant engaged by the Client in connection with the Procurement Process, shall be eligible for award of the Contract, unless it can be demonstrated to the satisfaction of the Bank that there is not a significant degree of common ownership, influence or control between a Participant and the Client, Borrower, or the Grant Recipient, as appropriate, or the procurement agent, or consultant engaged by the Client in connection with the Procurement Process.
- 4.5 In the event that a prequalification of potential Participants has been undertaken, only proposals from prequalified Participants shall be considered by the Client for award of the Contract.

As part of its proposal a prequalified Participant shall:

- (a) update the information submitted with its prequalification application and demonstrate that the Participant meets the conditions for its prequalification, where applicable; or
- (b) confirm that all original information submitted with its prequalification application remains essentially correct, as of the date of the proposal submission.

The formation of a JVCA after prequalification as well as any change in a prequalified JVCA shall be subject to the written approval by the Client prior to the deadline for submission of proposals, stated in ITP 19.1. Such approval may be denied if:

- (i) members withdraw from a JVCA and the remaining members do not meet the qualifying requirements;
- (ii) the level of participation by members of the JVCA or the structure of the JVCA have been substantially changed;
- (iii) the new JVCA is not qualified;
- (iv) such change may result in a substantial reduction of competition; or
- (v) a request for a change in the status of the prequalified Participant is received by the Client after the date stated in the DS.

The Client shall use its best efforts to notify Participants of any changes to the list of prequalified Participants as soon as possible and in any case prior to the proposal opening.

- 4.6 Participants shall provide evidence of their eligibility satisfactory to the Client, as the Client may reasonably request.
- 4.7 The considerations specified above shall apply to Subcontractors, as appropriate.

## **5. Cost of Participation in Procurement Process**

- 5.1 A Participant shall bear all costs associated with the preparation and submission of its proposal, and the Client shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Procurement Process.
- 5.2 Unless otherwise stated in the DS, the Procurement Document is provided to the Participants free of charge.

**6. Language of Procurement Process**

- 6.1 The proposal, as well as all correspondence and documents relating to the Procurement Process exchanged between a Participant and the Client, shall be in the language specified in the DS.
- 6.2 Supporting documentation that is part of the proposal may be in another language provided that it is accompanied by an accurate translation of the relevant sections in the governing language. For purposes of evaluation of the proposal and its interpretation, such translation shall govern.

## B. Procurement Document

### 7. Contents of Procurement Document

- 7.1 The Procurement Document consists of the Sections listed below, which provide the details of the Procurement Process, and should be read in conjunction with any amendments or addenda issued in accordance with ITP 8:
- Section I: Instructions to Participants;
  - Section II: Data Sheet;
  - Section III: Evaluation Methodology;
  - Section IV: Eligibility and Qualification Criteria;
  - Section V: Forms;
  - Section VI: Requirements; and
  - Section VII: Contract Terms and Conditions.
- 7.2 The invitation to participate in the Procurement Process issued by the Client is not part of the Procurement Document.
- 7.3 A Participant shall obtain the Procurement Document from the source stated by the Client in the invitation to participate in the Procurement Process. The Client is not responsible for incompleteness or incorrectness of the Procurement Document, if this document is obtained from another source.
- 7.4 A Participant is expected to examine all instructions, forms, terms and conditions of the Contract, the Requirements and any other information in the Procurement Document. Failure to furnish all information or documentation required by the Procurement Document may result in the rejection of the proposal.

### 8. Amendment of Procurement Document

- 8.1 At any time prior to the deadline for submission of proposals, stated in ITP 19.1, the Client may amend the Procurement Document by issuing an amendment.
- 8.2 Any amendment issued shall be part of the Procurement Document and shall be communicated in writing to all Participants, who have acquired the Procurement Document from the Client in accordance with ITP 7.3.
- 8.3 To give Participants reasonable time to take an amendment into account in preparing their proposals, the Client may extend the deadline for submission of proposals, stated in ITP 19.1.



## C. Preparation of Proposals

### 9. Clarification of Procurement Document, Site Visit, Clarification Meeting

- 9.1 A Participant requiring any clarification of the Procurement Document shall contact the Client in writing, as described in the DS, or raise its enquiries during the clarification meeting, if provided for in accordance with ITP 9.2.

Prior to the deadline for submission of proposals, stated in ITP 19.1, the Client shall respond promptly to any requests for clarification, provided that such requests are received no later than the number of calendar days specified in the DS. The Client's response shall be in writing with copies to all Participants who have acquired the Procurement Document in accordance with ITP 7.3, including a description of the inquiry but without identifying its source. If the Client deems it necessary to amend the Procurement Document, as a result of a request for clarification, it shall follow the procedure described under ITP 8.

- 9.2 The Participants' designated representatives are invited to attend a clarification meeting, if provided for in the DS. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

Non-attendance at the clarification meeting will not be a cause for rejection of the proposal by a Participant.

- 9.3 A Participant is requested, as far as possible, to submit any questions in writing to reach the Client not later than seven (7) calendar days before the clarification meeting.

- 9.4 Where applicable, a Participant may visit and examine the Site and obtain for itself, at its own responsibility, all information that may be necessary for preparing the proposal and entering into the Contract.

- 9.5 Where a Participant and any of its personnel or agents have been granted permission by the Client to enter its premises and lands for the purpose of such visit, the Participant, its personnel, and agents shall release and indemnify the Client and its personnel and agents from and against all liability in respect thereof, and shall be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the visit.

- 9.6 If so provided in the DS, the Client will organise a Site visit.

Unless otherwise stated in the DS, non-attendance at the Site visit will not be a cause for rejection of the proposal by a Participant.

- 9.7 The costs of attending a clarification meeting or visiting the Site shall be at the Participant's own expense.

- 9.8 Minutes of the clarification meeting and the Site visit, if appropriate, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Participants, who have acquired the Procurement Document in accordance with ITP 7.3.

Any modification to the Procurement Document that may become necessary as a result of the clarification meeting shall be made by the Client exclusively through the issuance of an amendment of the Procurement Document pursuant to ITP 8 and not through the minutes of the clarification meeting.

## **10. Documents Comprising Proposals**

- 10.1 The proposal shall comprise the following documentation:
- (a) the document entitled the letter of tender (the “Letter of Tender”) and the enclosed integrity covenant (the “Covenant of Integrity”) supported by a duly authorised power of attorney. Where applicable, the completed pages entitled appendix to tender (the “Appendix to Tender”) shall be appended to and form part of the Letter of Tender;
  - (b) the documentation representing the Participant’s technical proposal (the “Technical Documentation”);
  - (c) the documentation representing the Participant’s financial proposal (the “Financial Documentation”); and
  - (d) the documentation confirming the Participant’s eligibility and qualifications (the “Eligibility and Qualification Documentation”).
- 10.2 A Participant shall submit the Letter of Tender, the Covenant of Integrity and the Appendix to Tender, where appropriate, in the form as furnished in Section V, Forms. These forms must be completed without any alterations to their format, and no substitutes shall be accepted. All blank spaces shall be completed in with the information requested.
- 10.3 The Technical Documentation shall comprise the documents listed in the DS.
- 10.4 The Financial Documentation shall comprise the documents listed in the DS.
- 10.5 The Eligibility and Qualification Documentation shall comprise the documents listed in the DS.
- 10.6 The Technical or the Eligibility and Qualification Documentation shall not include any material financial information related to the Financial Documentation.
- 10.7 Whilst preparing the proposal, a Participant shall provide the information requested by using the forms furnished in Section V, Forms, as appropriate.

## **11. Alternative Proposals**

- 11.1 Unless otherwise stated in the DS, alternative proposals shall not be considered.
- 11.2 Where alternative proposals are invited, the method of the evaluation of the alternative proposals shall be stipulated in Section III, Evaluation Methodology.

## **12. Proposal Price and Discounts**

- 12.1 The prices quoted by a Participant in the proposal shall be for the entire scope of the Contract and conform to the requirements specified in the DS.
- 12.2 A Participant shall complete, as appropriate, rates and prices for all items of the Price Schedules. Items against which no rate or price is entered by a Participant will not be paid for by the Client and shall be deemed covered by the rates and prices for other items in the Price Schedules.
- 12.3 In the Letter of Tender a Participant may quote discounts and the methodology for their application.

Notwithstanding the above, any discounts conditional upon, or related to, the proposals of other Participants shall be disregarded.

### **13. Currency of Proposals**

- 13.1 The price quoted by a Participant in its proposal shall be in the currency or currencies specified in the DS.

### **14. Period of Validity of Proposals**

- 14.1 Proposals shall remain valid for the period specified in the DS. A proposal valid for a shorter period may be rejected by the Client as non-responsive.
- 14.2 In exceptional circumstances, prior to the expiration of the proposal validity period, the Client may request the Participants to extend the period of validity of their proposals without requiring or permitting to modify them, except as provided for in ITP 14.3. The request and the responses shall be made in writing.

A Participant may refuse the request for such extension without forfeiting its tender security, if such security is requested in accordance with ITP 15.1.

If a tender security is required in accordance with ITP 15.1, a Participant agreeing to the request shall for an extension of the validity of its proposal also extend the validity of the tender security for at least twenty-eight (28) calendar days beyond the revised validity of the proposal.

- 14.3 In the case of fixed price contracts, if the period of proposal validity is extended, the proposal price of the successful Participant shall be adjusted to arrive at the Contract price in accordance with the methodology provided in the request for extension. However, the evaluation of proposals shall be based on the prices quoted by Participants in their original proposals without taking into consideration the above adjustment.

### **15. Tender Security**

- 15.1 If so required in the DS, a Participant shall furnish the original of a tender security, based on the form provided in Section V, Forms, or in another substantially similar form approved by the Client prior to the deadline for submission of proposals, stated in ITP 19.1.
- 15.2 The tender security shall be issued in the name of the Participant.

The tender security of a JVCA shall normally be in the name of the Lead Partner. However, it may be issued in the name of another member or members of the JVCA on the condition that the tender security clearly specifies the names of all members of the JVCA and states that the security is submitted for and on behalf of the JVCA.

- 15.3 The tender security amount and currency shall be as specified in the DS.
- 15.4 The tender security shall be in the form of
- (a) cash transferred to the Client's account specified in the DS; or
  - (b) a demand guarantee in any of the following forms at the Participant's option:
    - (i) an unconditional bank guarantee; or
    - (ii) an irrevocable letter of credit.

Unless it is provided in the form of a cash transfer, the tender security shall be issued by a reputable bank, which shall have the minimum credit rating stated in the DS.

The tender security may be issued in electronic form using the Society for Worldwide Interbank Financial Telecommunication system (the "SWIFT").

15.5 The submission of the tender security shall be done in the manner described in the DS.

The tender security shall be received by the Client, in the manner described above, prior to the deadline for submission of proposals, stated in ITP 19.1.

15.6 Unless otherwise stated in the DS, the tender security shall be valid for twenty-eight (28) calendar days beyond the validity of the proposal.

15.7 If a tender security is required pursuant to ITP 15.1, any proposal not supported by a substantially responsive tender security may be rejected by the Client as non-responsive.

15.8 If a tender security is required pursuant to ITP 15.1, the tender security of unsuccessful Participants shall be returned to them as promptly as possible and in any case immediately after (a) expiration of the validity of their proposals, or (b) the successful Participant has signed the Contract and, if required, has furnished the performance security in accordance with the requirements of the Contract; whichever is the earliest.

15.9 The tender security of the successful Participant shall be returned as promptly as possible once the successful Participant has signed the Contract and, if required, has furnished the performance security in accordance with the requirements of the Contract.

15.10 In case of an annulment of the Procurement Process in accordance with ITP 32 the Client shall promptly return the submitted tender securities to the respective Participants.

15.11 The tender security may be forfeited:

- (a) if a Participant withdraws its proposal during the period of proposal validity specified by a Participant in the Letter of Tender; or
- (b) if the successful Participant fails to:
  - (i) sign the Contract in accordance with ITP 36;
  - (ii) If required, furnish the performance security in accordance with the requirements of the Contract; or
  - (iii) accept the correction of arithmetical errors of the proposal in accordance with ITP 27.

## **16. Format and Signing of Proposals**

16.1 A Participant shall prepare one original set of the documents comprising the proposal, as described in ITP 10 and ITP 11.

16.2 The proposal shall be in writing and signed by a person duly authorised on behalf of a Participant. This authorisation shall be in the form of a power of attorney, duly authorising the person(s) to sign the proposal.

16.3 A proposal submitted by a JVCA shall:

- (a) be signed so as to be legally binding on all members of the JVCA; and

- (b) include the Lead Partner's authorisation referred to in ITP 4.1, consisting of a power of attorney signed by those legally authorised to sign on behalf of the JVCA.

## D. Submission and Opening of Proposals

### 17. Submission of Proposals

- 17.1 Participants shall submit their proposals in the manner and within the deadline as described in the DS.

### 18. Withdrawal and Modification of Proposals

- 18.1 At any time prior to the deadline for the submission of proposals as stated in ITP 19.1, a Participant may withdraw or modify its proposal after submission in accordance with the process described in the DS.
- 18.2 Any withdrawal or modification of a proposal shall be valid only if they are signed by a person duly authorised by the Participant. No withdrawal or modification of the proposal shall be considered unless the corresponding notice of withdrawal or modification contains a valid authorisation.

### 19. Deadline for Submission of Proposals

- 19.1 Proposals shall be received by the Client no later than the date and time, indicated in the DS.
- 19.2 The Client may, at its discretion, extend the deadline for submission of proposals by amending the Procurement Document in accordance with ITP 8. In case of an extension, all rights and obligations of the Client and Participants shall thereafter be subject to the extended deadline.
- 19.3 Notwithstanding any other ITP provisions, in the event that the Client issues an amendment to the Procurement Document or clarifications in accordance with ITP 8 or ITP 9 respectively, the Client shall ensure that Participants at all times have a minimum of seven (7) calendar days to take the respective amendment or clarification into account in the preparation of their proposals. If necessary, the Client shall extend the deadline for submission of proposals by amending the Procurement Document in accordance with ITP 8.

### 20. Late Proposals

- 20.1 The Client shall reject any proposal received after the deadline for submission of proposals as stated in ITP 19.1.

### 21. Proposal Opening

- 21.1 A proposal opening shall be conducted as described in the DS.
- 21.2 A record of the proposal opening shall be prepared immediately thereafter and promptly communicated to all Participants, who submitted proposals, in the manner described in the DS.

The record shall include, as a minimum, the information specified in the DS, as well as any other information the Client may consider necessary.

- 21.3 Proposals, modifications, discounts and alternatives, which are not mentioned in the record of the proposal opening shall not be considered during the evaluation of proposals, irrespective of the circumstances.

## E. Evaluation of Proposals

### 22. Confidentiality

- 22.1 Financial, commercial or proprietary information as well as personal data created or received by the Client in the course of the Procurement Process shall be confidential, unless:
- (a) the PPR or the Procurement Document expressly provide for public disclosure thereof;
  - (b) permission is given by the concerned Participant to release such information; or
  - (c) the information is requested by the Bank, a competent court, an enforcement authority or a statutory auditor.
- 22.2 Prior to communicating to the Participants the outcome of the proposals evaluation, no information relating to the evaluation shall be disclosed to Participants or any persons not officially involved with the evaluation.
- 22.3 Any attempt by a Participant to influence, directly or indirectly, the Client or any other person involved with the evaluation of proposals, may result in the rejection of such Participant's proposal.
- 22.4 Notwithstanding the above, in the period from the proposal opening until the Contract signing, if any Participant wishes to contact the Client on any matter related to the Procurement Process, it shall do so in writing.

### 23. Evaluation of Proposals

- 23.1 The Client shall evaluate proposals in accordance with the instructions in ITP 23-31 and the criteria and methodology as stated in Section III, Evaluation Methodology. No other evaluation criteria or methodologies shall be permitted.
- 23.2 The Client's evaluation of a proposal shall be based on the content of the proposal itself as described in ITP 10 and ITP 11, and any requested clarifications thereof.
- 23.3 If a proposal is not substantially responsive to the requirements of the Procurement Document, it shall be rejected by the Client.
- 23.4 During the evaluation of proposals, a Participant shall not be permitted or asked to rectify any material Deviations, Reservations, or Omissions in its proposal, except for substituting a Subcontractor or a financial institution in accordance with ITP 32.

### 24. Clarification of Proposals

- 24.1 To assist in the examination, evaluation, and comparison of the proposals and qualification of the Participants, the Client may, at its discretion, ask any Participant for a clarification of its proposal, allowing a reasonable time for response. Any clarification submitted by a Participant that is not in response to a request by the Client shall not be considered. The Client's request for clarification and the response shall be in writing. During the clarification process no change in the prices or substance of the proposal shall be sought, offered, or permitted, except for confirming the correction of arithmetical errors discovered by the Client in the evaluation of the proposals in accordance with ITP 27.
- 24.2 If a Participant does not provide clarifications of its proposal by the date and time set in the Client's request, its proposal may be rejected.

## **25. Determination of Responsiveness**

25.1 For a proposal or tender security to be considered substantially responsive, it shall meet the requirements set out in the Procurement Document without a material Deviation, Reservation, or Omission as defined below:

- a “Deviation” is the departure from the requirements specified in the Procurement Document;
- a “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Procurement Document; and
- an “Omission” is the failure to submit part or all of the information or documentation required in the Procurement Document.

A material Deviation, Reservation, or Omission is one that, if:

- (a) accepted, would:
  - (i) affect in any substantial way the scope, quality, or performance of the requirements, as specified in Section VI, Requirements; or
  - (ii) limit in any substantial way, inconsistent with the Procurement Document, the Client’s rights or the Participant’s obligations under the Contract; or
- (b) rectified, would unfairly affect the competitive position of other Participants presenting substantially responsive proposals.

25.2 The Client shall examine the proposals to confirm that all requirements of Section VI, Requirements, and Section VII, Contract Terms and Conditions, have been met without any material Deviation, Reservation, or Omission.

## **26. Non-material Non-conformities**

26.1 Provided that a proposal is substantially responsive, the Client may waive any quantifiable non-conformities in the proposal that do not constitute material Deviations, Reservations or Omissions.

A Participant shall not be requested or permitted to offer a price adjustment for rectifying such Deviations, Reservations or Omissions. For evaluation purposes, the cost of all quantifiable Deviations, Reservations or Omissions shall be added to the price of the proposal in question. Unless it can be directly derived from the Participant’s proposal, a reasonable estimate of the cost shall be made by the Client, taking into consideration the corresponding prices from the proposals of other responsive Participants, or other appropriate market prices. Such costs will be at the Client’s sole discretion.

Deviations and other factors that exceed of the requirements of the Procurement Document or otherwise result in unsolicited benefits for the Client shall not be taken into account in the evaluation of proposals.

26.2 Notwithstanding the provisions of ITP 23.4, and provided that a proposal is substantially responsive, the Client may request a Participant to submit any necessary missing information or documentation, within a reasonable period of time, to rectify non-material Omissions in the proposal. Requested information or documentation pertaining to such Omissions shall not be related to any aspect of the price of the proposal.

Failure of the Participant to comply with the request may result in the rejection of its proposal.



## **27. Correction of Arithmetical Errors**

27.1 Provided that the proposal is substantially responsive, the Client 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 Client there is an obvious misplacement of the decimal point in the unit price, in which case the unit price shall be corrected based on the quoted total price, or appropriate market price data;
- (b) where there are errors between the sub-total of the amounts given under the price breakdown and the amount given under the total price, the former shall prevail and the latter will be corrected accordingly;
- (c) 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
- (d) 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.

27.2 If a Participant does not accept the correction of errors, its proposal shall be declared non-responsive and rejected and its tender security may be forfeited.

## **28. Proposal Price Adjustments**

28.1 For evaluation and comparison purposes the Client shall adjust, as appropriate, the prices of the proposals using the methodology specified in Section III, Evaluation Methodology, as well as the provisions of ITP 26.1 and ITP 27.1.

## **29. Conversion to Single Currency**

29.1 For evaluation and comparison purposes, the currency or currencies of the proposals shall be converted into a single currency, as specified in Section III, Evaluation Methodology.

## **30. Qualification of Successful Participant**

30.1 The Client shall determine to its satisfaction whether the Participant that is selected as having submitted the most economically advantageous and substantially responsive proposal meets the qualifying criteria specified in Section IV, Eligibility and Qualification Criteria.

30.2 The determination shall be based upon an examination of the documentary evidence of the Participant's qualifications as submitted by the Participant pursuant to ITP 10.

Notwithstanding the provisions of ITP 23.4, the Client may request additional information to establish that a Participant meets the qualifying criteria specified in Section IV, Eligibility and Qualification Criteria.

30.3 An affirmative determination of the qualification shall be a prerequisite for the award of the Contract to the Participant. A negative determination shall result in the rejection of the proposal, in which event the Client shall proceed to the next most economically advantageous proposal (as has been determined pursuant to the methodology, specified in Section III, Evaluation Methodology) to make a similar determination of that Participant's qualifications to perform the Contract successfully.

30.4 Notwithstanding the provisions of ITP 30.3, the Client reserves the right to waive any minor Deviations or Omissions in the Eligibility and Qualification Documentation that do not materially affect the capability of the Participant to perform the Contract.

### **31. Exclusions from Contract Award**

31.1 The Client shall exclude a Participant from the award of the Contract if:

- (a) the Participant, or in case of a JVCA, any member thereof, has been declared ineligible pursuant to the EPPs; or
- (b) any import of goods from the Participant's country or any payments to the Participant, or in case of a JVCA, any member thereof, are prohibited by sanctions imposed by a resolution of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

31.2 Provided that the Bank has determined that such exclusion is not contrary to the principles set out in the PPR, the Client shall exclude a Participant from the award of the Contract, if:

- (a) in relation to the Procurement Process, the Participant has been determined to have a conflict of interest, an unfair competitive advantage, or has engaged in Anti-Competitive Conduct;
- (b) the Participant, any member of a JVCA, or their Affiliates have been convicted of an offence involving a Prohibited Practice or equivalent act during the ten years preceding the eligibility assessment, provided that such criminal conviction is final in the relevant national jurisdiction and was rendered in judicial proceedings providing for adequate due process acceptable to the Bank;
- (c) it is or it will become unlawful for the Client under the law governing the Contract to enter into the Contract with the Participant or to perform its obligations under the Contract; or
- (d) a circumstance or event exists, outside the Client's control (including but not limited to the imposition of any law), which has or may reasonably be expected to have the effect of prohibiting, impairing or delaying in any material respect the performance by either the Participant or the Client under the Contract.

31.3 A Participant may be considered to have a conflict of interest with one or more of the other Participants in the Procurement Process or the Client, including but not limited to the situations, when:

- (a) they have controlling partners in common;
- (b) they receive or have received any direct or indirect subsidy from any of the other Participants or the Client;
- (c) for purposes of the Procurement Process they have the same legal representative, as other Participants;
- (d) the Participant, any member of a JVCA, or their Affiliates have participated in the feasibility or design stages of the Project, unless it can be demonstrated that such participation would not constitute a conflict of interest. Such determination must be made by the Client to the satisfaction of the Bank prior to the deadline for submission of the proposals as stated in ITP 19.1;
- (e) the Participant, any member of a JVCA, or their Affiliates have participated as a consultant in the preparation of Section VI, Requirements, which is the subject of the Procurement Process; or

- (f) the Participant, any member of a JVCA, or their Affiliates have been hired, or are proposed to be hired, by the Client or the Borrower or the Grant Recipient, as appropriate, for the supervision or administration of the Contract.
- 31.4 A Participant may be considered to have an unfair competitive advantage, if they, compared to other Participants, have:
- (a) greater access to information in respect of the Procurement Process or the Contract; or
  - (b) close business relations with the Client that may materially distort the behaviour of the Client in respect of the Procurement Process, including the award of the Contract.
- 31.5 A Subcontractor shall be deemed unacceptable in any of the following circumstances:
- (a) the Subcontractor:
    - (i) has a conflict of interest as a result of:
      - participating in the feasibility or design stages of the Project or the preparation of Section VI, Requirements, for the Contract, unless it can be demonstrated that such participation would not constitute a conflict of interest; or
      - being hired, or being proposed to be hired, by the Client or the Borrower or the Grant Recipient, as appropriate, for the supervision or administration of the Contract;
    - (ii) has been declared ineligible pursuant to the EPPs; or
    - (iii) has engaged in Anti-Competitive Conduct during the Procurement Process;
  - (b) any import of goods from the Subcontractor's country is prohibited by sanctions imposed by a resolution of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

## **32. Client's Right to Request Substitutions**

- 32.1 Should the Client determine that a Subcontractor is unacceptable in accordance with ITP 31.5 or unqualified, where appropriate, the Client shall not reject the proposal, but request the Participant to substitute the Subcontractor for an acceptable party, without any modification to the price of the proposal.
- 32.2 Should the Client determine that the involvement of a financial institution proposed by a Participant for receiving payments, providing bank guarantees or insurance policies under the Contract, may prohibit or impair in any material respect the payments to these institutions or the enforceability of these bank guarantees or insurance policies, the Client shall not reject the proposal, but request the Participant to substitute such financial institution for an acceptable party, without any modification to the price of the proposal.

## **33. Client's Right to Accept Any Proposal, and to Reject Any or All Proposals**

- 33.1 The Client reserves the right to accept or reject any proposal, and to annul the Procurement Process and reject all proposals at any time prior to a contract award, without thereby incurring any liability towards the Participants.

## F. Contract Signing

### 34. Award Criteria

- 34.1 The Client shall award the Contract to the Participant whose proposal has been determined pursuant to the methodology specified in Section III, Evaluation Methodology to be substantially responsive to the requirements of the Procurement Document and the most economically advantageous, provided that the Participant is determined to be qualified to perform the Contract successfully and there are no grounds for exclusion of the Participant from contract award, as per ITP 31.

### 35. Notification of Outcome of Proposal Evaluation

- 35.1 Upon the completion of the evaluation, the Client shall send simultaneously to each Participant the notification of the outcome of the proposals evaluation.

The notification shall include, as a minimum, the information specified in the DS, as well as any other information, as the Client may consider necessary.

- 35.2 Upon receipt of the notification sent in accordance with ITP 35.1, a Participant may make a written request to the Client for a debriefing. The Participant shall ensure that such request is received by the Client within the following seven (7) calendar days. The Client shall provide a debriefing to the Participant within seven (7) calendar days upon receipt of such request.

Debriefings may be provided either in writing or verbally. In the latter case, within three (3) calendar days following the debriefing, the Client shall send to the Participant minutes of the meeting. Participants shall bear their own costs of attending a debriefing meeting.

The Contract shall be awarded no earlier than fourteen (14) calendar days from the date of sending the notification in accordance with ITP 35.1 or ten (10) calendar days after the date of completion of the debriefing process, whichever is later. This provision does not apply in the event that only one proposal has been received by the Client prior to the deadline for submission of the proposals as stated in ITP 19.1.

- 35.3 Subject to the provisions of ITP 35.1, prior to the expiration of the period of proposal validity, the Client shall notify the successful Participant in writing that its proposal has been determined to be the most economically advantageous.

Unless a contract finalisation meeting is held in accordance with ITP 35.4, the aforementioned notification shall construe the notification of a contract award and shall be issued in the form of the Letter of Acceptance, included in Section VII, Contract Terms and Conditions.

- 35.4 Subject to the provisions of ITP 35.1, prior to the expiration of the period of proposal validity, the Client may invite the successful Participant for a contract finalisation meeting, by issuing an invitation for such meeting, which shall include details of the place and time for the meeting and the subject of the discussions.

The meeting shall be used solely for the purpose of clarifying any outstanding minor or non-material issues pertinent to the proposal, which has been determined to be the most economically advantageous.

At the meeting the Participant shall not be allowed or asked to change the substance of its proposal nor required to accept new conditions, as a condition of the Contract signing.

Notwithstanding the above, any modifications to the resulting Contract, which are agreed during the meeting shall not impact upon the original relative ranking of the Participants, established as a result of the evaluation of their proposals.

The Client and the Participant shall use best efforts to expeditiously finalise the draft Contract, which shall include the Letter of Acceptance, if appropriate.

If parties fail to agree on the draft Contract, the Client, subject to the Bank's prior no-objection, may reject the proposal of the Participant.

A Participant shall bear the cost of attending the meeting.

- 35.5 Within seven (7) calendar days of the Participant's receipt of the notification of a contract award or an invitation to the contract finalisation meeting, the Participant shall acknowledge it to the Client in writing. The Participant shall enclose with the acknowledgment the details of the bank account(s) to be used for receiving payments under the Contract.

Such bank account details shall be provided in the format required in the Letter of Acceptance, or the draft Contract, when a contract finalisation meeting is provided for.

Unless otherwise agreed by the Client, the bank account(s) shall be held in the name of the Participant and be located either in the Participant's country of incorporation or domicile, as applicable, or in the country, where the Contract is implemented.

In case of a JVCA, such account(s) shall be in the name of any member thereof and shall be located in such member's country of incorporation or domicile, as applicable, or in the country where the Contract is implemented.

The Bank will not make payments to a bank account in a jurisdiction which is deemed by the Financial Action Task Force (the "FATF"), to be on the list of non-cooperative countries or territories<sup>1</sup> at the date of payment.

## **36. Contract Signing**

- 36.1 Pursuant to ITP 35, and promptly upon receipt of the successful Participant's acknowledgement of the notification of the Contract award and the bank account details, or upon finalising the draft Contract, if a contract finalisation meeting has been held, the Client shall sign the Contract Agreement and send the successful Participant the complete Contract.
- 36.2 Within fourteen (14) calendar days of receipt of the Contract, the successful Participant shall sign, date, and return it to the Client.
- 36.3 Upon signing the Contract, the successful Participant shall, if required, provide the performance security in accordance with the Contract.
- 36.4 On the next working day upon receiving the signed Contract, the Client shall notify in writing all Participants, who submitted a proposal, of the results of the Procurement Process, stating:
- (a) the title of the Project;
  - (b) the title of the Procurement Process;
  - (c) the title of the Contract;

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<sup>1</sup> The current FATF list of Non-Cooperative Countries or Territories (the list of High-Risk Jurisdictions subject to a Call for Action), can be found on the following web-page: <https://www.fatf-gafi.org/en/publications.html>

- (d) the name of the Participant, whose proposal has been determined to be the most economically advantageous;
- (e) the Contract price; and
- (f) the duration of the Contract.

The above information may be made public.

- 36.5 Simultaneously with the notification under ITP 36.4, the Client shall send the information regarding the outcome of the Procurement Process and the Contract award for publication by the Bank.

## G. Complaints

### 37. Complaint Procedure

- 37.1 Participants are entitled to bring potential irregularities in the Procurement Process to the Client's attention or to submit to the Client a procurement-related complaint.

Such communication shall be sent to the Client as soon as reasonably practicable, but no later than seven (7) calendar days after the Participant became aware, or should have become aware, of the relevant event or circumstance, and in any case fourteen (14) calendar days prior to the deadline for submission of proposals as stated in ITP 19.1.

The Client shall review the received information or complaint and shall respond to the concerned Participant in an expeditious manner, and, to the extent possible, no later than seven (7) calendar days prior to the deadline for submission of proposals as stated in ITP 19.1.

Any issues concerning evaluation of proposals shall be dealt with in accordance with ITP 35.2.

- 37.2 For issues not resolved through the procedures as described in ITP 37.1, Participants may request the Bank to review potential irregularities in the Procurement Process or to submit a procurement-related complaint in accordance with the Bank's review processes as published on the Bank's web-site:

<https://www.ebrd.com/work-with-us/procurement/project-procurement-complaints.html>