

KOICA REGULATIONS FOR INTERNATIONAL PROCUREMENT

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CHAPTER I. INTRODUCTION

Article 1 Purpose and Scope of Application

- (1) These Regulations for International Procurement (these “**Guidelines**”) relate to the Projects in Article 22-2(4) of the Korea International Cooperation Agency Act (the “**Act**”) (the “**Projects**”). Accordingly, the purposes of these Regulations are to promote the efficient and proper implementation of the Projects by: (a) detailing the procedures applicable to (i) International Tender processes conducted within Korea; or (ii) Local Tender processes conducted overseas or International Procurement processes conducted using a Recipient Country’s procurement system (collectively, the “**Procurement Procedures**”); and (b) delineating those matters that will be relevant to the contracts entered into with Domestic Persons and/or Foreign Persons participating in such Procurement Procedures.
- (2) Should KOICA or a government agency of Korea agree to cooperate with an international organization, a non-governmental international organization, or a foreign aid organization, KOICA may delegate to or entrust a KOICA Trustee with the International Procurement duties relating to a Project; or may have the KOICA Trustee appoint a separate Project undertaker.
- (3) Matters not prescribed by these Regulations shall be subject to Grant Aid Project the related enforcement regulations, and such other regulations of KOICA that relate to the Projects. The laws of the Recipient Country and general international good practice shall also be taken into consideration. To the extent a matter required to complete the Bid Proposal is not expressly prescribed herein, such matter shall be announced or notified to the Bidders in accordance with Article 13 of these Regulations.

Article 2 Definitions

In addition to the terms used elsewhere in these Regulations, the definitions in this Article 2 shall apply throughout these Regulations unless expressed otherwise.

1. “**Bidder**” means any Domestic Person or Foreign Person participating in a tender for international procurement.
2. “**Bid Proposal**” means proposal documents prepared and submitted by Bidders in response to an ITB.
3. “**Contracting Party**” means the counterparty to a contract entered into with the Employer pursuant to a competitive bidding process (either general or designated) as further detailed in Sections II and III of

these Regulations or a negotiated contracting process; or a contract executed with the Employer in accordance with the Recipient Country's own procurement system as further detailed in Section IV of these Regulations.

4. **"Data Processing Unit"** means the E-Procurement System on KOICA's website, which KOICA designates as the forum for disclosing and posting information regarding the International Procurement process.
5. **"Domestic Person"** means an individual who has Republic of Korea nationality and an entity established in accordance with the laws of the Republic of Korea.
6. **"Employer"** means KOICA (including KOICA HQ and any KOICA Overseas Office) or a KOICA Trustee and is the entity undertaking the International Procurement activities in accordance with these Regulations.
7. **"Estimated Price"** means the criterion amount for determining a reasonable price for procurement contracts relating to goods, services, and construction works, etc. as estimated by KOICA considering the relevant Project budget, and if there is a choice for procurement, the Estimated Price shall be the highest possible procurable price. Regarding International Procurement under these Regulations, KOICA shall be entitled to determine the Estimated Price based on its own evaluations without calculating the pre-determined price under the Act on Contracts to which the State is a Party.
8. **"Foreign Person"** means an individual who is not a citizen of the Republic of Korea, an individual with multiple nationalities or an entity established in accordance with the laws of a country other than the Republic of Korea.
9. **"International Procurement"** means the procurement of the Manufacture/Purchase of Goods, services, construction works required for implementing a Project through an International Tender, Local Tender, or use of the Recipient Country's system, each as further detailed in these Regulations.
10. **"International Tender"** means a tender for International Procurement conducted by KOICA HQ in Korea in accordance with these Regulations and targeted at Domestic Persons and Foreign Persons, and includes negotiated contracts.
11. **"Local Tender"** means a tender for international procurement that is conducted by either a KOICA Overseas Office or a KOICA Trustee outside of Korea and which is targeted at Domestic Persons and Foreign Persons, and includes negotiated contracts.
12. **"KOICA HQ" or "KOICA"** means the headquarter offices of the KOICA. For the purposes of these Regulations, to the extent "KOICA" must be differentiated from a KOICA Overseas Office, "KOICA" shall be the "KOICA HQ"; otherwise, "KOICA" shall mean both the KOICA HQ and a KOICA Overseas Office.
13. **"KOICA Overseas Office"** means a branch office established overseas by KOICA with the approval of the Ministry of Foreign Affairs. To the extent, KOICA must conduct a Local Tender process in a Recipient Country where no KOICA Overseas Office exists, the overseas diplomatic officer or an expatriate to which KOICA entrusts or delegates the International Procurement and contracting duties

shall be a “KOICA Overseas Office” for the purposes of these Regulations.

14. “**KOICA Trustee**” means any third-party person or organization to which KOICA entrusts or delegates its International Procurement duties relating to any Project.
15. “**Manufacture/Purchase of Goods**” means the purchase, manufacture, packaging, transportation, unloading, storage, insurance, etc. of goods for a Recipient Country and any similar actions related to the procurement of goods.
16. “**Person**” means an individual (a natural person), a corporation, partnership, limited liability company, association, trust, unincorporated organization, or other legal entity or organization, or a government body.
17. “**Projects**” has the meaning ascribed to it in Article 1(1) of these Regulations and includes individual projects conducted to implement and complete the Projects.
18. “**Recipient Country**” means the country in which a Project is to be implemented or in which the profits of the Project (deriving from the Manufacture/Purchase of Goods, supply, construction, and other services) will ultimately vest.

Article 3 General

- (1) KOICA must publish these Regulations on its Data Processing Unit so that it may be accessed by anyone including all Employers and Bidders.
- (2) The procurement of goods, construction works, and other services pursuant to these Regulations shall be by way of a process that is economical, efficient, and transparent.
- (3) In undertaking the International Procurement, KOICA shall not, without reasonable cause, (a) specify any special terms or conditions that unreasonably restrict the Bidder’s participation in a tender process or the contractual interests of the Contracting Party; or (b) prejudicially provide information relating to any International Procurement contract.
- (4) Contracts for International Procurement may be concluded through one of the following methods: general competitive bidding or designated competitive bidding or negotiated contracting, but contracts concluded through general competitive bidding shall be the default contracting method. The Employer shall be responsible for choosing the most appropriate contracting method having considered the nature of the goods, construction works, and other services being procured, the nature and characteristics of the Project and the local circumstances of the Recipient Country.

Article 4 Methods of Tender Based upon Location of Bidder

- (1) A tender for International Procurement may be conducted in one of the following ways: (a) by way of International Tender conducted by KOICA HQ from within Korea; (b) by way of Local Tender conducted by a KOICA Overseas Office or KOICA Trustee, from outside of Korea; or (c) by using the procurement system of the Recipient Country.
- (2) Unless otherwise decided by KOICA, the KOICA Overseas Office shall be the Employer for Local

Tenders and the procedures prescribed in Section II of these Regulations shall apply. However, in accordance with Article 1(2) of these Regulations, KOICA may delegate or entrust its International Procurement duties related to the relevant Project to a KOICA Trustee; provided that such delegation or entrustment is recorded in writing.

- (3) For International Tenders, KOICA HQ shall be the Employer and the procedures prescribed in Section III of these Regulations shall apply.
- (4) Use of the procurement system of a Recipient Country shall be at the discretion of KOICA and the procedures prescribed in Section IV of these Regulations shall apply.

Article 5 Eligibility

- (1) The Employer, the Bidder, and the Contracting Party must adhere to the highest standards of ethics in connection with tenders for and contracts of International Procurement. Accordingly,
 - (a) if a selected Bidder is found to have been fraudulent or deceitful during the competitive bid process, the Employer shall be entitled to cancel such selection; and
 - (b) if a Bidder or a Contracting Party is found to have been fraudulent or deceitful during a separate tender process or contracting process conducted by the Employer, KOICA shall be entitled to restrict such Bidder's or Contracting Party's ability to participate in other tenders conducted by the Employer for such period(s) of time as it chooses.
- (2) A Domestic Person or Foreign Person who intends to participate in a tender for International Procurement pursuant to these Regulations must:
 - (a) either own or lease in its relevant jurisdiction (or where the relevant person is not an individual, in the jurisdiction of the head office or the Recipient Country) the facilities and shops for the goods being procured;
 - (b) where required by the laws and regulations of the Recipient Country or the Republic of Korea, have obtained the relevant permits, authorizations, licenses, registrations, or declarations necessary to undertake the relevant Project or fulfilled the eligibility requirements in its relevant jurisdiction;
 - (c) where security measurements and other similar investigations are required in order to undertake the relevant Project, have obtained a conformity determination from the relevant authorities in either the Recipient Country or in the Republic of Korea;
 - (d) not be listed on the sanctioned persons list issued by the UN and/or the Republic of Korea (plus, a sanctioned person must not own more than 50% of its equity and it must not own more than 50% equity in a sanctioned person); and
 - (e) possess a transcript of incorporation register in the relevant jurisdiction or equivalent documents (in the case of an individual, an identification certificate) and a certificate of national tax payment or equivalent document in the relevant jurisdiction.

Article 6 KOICA's Evaluation

- (1) The Employer shall review and evaluate all documents (including but not limited to the Bid Proposal), confirmations, contracts, and proposals submitted by the Bidder relating to the International Procurement. The Employer shall be entitled to request at any time from the Bidder or prospective Bidder such documents and information required to evaluate such Bidder's eligibility to participate in the tender and ability to fulfill the terms of the contract. The fact that such requests were not originally specified in the initial invitation to bid ("ITB") shall not excuse a Bidder or prospective Bidder's failure to comply with the Employer's requests for documents and information, unless such Bidder or prospective Bidder has good cause. Where the Employer is a KOICA Trustee, separately from the KOICA Trustee, KOICA may request any documents and confirmations that it, in its reasonable discretion, deems necessary from the Bidder.
- (2) KOICA shall have the right to refuse, cancel, or suspend the payment of all funds for a Project if goods, services, and construction works are provided in breach of these Regulations or a process separately agreed by the relevant parties. KOICA shall be entitled to recover all Project funds that have been applied or used unjustly and/or in violation of these Regulations.

CHAPTER II. LOCAL TENDER

Article 7 The Main Agent of a Local Tender and General Principles

- (1) Local Tenders shall be conducted by the relevant KOICA Overseas Office and shall at all times be subject to these Regulations and the internal regulations of KOICA. Notwithstanding the above, where KOICA deems it necessary, in accordance with Article 1(2) of these Regulations, KOICA may delegate or entrust the duties of managing the Local Tender process to a KOICA Trustee. Such KOICA Trustee must conduct the Local Tender process in accordance with the terms of a separate agreement which shall be executed by and between KOICA and the KOICA Trustee. To the extent there are any conflicts between the terms of such agreement and these Regulations, the terms of such separate agreement shall prevail.
- (2) Unless otherwise provided for herein, in principle, Local Tenders shall be conducted by way of a general competitive bidding process. The Employer shall timely notify all prospective Bidders of KOICA's requirements using the most appropriate method and shall provide each prospective Bidder with equal opportunity to participate in the bid process.
- (3) The Employer may adopt the designated competitive bidding process if any of the conditions in Article 8 of these Regulations are satisfied and the Employer may proceed to conclude a negotiated contract with the Contracting Party without undergoing a competitive bidding process if any of the conditions in Article 9 of these Regulations are satisfied.

Article 8 Designated Competitive Bidding

- (1) The Employer may proceed with a designated competitive bidding process in each of the following circumstances:
 - (a) where the Contracting Party wishes to continue its contract for the Manufacture/Purchase of Goods, services and/or construction works, provided that the relevant contract was concluded in a manner and through a process acceptable to KOICA;
 - (b) where the number of persons qualified to perform the relevant contract is confirmed to be less than ten (10); or
 - (c) where, for contracts for the Manufacture/Purchase of Goods or construction, the Estimated Price is less than US\$100,000 and, for contracts for the purchase of goods or services, the Estimated Price is less than US\$50,000.
- (2) In the case of a designated competitive bidding, the Employer must nominate the largest number of nominees as Bidders to secure the most competitive price and where the number of nominees is less than five or if the Employer determines it necessary in order to secure the most competitive price, then all possible nominees must be nominated as the Bidder.
- (3) The process for general competitive bidding shall apply mutatis mutandis to designated competitive bidding except that the ITB and the pre-qualification screening process shall not apply.

Article 9 Negotiated Contracting

- (1) The Employer may enter into a negotiated contract with the Contracting Party in each of the following cases:
 - (a) where there is no Bidder or successful Bidder following a re-issued ITB in accordance with Article 22(2) hereto;
 - (b) where the standardization of equipment or the requirement to interconvert existing equipment necessitates additional purchases from the existing supplier; provided that, (a) such parts must be suitable for the existing equipment; (b) generally, the quantity of new items is less than the existing quantity; (c) the prices are reasonable; and (d) the equipment of other manufacturers or brands must have been considered but rejected for reasons acceptable to the Employer;
 - (c) where essential equipment is proprietary and only available from the one supplier;
 - (d) where the procurement of a particular good from a particular supplier is crucial to achieving the required level of performance or functional assurance of the equipment, plant, or facility;
 - (e) where for contracts for the Manufacture/Purchase of Goods, or service contracts, the Estimated Price is less than US\$20,000 and for construction contracts, the Estimated Price is less than US\$80,000;
 - (f) where it is necessary to respond to situations which KOICA recognizes as a natural disaster and/or an emergency situation; and
 - (g) where KOICA determines that contracting through a competitive bidding process is inefficient

having considered the purpose and nature of the relevant contract.

Article 10 Types of Contract

- (1) Depending on the Manufacture/Purchase of Goods, the nature and scope of construction works or services, a contract concluded following a Local Tender process may be concluded in the form of a unit-price contract, a lump-sum contract, a cost-plus-fee contract, or a hybrid of all of these. The type of contract must be specified in the ITB or the relevant bid manual.
- (2) A contract concluded following a Local Tender process may be concluded as a joint contract with more than two Contracting Parties. The ITB or bid manual must specify whether joint contracts are permitted and if so, provide information on the expected implementation method and the expected allocation of liability among the multiple Contracting Parties.

Article 11 Two-Stage Competitive Bidding

- (1) Regarding tenders for Manufacture/Purchase of Goods and services, to the extent it is inconvenient to prepare the specifications in advance or to the extent deemed necessary due to the nature of a particular Project, the Employer may adopt a two-stage bidding process consisting of a technical proposal stage and a fee proposal stage. For the first stage, the Bidder shall submit only a technical or specifications proposal without specifying a price. Only those technical proposals that qualify (each a “**Qualifying Bid**”) will be eligible to participate in the second stage which will involve submitting a fee proposal.
- (2) The Employer may also adopt a single-stage bidding process, which will require the Bidder to submit both the technical and fee proposals simultaneously but in two separate envelopes. The Employer will first open all of the technical proposals and examine them for conformity and then will open the fee proposals of only the Qualifying Bids.
- (3) Where there are more than two Qualifying Bids, the Bidder with the lowest bid price shall be selected as the successful Bidder.

Article 12 Negotiating Contracts

- (1) During a tender process for the Manufacture/Purchase of Goods and for service contracts, if deemed necessary for determining specialty and technical ability, of urgency, safeness of the facilities, and such other purposes relating to security, the Employer may, following its evaluation of the Bid Proposal, negotiate with the Bidder that it determines to be the most favorable to the Employer.
- (2) If the Employer decides to conclude a contract in accordance with subparagraph (1) above, the Employer must set detailed standards, having considered the relevant Contracting Party’s performance and technical capabilities, Project implementation plan, financial status, and bid price, and must disclose such standards to the relevant Contracting Party.

Article 13 Invitation to Bid and Pre-qualification Screening

- (1) The timeliness of ITBs is essential in a general competitive bidding process to ensure a fair process and equal opportunity for all potential participants. Any ITB must be open for a considerable period of time.
- (2) Prior to starting a tender process, the Employer may undertake a pre-qualification screening of prospective Bidders to determine whether they satisfy the eligibility requirements stated in Article 5(2) of these Regulations. Where the tender is for large or complex construction works or for custom-designed equipment or specialty services that demand particular technical and financial competence, the Employer may initiate a pre-qualification screening process to pre-determine a prospective Bidder's: (a) prior experience or track record relating to similar contracts; (b) technical manpower and whether it is equipped with manufacturing facilities; and (c) financial capability and ability to adequately perform the relevant contract.

Article 14 Deadline for Submitting Bid Proposals

- (1) The deadline for submitting the Bid Proposal must be specified in the ITB.
- (2) The deadline for submitting the Bid Proposal shall be determined by the Employer considering the size and complexity of the Project. As a general rule, at least 40 days from the date of the ITB shall be allowed; provided that such period may be reduced to ten days where urgent circumstances exist.
- (3) Where it is determined that a site investigation by the prospective Bidder is necessary or that there are other requirements to is a requirement to lengthen the deadline, the Employer may extend the submission deadline beyond the timeframe set under subparagraph (1) above.

Article 15 Bid Documents

The ITB must specify the bid documents which shall contain all information necessary for a prospective Bidder to prepare its Bid Proposal relating to the procurement of goods, construction works, and/or services (the “**Bid Documents**”). The composition of and details contained in the Bid Documents may vary depending on the type and size of the relevant Project but must generally include the following information:

- (i) name of the contract relevant to the tender, the Estimated Price and the telephone numbers (or fax numbers) and addresses, e-mail addresses easily accessible from within and outside of Korea or website details, for both the Employer and the person in charge of the tender process;
- (ii) bid manual or instructions to Bidders, and a template Bid Proposal;
- (iii) standard form contract or contract terms and conditions (general and special);
- (iv) technical specifications, list of goods or quantity statement, drawings, and other necessary attachments;
- (v) a form of guarantee;
- (vi) the pre-qualification screening and bid schedule; and
- (vii) whether joint contracts will be permitted, method of implementing such contracts, and allocation of liability for the Contracting Parties.

Article 16 Bid Deposit or Bid Guarantee

- (1) Bidders participating in a general competitive bidding process shall be required to pay the Employer a bid deposit amounting to at least five percent (5%) of the bid price (in the case of a unit-price contract, the relevant bid price amount shall be the unit price multiplied by the maximum volume of units to be implemented each time). Such bid deposit shall be a cash deposit. However, considering the Recipient Country's circumstances, the type, nature, and size of the contract, and the possibility of a successful bidder's withdrawal, KOICA may waive the obligation to provide a bid deposit and instead may request a bid guarantee issued by a financial institution or an insurance company pre-approved by KOICA.
- (2) Where a successful Bidder fails to conclude the relevant contract, the bid deposit that was submitted by such successful Bidder shall vest in KOICA (The Employer, if a different entity from KOICA HQ, shall thereafter transfer the deposit amount to the account of KOICA HQ). Where the successful Bidder that fails to conclude the relevant contract is exempted from providing a cash deposit and instead submitted a bid guarantee, KOICA shall be entitled to invoke the bid guarantee and the relevant Bidder shall be required to make a cash payment on the bid guarantee within a certain period of time (to be specified by KOICA).

Article 17 Conditions of Contract

- (1) The terms and conditions of the contract included in the Bid Documents must clearly define the rights and obligations of the Employer and the Contracting Party relating to the implementation of the relevant contract (including any amendments thereto) and where the Employer has appointed a supervisor or agent (for contract management), the rights and obligations of such supervisor or agent. The terms of the contract may include not only general conditions of the contract but also special conditions that have regard for the type and nature of the relevant Project.
- (2) Any proposed changes to the general conditions of the contract that result in a general condition becoming a special condition shall be considered with reference to whether such change is reasonable and necessary for the smooth implementation of the Project.

Article 18 Preparing the Bid Documents

- (1) The general and technical specifications must clearly and in detail, specify details of the goods or services to be supplied, the subject-matter of construction, and the place of installation or delivery.
- (2) Any drawings attached to the general or technical specifications (the “**Attachments**”) must correspond to the relevant specifications to which they attach. Should there be any discrepancies between the Attachments and the general or technical specifications to which they attach and the relevant specifications, the latter shall prevail.
- (3) To the extent there are any discrepancies between the general specifications and the technical specifications, the latter shall prevail.

- (4) The Bid Documents shall specify, in addition to the Estimated Price, the evaluation criteria and factors which will be taken into account in the evaluation of the Bid Proposals, and how such factors will be quantified or otherwise evaluated. If alternative bids based on alternative designs, materials, completion schedules, payment terms, etc. are permitted, conditions for their acceptability and the applicable evaluation method shall be specified in the Bid Documents.
- (5) Taking into account circumstances of the Recipient Country, goods that are importable or such other eligibility requirements may be specified in the bid manual or the instruction to Bidders.
- (6) Where the general or technical specifications are supplemented, clarified, rectified for errors, amended or modified, or where the general or technical specifications are modified, supplemented or amended due to the Employer, all such modifications shall be disclosed or provided to all recipients of the original Bid Documents in the same manner in which the original Bid Documents were disclosed or provided. Where such modifications are deemed significant and substantial, the Employer may extend the bid submission deadline in order that all Bidders may have an opportunity to review such modifications.
- (7) To the extent the Bid Documents specify an international or national standard regarding certain equipment, material, or technical workmanship, such Bid Documents must also state that those equipment, material, or technical workmanship that meet other standards of substantially equal or similar stature, will also be accepted.
- (8) The general and technical specifications must not reference or indicate brand names, product names, manufacturer details, unless the relevant Project requires the use of particular parts or it is necessary to provide a certain level of standard, in which case specific brand names, product names, or manufacturer details may be referenced.
- (9) Where, in accordance with the provisions in paragraph (8) above, the general or technical specifications refer to specific brand names, product names, or manufacturer details, the Bid Documents must also specify that a Bidder has the right to propose alternative goods similar in nature and of the same or better quality as the specified brands.

Article 19 Restriction on Changes to Bids

Except for as otherwise provided herein, no Bidder shall be requested or permitted to alter its Bid Proposal after it has been submitted. However, a Bidder may ask the Employer for an opportunity to clarify its Bid Proposal, provided that it does not change the substance of the Bid Proposal.

Article 20 Invalidation of Bid Proposals

- (1) Upon receiving the Bid Proposals, the Employer must ascertain and verify whether each substantially conforms to the Bid Documents, whether the required Performance Guarantees have been provided, whether documents have been properly signed and whether the Bid Proposals are otherwise generally in order.

- (2) The Employer may invalidate and reject a Bid Proposal in each of the following cases:
 - (a) where the submitting Bidder is not eligible to bid under Article 5 above;
 - (b) where a bid deposit or guarantee has not been submitted within the date specified in the ITB in accordance with Article 16 above;
 - (c) where the same Bidder (where one person is a stakeholder in several entities, such entities shall be deemed the same person) has submitted Bid Proposals regarding the same ITB;
 - (d) where a document specified in the ITB has been omitted or the Bid Proposal includes inappropriate reservations; or
 - (e) where the conditions specified in the bid instructions have not been satisfied.
- (3) Where a Bid Proposal is invalidated and rejected pursuant to subparagraph (2) above, the Employer must inform the relevant Bidder of the reason(s) for such invalidation and rejection.

Article 21 Cancellation of the Bid Process

- (1) The Employer may reject all Bid Proposals and cancel the bid process in each of the following cases:
 - (a) where the lowest evaluated bid price exceeds the Estimated Price;
 - (b) where none of the Bid Proposals satisfy the criteria prescribed in the Bid Documents; and
 - (c) where KOICA's budgetary situation leads to changes in the business plan or other unavoidable circumstances.
- (2) Following the cancellation of a bid process, the Employer must review the reasons for such cancellation, and prior to initiating a re-bid or a new tender, it must consider amending the general and/or technical specifications or the bid instructions and bid manual.

Article 22 Re-Tender and Re-issue ITB

- (1) If two or more valid Bid Proposals have not been submitted or there is no successful Bidder in a competitive bid process, the Employer may re-initiate the bid process at the same place (the "**Re-Tender**"). The Re-Tender shall not be construed as a new bid process and shall not be subject to any restriction on tenders or to the number of repeated bid processes.
- (2) Where there are no Bidders or no successful Bidder, or where a successful Bidder fails to conclude the relevant contract, the Employer may re-issue the relevant ITB.
- (3) Where the bid process is re-initiated or where the ITB is re-issued, except for the submission deadline, the price and all other terms and conditions of the initial tender must remain unchanged.

Article 23 Currency

- (1) The Estimated Price and the bid price shall be expressed in Korean Won (KRW) or the United States Dollars (USD) or in such other internationally-recognized currency. However, where special circumstances apply, such as the laws of the Recipient Country stipulating that the local currency must be used, the Estimated Price or bid price (in whole or in part) may be expressed in the currency of the

Recipient Country.

- (2) The currency for the bid price must be stated in the Bid Documents and must correspond to the currency of the Estimated Price.
- (3) All bid prices must be converted into the single currency specified by the Employer in the Bid Documents and shall be expressed as an aggregate bid price. Unless otherwise stated by the Employer in the Bid Documents, the applicable exchange rate will be the selling exchange rate published on the 15th day of every month by KOICA's designated foreign exchange bank.
- (4) Payment of the contract price must be made in the currency specified in the Bid Proposal, unless there are reasonable grounds for paying in a different currency and as long as the ITB states that the contract price may be paid in a currency other than that stated in the Bid Proposal.
- (5) If the Bidder anticipates that the bid price (in whole or in part) will be paid in a currency other than that specified in the ITB, the Bidder must specify in its Bid Proposal the otherwise applicable exchange rate. If the Bidder cannot pay in the currency specified in the ITB, it must pay in the currency stipulated in its Bid Proposal.

Article 24 Language

- (1) As a rule, Bid Documents shall be prepared in either English or Korean. However, the Employer may (at its discretion) prepare a translation of each Bid Document in either: (a) the official language of the Recipient Country; or (b) the language most commonly used in the Recipient Country and thereby provide the Bid Documents in languages other than in English and Korean.
- (2) The language of the contract shall be the same as the language of the Bid Documents. Where there is a conflict between matters expressed in English and matters expressed in Korean or the language of a Recipient Country, the English version shall prevail.

Article 25 Opening of Bids

- (1) The ITB or the Bid Documents must specify the deadline for submitting the Bid Proposal, the place of submission, and the date, time, and place for the opening of bids. The Employer must open all bids at the designated time and place as stipulated in the ITB or the Bid Documents, in the presence of all Bidders (or their representatives) (except where tenders are conducted electronically, attendance may be online). Bid Proposals received after the specified submission deadline shall be unopened and returned to the relevant Bidder.
- (2) At the bid opening, the names of the Bidders and the bid price shall be read out aloud and recorded. All attendees of the opening process (Bidders or their representatives) shall have access to such records for the verification process.

Article 26 Evaluation of Bid Proposals

- (1) The evaluation of Bid Proposals must be conducted in accordance with the conditions and standards

specified in the Bid Documents.

- (2) The Bid Documents shall specify provisions allowing for the adjustment of bid prices to correct any errors in computation, the relevant factors to be considered in a bid evaluation, and the standards to be applied when determining the lowest evaluated bid price.
- (3) Factors (other than bid price) which may be taken into consideration during evaluation include inter alia, the payment schedule, the time for completion or delivery, operational costs, equipment efficiency and compatibility, availability of services and spare parts, reliability of the proposed quality control method (including construction methods) and safety and environmental considerations. The importance of each such factor (other than bid price) shall be converted into points based on standards stated in the Bid Documents or in accordance with such other methods as shall be stipulated in the Bid Documents.
- (4) In the case of the Manufacture/Purchase of Goods (A) (i) the INCOTERMS delivery conditions shall apply for the supply of imported goods; and (ii) for goods not imported, the place of delivery shall be specified and the bid price shall comprise the costs of transportation and delivery as well as insurance; and (B) duties imposed in connection with the importation or sale of goods, import tax and other similar taxes imposed in connection with the importation or sale of goods shall not be taken into account in the evaluation of bids.
- (5) Regarding service contracts or construction contracts, a Bidder's bid price calculation must take into account all taxes, duties, and other charges related to the implementation of such contracts.

Article 27 Technical Evaluation

- (1) If the nature of the Project is such that technical factors are important or if the relevant contract is to be concluded in accordance with Article 12 above, the Employer may select the successful Bidder by undertaking a technical evaluation as long as it has specified the method and process of tender, the standards for and process of a technical evaluation, the process for selecting a successful Bidder in either the ITB or the Bid Documents.
- (2) The technical proposal cannot be replaced or amended once it has been submitted and failure to submit within the prescribed time period will be seen as a confirmed intention to no longer participate in the tender process. However, if during the evaluation process, it finds that certain matters have been omitted or require clarification, the Employer may request that the relevant Bidder supplements its technical proposal without substantially amending its original technical proposal.
- (3) All technical proposals must be evaluated fairly in accordance with the standards and processes stipulated in the ITB or Bid Documents.
- (4) Should the Employer decide to initiate a two-stage competitive bidding process in accordance with Article 11 above regarding a technical tender, it shall also be subject to the provisions of this Article 27 when conducting its technical evaluation.

Article 28 Post-qualification Screening

- (1) The Employer may undertake an evaluation of the Bidder's capabilities, starting with the Bidder with the lowest bid price to select the successful Bidder.
- (2) Other than the matters prescribed in Article 26(3) above, a capability evaluation process shall take into consideration a combination of factors including the bid price and social responsibility, and shall be conducted in accordance with the standards and criteria stipulated in the ITB or the Bid Documents. Should the relevant Bidder be deemed ineligible, the Employer must undertake the same evaluation process regarding the Bidder with the next-lowest Bid Proposal.
- (3) The Bidder with the lowest price and deemed eligible based on the capability evaluation process under subparagraph (2) above shall be selected as the successful Bidder. The Employer cannot, as a condition to its selection, request that a successful Bidder undertake any construction works or services not specified in the general or technical specifications; or impose on such successful Bidder additional responsibilities nor request that such successful Bidder amends its Bid Proposal.

Article 29 Evaluation Report

The Employer shall prepare and maintain an evaluation and comparison report detailing the specific grounds and related circumstances for selecting the successful Bidder.

Article 30 Notification to and Debriefing of Unsuccessful Bidders

Upon the successful Bidder furnishing a performance guarantee or a similar security, the Employer must promptly notify the other Bidders that their bids have been unsuccessful and must return the Performance Guarantee or similar security to the relevant unsuccessful Bidder.

Article 31 Performance Guarantee and Defect Warranty

- (1) The Employer may require a Contracting Party to submit cash collateral equal to a fixed ratio of the relevant contract value or a guarantee of equal value (each a "**Performance Guarantee**") to secure the proper performance of a contract. Any requirement to submit a Performance Guarantee must be specified in the Bid Documents. Other than cash, the Performance Guarantee may be a payment guarantee issued by the Contracting Party's bank. The value of the Performance Guarantee shall be dependent on the type and size of the goods, construction works, or services being procured but must constitute sufficient recompense for any loss suffered by the Employer as a result of the Contracting Party's breach of the relevant contract. The Performance Guarantee's value, method of submission must be specified in the Bid Documents.
- (2) The Employer may request a defects warranty from the Contracting Party to secure the Contracting Party's obligation regarding quality and defects. The value of such defects warranty and method of submission must be specified in the Bid Documents.

Article 32 Advance Payment and Advance Payment Guarantee

- (1) The Bid Documents shall specify whether the Employer will be providing an advance to the Contracting Party upon the contract entering into effect, and if so, shall specify the details of such advance payment(s).
- (2) Where such an advance is to be provided, the Bid Documents shall also specify whether any security is required to guarantee the return of such an advance to the Employer.

Article 33 Insurance

The type and terms of insurance (e.g. scope of cover, insurance period, and details of the insureds) which the successful Bidder shall be required to obtain shall be specified in the Bid Documents.

Article 34 Liquidated Damages

The relevant contract may provide for delayed damages and/or liquidated damages to be payable where a delay in the delivery of goods or completion of works results in additional costs and expenses, loss of revenue, or loss of other benefits. Where delay damages and/or liquidated damages are to be included in the terms of the contract, the Bid Documents shall specify the same.

Article 35 Force Majeure

The conditions of the contract included in the Bid Document may include a force majeure provision, stipulating that the inability of the parties to the contract will not be considered a breach of contract if such failure is a result of an event of force majeure.

Article 36 Dispute Resolution

The conditions of the contract in the Bid Documents must include a provision for dispute resolution. The parties shall have the discretion to agree the on method and jurisdiction of a dispute resolution process but must consider the nature of the Project, the type of contract, whether there are any restrictions imposed by the laws and regulations of the Recipient Country and, as a rule, must subject such dispute resolution processes to the arbitration rules of an international arbitration institution.

Article 37 Governing Law

The conditions of the contract in the Bid Documents must stipulate which laws will govern the interpretation and performance of the contract.

Article 38 Confidentiality

Except as otherwise expressly required by the laws of the Republic of Korea or a Recipient Country, no information relating to the examination, clarification, and evaluation of bids or relating to the selection process shall be communicated or disclosed after the opening of bids, to any person who has no right to

access such information in the bid process until a contract is executed with a successful Bidder.

Article 39 Price Adjustment Clause

- (1) Should any adjustment to the bid price be permitted, the Bid Documents must specify such possibility and also the methods for such price adjustment. Unless the Bid Documents expressly specify that price adjustment is permitted, changes to the contract price resulting from changes to labor costs or costs of key materials will not be permitted. In such circumstances, price adjustments may only be permitted in exceptional circumstances where the proposed price adjustment is objective and there is a reliable survey price.
- (2) If price adjustments are allowed under subparagraph (1) above, the Employer may also stipulate the upper and lower limits thereof. For the avoidance of doubt, price adjustments will not be permitted for contracts that can be completed within a one-year period.

CHAPTER III. INTERNATIONAL TENDERS

Article 40 Scope of Application

- (1) KOICA may conduct within Korea an International Tender targeted at Domestic Persons and Foreign Persons for the Manufacture/Purchase of Goods, construction works, and services using its electronic procurement system having taken into consideration the nature and size of the Project, and the circumstances of the Recipient Country. An International Tender initiated by KOICA must not be targeted at Domestic Persons only.
- (2) Regarding contracts concluded as a result of International Tenders conducted by KOICA, to the extent this Section III of these Regulations do not cover such contracts or matters relating to such contracts, the Regulations relating to Procurement and Contracting by KOICA and the Enforcement Rules relating to the KOICA Procurement and Contracting Regulations shall apply.

Article 41 Determining Estimated Price

The estimated price shall be determined in accordance with the Regulations relating to Procurement and Contracting by KOICA and the Enforcement Rules relating to the KOICA Procurement and Contracting Regulations.

Article 42 Language

- (1) The language for contracts concluded pursuant to an International Tender shall be Korean or English. However, where the use of another language is inevitable because, for example, a supplier of the goods being procured is restricted to a particular area, such another language may be used.
- (2) Where KOICA issues an ITB in Korean, it shall also state in English at the bottom of the same ITB or on an annex attached thereto certain important information, such as matters to be included in the bid and

deadline for the bid submission.

- (3) Regarding any conflicts between the Korean and non-Korean versions of any notices or information provided pursuant to paragraphs (a) and (b) above, the Korean version shall prevail.

Article 43 Invitations to Bid (ITB)

- (1) KOICA must issue an ITB through its electronic procurement system should it intend for the procurement method to be by way of a general competitive bid process. Where the selected procurement method is designated competitive bidding, the ITB must also include the standards for participation.
- (2) Other than those items prescribed in Article 23 of the Enforcement Rules relating to the KOICA Procurement and Contracting Regulations, the ITB must also include the following:
 - (a) details on economic and technical requirements, financial guarantees, and the information that a Bidder must provide;
 - (b) details concerning the issuance of a bid manual; and
 - (c) information regarding the selection process.
- (3) KOICA shall prepare and deliver a bid manual which shall contain the following information:
 - (a) the composition and outline of the tender documents;
 - (b) a description of the technical specifications and industry standards relating to the constructions works or goods the subject-matter of the tender, and a description of the relevant services;
 - (c) language of the contract; and
 - (d) other relevant matters.
- (4) In the case of a competitive bidding, KOICA shall provide each participating Bidder with an equal opportunity to receive the bid manual; and shall respond promptly to any requests for explanations regarding the bid manual.

Article 44 Announcement of Successful Bidder and Execution of Contract

- (1) Upon selecting the successful Bidder or the Contracting Party, KOICA shall announce its selection on the bulletin board of its Data Processing Unit within 60 days of the date following the date of such decision. The announcement shall state the name and address of the successful Bidder or the Contracting Party and the contract price.
- (2) In the case of a competitive bidding, KOICA shall inform the other participating Bidders of its selection of a successful Bidder and shall provide details of the successful Bidder's name, address, and bid price. KOICA shall inform the other Bidders of its selection within seven (7) days of the date following the date of its decision and may elect to inform them by a written notice or through a notification on its Data Processing Unit.
- (3) Should any unsuccessful Bidder request to receive from KOICA reasons why it was not selected and documents and information relating to the bid process, KOICA shall accede to such request, unless it has reasonable grounds not to in which case it shall inform the requesting Bidder of such grounds.

Article 45 Records and Reports of Contract

- (1) In the case of a competitive bid, following the selection of a successful Bidder, KOICA shall prepare and manage a record of the following:
 - (a) names of all Bidders;
 - (b) names of those persons who participated in the opening of the bids;
 - (c) each Bidder's eligibility to participate;
 - (d) the name of the successful Bidder;
 - (e) the value of the successful bid;
 - (f) reasons for selecting the successful Bidder;
 - (g) in the case of an invalid bid, the details of such bid and the reasons for its invalidation;
 - (h) where a notice was provided to the unsuccessful Bidders, details of such notice; and
 - (i) any other matters determined to be necessary for recordkeeping.
- (2) In the case of negotiated contracting, KOICA shall prepare and maintain a record of the following:
 - (a) the purpose of the contract;
 - (b) the Contracting Party's country, name, address;
 - (c) the product name and quantity;
 - (d) a summary of the construction works or the services;
 - (e) the unit price or contract price
 - (f) reasons for entering into a negotiated contract; and
 - (g) any other matters determined to be necessary for recordkeeping.

CHAPTER IV. USE OF RECIPIENT COUNTRY'S PROCUREMENT SYSTEM

Article 46 Conditions for using the Recipient Country's Procurement System

- (1) If KOICA deems it necessary, it may use the Recipient Country's own procurement system to conclude a contract for procurement and where a contract for procurement is to be so concluded, the relevant party to the contract with KOICA shall be a government agency or an affiliated organization of the Recipient Country (the "**Recipient Country Procurement Agent**"). Regarding the terms and conditions to be complied with by the Recipient Country Procurement Agent and the Contracting Party, KOICA and the Recipient Country Procurement Agent shall enter into a separate agreement.
- (2) The Recipient Country Procurement Agent shall select the successful Bidder in a transparent and fair manner. The Recipient Country Procurement Agent shall ensure that information regarding the procurement is not provided in a discriminatory manner.

Article 47 Report and Approval

- (1) Where the Recipient Country's procurement system is used, the Recipient Country Procurement Agent

shall provide the relevant KOICA Office with details and updates on the tender process in the Recipient Country on a regular basis. In particular, the Recipient Country Procurement Agent shall inform the relevant KOICA Office of the result of the pre-qualification screening process or the bid evaluation process within the relevant time period stipulated by the relevant KOICA Office. For the purposes of this Chapter IV, “**KOICA Office**” shall mean any office of KOICA, including the head office and a KOICA Overseas Office, that has jurisdiction over the relevant Project.

- (2) Prior to selecting the successful Bidder or to selecting the Contracting Party by way of negotiated contracting, the Recipient Country Procurement Agent shall obtain the prior written approval of the relevant KOICA Office. The same approval process shall apply for amending any contracts.
- (3) The relevant KOICA Office shall have the right to suspend or cancel and recover from the Recipient Country any funding provided to the Recipient Country if the Recipient Country Procurement Agent breaches any provision of this Chapter IV, including (a) failing to provide information relating to the tender in a timely manner; and (b) selecting a successful Bidder, concluding or amending a contract without the prior written consent of the relevant KOICA Office.

Article 48 Language

- (1) When using the Recipient Country procurement system, the official language of the Recipient Country or the language most commonly used in the Recipient Country (where applicable) may be used, provided that a certified English translation of the Bid Documents or similar documents are provided. The contract concluded in accordance with this Section IV shall be concluded in dual form (in English and the local or official language of the Recipient Country) and where there is a conflict between the two forms, the English version shall prevail.
- (2) For all matters requiring the prior approval of the relevant KOICA Office, the Recipient Country Procurement Agent shall provide such relevant KOICA Office with all necessary information in English.

INSTRUCTIONS ON INTERNATIONAL BIDDING FOR THE PURCHASE OF GOODS

Article 1 Purpose

These Instructions on International Bidding for the Purchase of Good (these “**Instructions**”) state the matters by which a Bidder participating in an International Tender or Local Tender (collectively, the “**Tenders**”) for the Manufacture/Purchase of Goods conducted by KOICA must abide.

Article 2 Definitions

Unless otherwise provided herein, the terms used in these Instructions shall have the meanings given to them in the KOICA Regulations for International Procurement (the “**Regulations**”) and the General Conditions of Contract for the Purchase of Goods (“**GCC**”).

Article 3 Registration as a KOICA Partner

- (1) Anyone wishing to participate in an International Tender must register as a partner of KOICA. Registration may be through KOICA’s Data Processing Unit or by downloading the partner registration form (English version) from KOICA’s Data Processing Unit, completing it, and then submitting the same in person (at KOICA’s head office), by post or electronically.
- (2) Anyone wishing to participate in a Local Tender must complete the partner registration form and then submit the same in person (at the relevant KOICA’s Overseas Office), by post or electronically. In the case of Local Tenders only, the partner registration process hereunder may be substituted by the submission of the Bid Proposal pursuant to Article 13 hereof.

Article 4 Eligibility to Participate in the Tender

- (1) Any person intending to participate in a Tender must satisfy the eligibility requirements stated in the relevant ITB or Bid-related Documents (as defined below).
- (2) In deciding the eligibility requirements for the Bidders in a competitive bidding process, if necessary and depending on the type and size of the contract for which the Tender is being conducted (the “**Relevant Contract**”), KOICA may refer to the same or similar contracts previously executed by such bid applicant, the performance results thereof, availability of technical personnel, manufacturing capacity, and managerial and financial status thereunder.

Article 5 Application to Participate in the Tender

- (1) Any person intending to participate in a Tender must submit the following documents to the Employer by no later than the submission due date stated in the ITB or the Bid-related Documents (as defined below) (the “**Application Submission Deadline**”):

- (a) a duly completed bid application form (in the prescribed form);
 - (b) one set of documents evidencing the applicant's eligibility to participate in the Tender;
 - (c) documents evidencing the authenticity of the applicant's signature or seal (for a Korean applicant, this will be a certificate of registered seal and certificate of use; for a non-Korean applicant, this may be a notarized or legalized specimen signature form containing the name, specimen signature, and title of the applicant (or the applicant's authorized signatory if a corporation) or equivalent documents); and
 - (d) any other documents specified in the ITB or required by a separate notice.
- (2) Each document provided under paragraph (1)(b) above must be provided in its original form or if a copy is provided, the copy must be certified as a true and correct copy of the original document and must be signed or have its registered seal affixed thereto.
 - (3) The documents, including the bid application form, submitted under paragraph (1) above cannot be amended except to correct matters such as typographical errors.
 - (4) If a representative is designated for submitting the bid application, such representative may participate in the Tender. If a bidding representative is designated or replaced after submission of the bid application but prior to the opening of bids, the designated representative may participate in the Tender.
 - (5) Where some or all of the documents specified in paragraph (1) above have been provided to the Employer before the Application Submission Deadline (for example as part of a pre-qualification screening process), such relevant documents may be deemed submitted for the purposes of the application to participate in the Tender under paragraph (1). In this case, the applicant must submit a list specifying those relevant documents that have already been submitted to the Employer.

Article 6 Bid-related Documents

- (1) All prospective Bidders shall have access to the following documents (collectively, the **"Bid-related Documents"**):
 - (a) the notice of tender or the ITB;
 - (b) these Instructions;
 - (c) a bid application form (in the prescribed form);
 - (d) the Bid Proposal (in the prescribed form);
 - (e) the International Contract for Purchase of Goods (in the standard form);
 - (f) specifications of the goods;
 - (g) general conditions of contract;
 - (h) particular conditions of contract;
 - (i) the Performance Guarantee (in the prescribed form); and
 - (j) any other documents that state matters relevant to the Tender.
- (2) The Employer may request that the prospective Bidder submitting the Bid-related Documents listed in

paragraph (1) above provide a bid deposit or bid guarantee for the amount prescribed in the ITB or notice of tender. The relevant prospective Bidder must comply with such request.

Article 7 Knowledge of Applicable Laws and Regulations

- (1) Any prospective Bidder must ensure that it is familiar with all laws and regulations applicable to the Tender and each of the Bid-related Documents specified in Article 6(1) above.
- (2) Any prospective Bidder shall have until the day before the Bid Proposal submission deadline (the “**Bid Proposal Deadline**”) to request clarification from the Employer of any mistakes or errors (including matters missing) in any of the Bid-related Documents that the prospective Bidder may have discovered during its review thereof.

Article 8 Criteria for Pre-qualification Screening

Where the ITB states that the Tender is to be subject to a pre-qualification screening process, such pre-qualification screening process shall be conducted in accordance with the KOICA's pre-qualification guideline.

Article 9 Bid Deposit or Bid Guarantee

- (1) Any prospective Bidder must submit by the Application Submission Deadline (if the submission deadline falls on a public holiday in the country in which the Tender is to be conducted, then by the immediately preceding business day) a cash bid deposit amounting to at least five percent (5%) of the bid price or a bid guarantee issued by a financial institution (e.g. a bank or an insurance company) issued a credit rating of A or higher from an internationally-recognized credit rating agency or which is pre-approved by KOICA.
- (2) If the selected Bidder fails to enter into the Relevant Contract within the prescribed period, the bid deposit or the bid guarantee that was submitted by such selected Bidder shall vest in KOICA.
- (3) The bid deposits or bid guarantees submitted by unsuccessful Bidders shall be returned to them as soon as the successful Bidder is selected. The bid deposit or bid guarantee of the successful Bidder shall be returned immediately following execution (by such successful Bidder) of the Relevant Contract.
- (4) The bid guarantee provided in accordance with subparagraph (1) above must be valid for a period beginning on a date that is before the Bid Proposal submission date and ending on a date that is at least 30 days after the Bid Proposal Deadline.

Article 10 Exemptions to Providing a Bid Deposit/Guarantee

- (1) The following applicants (each an “**Exempted Applicant**”) shall be exempt from providing a bid deposit or bid guarantee under Article 9 above:
 - (a) governmental agencies and local municipalities of the Republic of Korea;
 - (b) public institutions established under the laws of the Republic of Korea;

- (c) foreign corporations, 50% or more of whose net worth has been contributed by the government (including where such foreign corporation legally becomes a subsidiary of a governmental entity); and
 - (d) a prospective bidder whom KOICA reasonably assesses to be a low flight-risk based on track records for performing contracts with KOICA during the immediately preceding two (2)-year period.
- (2) An Exempted Applicant must submit to KOICA a written undertaking to pay the applicable penalty. The undertaking may be deemed (at the sole discretion of KOICA) the same as a bid application that promises the payment of a bid deposit.

Article 11 Participation in the Tender

- (1) Any person wishing to participate in a Tender must:
- (a) have submitted a bid application by the Application Submission Deadline;
 - (b) have completed a partner registration, where the Tender is subject to a partner registration is stated to be required in the ITB and/or the Bid-related Documents; and
 - (c) have attended a briefing session regarding the Tender, where the Tender is subject to a briefing session, and attendance of such briefing session is stated to be mandatory in the ITB and/or the Bid-related Documents.
- (2) When participating in the Tender, the Bidder (including any designated representative) must have in his/her or its possession his identification card and the same seal that was affixed to the bid application.
- (3) A person who has been restricted in accordance with Korean law and KOICA's internal regulations, from participating in a Tender for impropriety trading, cannot be designated as a representative under paragraph (2) above.
- (4) The Employer may issue instructions to the Bidders to ensure that order is maintained and shall have the authority to expel a Bidder from the Tender process or nullify his/her its bid if such Bidder fails to abide by such instructions.

Article 12 Preparation of the Bid Proposal

- (1) The Bid Proposal must be prepared in accordance with the guidance provided in the Bid-related Documents and in the prescribed form. The bid price must be stated as a lump sum where the Tender is for a lump-sum Project and as a unit price where the Tender is for a unit-price Project.
- (2) The Bid Proposal must be signed by the same person that signed the bid application. The signature must be accompanied by the signatory's full name. Where the Bidder is a corporation, the company's full name and the representative director's signature must be provided on the Bid Proposal. Where the bid application was executed by way of seal, the same seal must be affixed to the Bid Proposal.
- (3) To the extent there are any deletions or corrections to be made on the Bid Proposal following submission thereof, such deletions or corrections shall be accompanied by the Bidder's signature or seal that was

provided on the bid application.

Article 13 Submission of the Bid Proposal

- (1) The Bid Proposal shall be submitted in a sealed envelope and a Bidder shall only be permitted to submit one envelope; provided, however, that where a two-stage bidding process involving a separate technical stage and a fee proposal stage is conducted, a single Bidder shall submit two envelopes, one containing the technical proposal and the other containing the fee proposal.
- (2) A Bidder shall submit its Bid Proposal at such time, on such date and at such venue as instructed by the Employer, except if the ITB allows for submission by post, the Bidder need not comply with such instructions.
- (3) Submission of the Bid Proposal by post will only be effective if it arrives by the Bid Proposal Deadline. For the avoidance of doubt, KOICA shall not be responsible for any Bid Proposal that is lost, damaged, or delayed during transit.
- (4) A Bidder who intends to submit its Bid Proposal by post in accordance with the proviso in paragraph (2) above, must specify the following details on the cover of the sealed envelope: the name of the Tender, the date and time of the Tender, the name of the Bidder (and where it is a corporation, the company name and the name of the representative director) and a contact telephone number.
- (5) Upon receipt of a Bid Proposal by post, the Employer shall record on the cover of the envelope the date and time of receipt accompanied by a confirmatory signature or seal and shall hold the envelope unopened until the bid opening stage.
- (6) A Bidder cannot replace, modify or withdraw a Bid Proposal that has already been submitted. However, a Bidder may be allowed to withdraw its Bid Proposal if: (a) it expresses its intention to do so at the bid opening due to significant errors in the Bid Proposal; and (b) the Employer accepts and acknowledges such a request to withdraw. In a two-stage bidding process, a Bidder may be permitted to amend its technical bid proposal if: (i) there are no Qualifying Bids; or (ii) a Bidder is determined by the Employer as having satisfied the technical specifications except for a few minor matters requiring supplementation.

Article 14 Submission Deadline for Documents

- (1) All Bid-related Documents evidencing the Bidder's eligibility to participate in the Tender must be submitted on or prior to the Bid Proposal Deadline as specified in the ITB or the notice of tender.
- (2) Where the deadline including the Bid Proposal Deadline prescribed in the Bid-related Documents (the "**Relevant Deadline**") is set to be 0:00 and the date immediately preceding such deadline is an official public holiday in the jurisdiction in which the Tender is being conducted, the deadline for submitting relevant documents shall be the business day immediately preceding that.

Article 15 Bidder's Obligation regarding Fair Competition

- (1) Bidders must not engage in any unfair trade practices, including (without limitation) colluding on the bid price or assisting a specific Bidder to become the successful Bidder.
- (2) Where a Bidder violates the provisions of paragraph (1) above, KOICA may nullify his/its Bid Proposal in accordance with Article 18 hereto and may request a competent governmental agency to investigate the unfair trade practice of such Bidder.

Article 16 Tenders for the Manufacture of Goods on a Long-Term Basis

In the case of long-term contracts for the Manufacture/Purchase of Goods, Bidders participating in the relevant Tender shall bid relating to the total volume of goods.

Article 17 Competitive Bidding

- (1) Competitive bidding may only be constituted by two or more valid bids by Bidders.
- (2) For the avoidance of doubt, where a Tender is by a two-stage process and there is only one Qualifying Bid for the second stage (the fee proposal stage), the Employer may open the fee proposal for that one Qualifying Bid, as long as at least two or more valid technical proposals (that led to the one Qualifying Bid) were submitted at the first stage.

Article 18 Nullification of Bids

Bids that fall under any one of the following criteria may be nullified:

- (a) bids submitted by persons not eligible to participate in a Tender;
- (b) bids submitted by those persons without the right of representation;
- (c) bids submitted by those persons who failed to submit required documentation listed in the ITB or the Bid-related Documents at such specified date and time and place;
- (d) where multiple bids have been submitted by one and the same person (and where one person is a related party to multiple corporate entities, such entities shall be deemed to constitute one and the same person) or bids submitted on behalf of a third-party;
- (e) where important information, such as the bid price, has been omitted or is unclear in the Bid Proposal or where any corrections in the Bid Proposal have not been marked by a signature or seal;
- (f) bids submitted by those persons engaged in collusion or those persons interfering with the fair process of the Employer;
- (g) bids submitted without the Bidder's seal or signature (including those bids that bear the name of the proxy or the company rather than the Bidder and those bids that have affixed a seal or signature (as applicable) but where such seal or signature is different from that affixed to the bid application);
- (h) bids regarding which the Bidder has expressed at the bid opening an intention to withdraw due to significant errors therein, which withdrawal has been accepted by the Employer;

- (i) to the extent it was specified to be required, bids not accompanied by an estimate (or statement of calculation) or where the bid price contained in the Bid Proposal and the amount stated in the estimate (or statement of calculation) are inconsistent or where the specifications contained in the Bid Proposal and in the estimate are inconsistent with each other or where Bid Proposals contains inappropriate reservations clauses;
- (j) bids for which the prescribed bid deposit or a bid guarantee (in accordance with Article 9(1) above) has not been submitted by the applicable due date;
- (k) bids for which documents required to confirm eligibility of the Bidder or the Bidder's ability to implement the Project have not been submitted; or
- (l) bids submitted in violation of Article 12 above (i.e. without using the prescribed form) or where the bid price has only been specified in Arabic numerals or where electronic submissions have been damaged or not processed properly for failure to comply with electronic entry guidelines.

Article 19 Submission of a Sample

- (1) The Bidder must submit a sample where one is stated to be required in the ITB or if the Employer deems it necessary. Such samples must be marked with the following details: sample product name, Bidder's address and full name (or company name), ITB reference number, and any other necessary information.
- (2) The sample so submitted by a successful Bidder shall be returned to such successful Bidder, in accordance with his/its instructions, upon performance by him/it of the relevant contract. Samples submitted by unsuccessful Bidders shall be returned within one month of the Employer's selection of a successful Bidder in accordance with the relevant Bidder's instructions. In this case, the Employer shall not be liable for any samples lost or damaged due to the Employer and shall not be required to bear the costs of returning the samples.

Article 20 Extension of the Bid Proposal Deadline

- (1) The Employer may extend the Bid Proposal Deadline as first specified in the ITB or notice of tender if:
 - (a) it determines it necessary because the matters requiring clarification pursuant to Article 7(2) above are too significant; or
 - (b) it is not possible to conduct the Tender or bid opening for other unavoidable reasons.
- (2) Details of any extension of the Bid Proposal Deadline pursuant to paragraph (1) above and the reasons for such extension must be provided to the Bidders in the same manner in which the initial ITB or notice of tender was provided.

Article 21 Cancellation of Tender

- (1) At any time before confirming its selection of a successful Bidder, KOICA may cancel the relevant Tender in unavoidable circumstances (including budgetary reasons and changes to the business plan).

- (2) No Bidder shall be entitled to object to KOICA's decisions to cancel under paragraph (1) above or to claim damages relating thereto.

Article 22 Re-Tender and Re-Issuance of ITB

- (1) The Employer may re-initiate a bid process at the same original location of a Tender if a competitive bidding process does not result in two or more valid Bid Proposals or a successful Bidder (the "**Re-Tender**"). The Re-tender shall not be construed as a new bid process and shall not be subject to any restriction on tenders or to the number of repeated bid processes.
- (2) If there are no valid Bid Proposals or no successful Bidder or if a successful Bidder is selected but then fails to execute the Relevant Contract, the Employer may re-issue the relevant ITB.
- (3) Where a Tender has been conducted as a two-stage bidding process and the opening of the fee proposals in the second stage results in more than two potential successful Bidders, the Employer may request that only the Bidders of those Qualifying Bids re-submit their respective fee proposals.
- (4) In cases of a Re-Tender or a re-issuance of ITB under paragraphs (1) through (3) above, the terms and conditions of the initial Tender (other than the Bid Proposal Deadline) must remain unchanged.

Article 23 Bid Opening

- (1) Bid opening shall be conducted at such place, time, and date as is specified in the ITB, and such bid opening may be attended by Bidders or their representatives. The Employer may request that each attendee presents his/her identification card and a certificate evidencing eligibility to participate in the Tender.
- (2) Following the opening of bids, where the bid price offered in a Bid Proposal is extraordinarily lower than the bid prices offered in any other Bid Proposal, the Employer may undertake a separate screening process of that Bidder to ascertain such Bidder's capacity to comply with and implement the Relevant Contract. In such a case, the relevant Bidder must participate in this screening process in good faith.

Article 24 Selection of a Successful Bidder

- (1) The successful Bidder shall be selected in accordance with the relevant criteria prescribed in the Regulations.
- (2) The selection of a successful Bidder shall only take effect upon receipt by the relevant Bidder of a written notice of confirmation from the Employer. At any time before the execution of the Relevant Contract, KOICA shall be entitled to accept or reject any portion of the Bid Proposal, to cancel the Tender process, or to nullify all Bid Proposals. In such a case, KOICA shall bear no liability to any Bidder that is affected by KOICA's actions.
- (3) In cases falling under paragraph (1), if there are two or more Bidders of the same rank, where: (a) a two-stage bidding process has been conducted, the Bidder with a better technical proposal; and (b) a Bidder has been screened for his/its contractual capabilities, the highest-ranking Bidder, shall be selected as the

successful Bidder. However, where it is found that the Bidders with the lowest bids also have the same contractual capabilities, the successful Bidder shall then be selected by way of draw.

- (4) The draw under paragraph (3) above shall be conducted by an employee of the Employer who is not involved in any business or matter relating to the relevant Tender.

Article 25 Expenses

The costs and expenses relating to a Tender shall be borne by each participating Bidder.

Article 26 Language

- (1) In principle, the Bid-related Documents shall be prepared in English or Korean. However, the Employer may also provide the Bid-related Documents: (a) in the local language of the Recipient Country, or (b) in any language commonly used in the Recipient Country.
- (2) The contract must be prepared in the same language as that used to prepare the Bid-related Documents. The English version shall prevail in cases of any conflict between the English version and the Korean version, or the version prepared in the language commonly used in the Recipient Country.
- (3) Notwithstanding paragraphs (1) and (2) above, the default language for International Tenders conducted by KOICA HQ shall be Korean. However, where the use of a foreign language is deemed necessary, English or the language of that specific country involved in the Tender process (e.g. language that is widely used in the relevant country, such as French) may be used. Where the ITB is issued in Korean, KOICA HQ shall state certain important details (e.g. the subject-matter of the contract, submission deadline, etc.) in English at the bottom of the ITB or in an attachment to the ITB. In this case, where there are conflicts between the Korean and English versions, the Korean version shall prevail.

Article 27 Execution of Contract

- (1) Within seven (7) days of receiving a notice of selection, the successful Bidder must submit all requisite documents in their prescribed forms and a plan for the supply of goods. Within ten (10) days of receiving the same notice, the successful Bidder must execute the Relevant Contract for which it tendered.
- (2) In cases falling under paragraph (1), where the successful Bidder is prevented from executing a Relevant Contract due to a force majeure event, the period of such force majeure event shall not count towards the prescribed period under paragraph (1) above.
- (3) The successful Bidder intending to conclude a contract with the Employer under paragraph (1) above must submit all such related documents as specified in all applicable laws and requested by the Employer.
- (4) Where a long-term contract for the Manufacture/Purchase of Goods is to be executed with the successful Bidder, calculation of the contract value shall be based on the entire pool of goods (the “**Total Value**”) and the first contract for the Manufacture/Purchase of Goods shall be executed having

due regard for the scope of budget for the relevant year. In such case, it shall be further agreed by the parties by way of addendum that from the second contract onwards for the Manufacture/Purchase of Goods, the relevant contract value shall be the Total Value minus the value of the immediately preceding contract. For the purposes of this Article 27(4), “**Total Value**” shall mean the total value of the goods to be manufactured and purchased.

- (5) The value of a contract for the Manufacture/Purchase of Goods following the first contract for the Manufacture/Purchase of Goods (as provided for under paragraph (4) above), shall be based on the contract unit price which shall be based on the selected bid price which is based upon the Total Value. In the case of a long-term contract, where the Bid-related Documents allowed for price adjustment, the contract value may be adjusted subject to such adjustment provisions and to the extent the unit price of a contract for the Manufacture/Purchase of Goods is so adjusted, that adjusted price shall be the relevant contract value.

Article 28 Executing Contracts

The contract shall be finally executed when the Employer and the successful Bidder each affix their respective seal or signature to the Relevant Contract.

Article 29 Contract for Increase in Quantity

Following the selection of a successful Bidder, if an increase in the number of goods is required, the parties may execute a further agreement (the “**Contract for Increase in Quantity**”) as long as the Contract for Increase in Quantity relates to the same goods as the original Relevant Contract and if so, the agreement shall be for the whole volume of goods (i.e. including the increased quantity) at the unit price stipulated in the original Relevant Contract. Should the successful Bidder refuse to enter into the Contract for Increase in Quantity without any particular reason, KOICA may cancel or terminate the original Relevant Contract executed regarding the relevant Tender.

Article 30 Performance Bonds

- (1) Prior to the execution of the Relevant Contract, the successful Bidder must provide a performance bond to guarantee the performance of its obligations under such contract.
- (2) If the successful Bidder provides a performance bond by means of a guarantee insurance policy, the guarantee period thereof shall expire at least 60 days after the date the supply of goods is completed and not before.
- (3) A successful Bidder may be exempt (in whole or in part, at the discretion of the Employer) from providing a performance bond if any of the following circumstances apply:
 - (a) if the successful Bidder is a governmental agency or local municipality of the Republic of Korea;
 - (b) if the successful Bidder is a public institution established under the laws of the Republic of Korea;
 - (c) if the successful Bidder is a foreign corporation, 50% or more of whose net worth has been

contributed by the government (including where such foreign corporation legally becomes a subsidiary of a governmental entity); or

- (d) if the collection of a performance bond would not be appropriate having regard generally to the fair and reasonable customs of contract.

Article 31 Confidentiality

Bidders shall not use any of the Bid-related Documents or other materials provided by the Employer as part of a particular Tender process and any information acquired as a result of their participation in a particular Tender process for any purpose other than to participate in the relevant Tender process.

Article 32 Undertaking to Act with Integrity

- (1) The Employer may require Bidders to submit a letter of undertaking, (a) covenanting to act with integrity and to refrain from engaging in acts of collusion and other practices of unfair trade, including offering money and other valuables, treats, and other gains (collectively a “**Bribe**”) to KOICA’s officers, employees, and related public officials relating to the Tender process, the selection process, execution , and performance of the Relevant Contract; and (b) agreeing to submit to sanctions (such as but not limited to early termination of contract) should the terms of such letter be breached.
- (2) The successful Bidder shall consent to the incorporation of the letter of undertaking provided pursuant to paragraph (1) above into the Relevant Contract and shall comply with all such undertakings and covenants contained therein.
- (3) Any person who is found to have provided KOICA’s officers, employees, and/or related public officials with a Bribe in connection with a Tender process, selection process, contract negotiations, execution , and performance of a contract, shall be subject to the following sanctions regarding the Relevant Contract in question:
 - (a) if the Relevant Contract has been executed but the relevant Project not yet commenced, that Relevant Contract shall be rescinded; or
 - (b) if performance of the Relevant Contract has already commenced, such Relevant Contract shall be rescinded or terminated, in whole or in part, unless unavoidable circumstances exist (having due regard for the subject matter, progress, size , and period of performance of the contract) that prevent such rescission or termination.

Article 33 Electronic Bidding and Other Matters

The process of electronic bidding and such other matters not otherwise covered by these Instructions shall be subject to separate regulations and policies of KOICA.

Article 34 Application of Other Procurement-related Regulations

Unless otherwise provided for in these Instructions, the Regulations, the Regulations for Procurement and Contracts in Foreign Affairs and Trade Projects, and their related enforcement regulations shall apply to the subject matter hereunder.

INSTRUCTIONS ON INTERNATIONAL BIDDING FOR THE PROVISION OF SERVICES

Article 1 Purpose

These Instructions on International Bidding for the Provision of Services (these “**Instructions**”) state the matters by which a Bidder participating in an International Tender or Local Tender (collectively, the “**Tenders**”) for the provision of services conducted by KOICA must abide.

Article 2 Definitions

Unless otherwise provided herein, the terms used in these Instructions shall have the meanings given to them in the KOICA Regulations for International Procurement (the “**Regulations**”) and the Standard International Technical Services Contract.

Article 3 Registration as a KOICA Partner

- (1) Anyone wishing to participate in an International Tender must register as a partner of KOICA. Registration may be through KOICA’s Data Processing Unit or by downloading the partner registration form (English version) from KOICA’s Data Processing Unit, completing it, and then submitting the same in person (at KOICA’s head office), by post or electronically.
- (2) Anyone wishing to participate in a Local Tender must complete the partner registration form and then submit the same in person (at the relevant KOICA’s Overseas Office), by post or electronically. In the case of Local Tenders only, the partner registration process hereunder may be substituted by the submission of the Bid Proposal pursuant to Article 14 hereof.

Article 4 Eligibility to Participate in the Tender

- (1) Any person intending to participate in a Tender must satisfy the eligibility requirements stated in the relevant ITB or Bid-related Documents (as defined below).
- (2) In deciding the eligibility requirements for the Bidders in a competitive bidding process, if necessary and depending on the type and size of the contract for which the Tender is being conducted (the “**Relevant Contract**”), KOICA may refer to the same or similar contracts previously executed by such bid applicant, the performance results thereof, availability of technical personnel, manufacturing capacity, and managerial and financial status thereunder.

Article 5 Application to Participate in Tender

- (1) Any person intending to participate in a Tender must submit the following documents to the Employer by no later than the submission due date stated in the ITB or the Bid-related Documents (as defined below) (the “**Application Submission Deadline**”):

- (a) a duly completed bid application form (in the prescribed form);
 - (b) one set of documents evidencing the applicant's eligibility to participate in the Tender;
 - (c) documents evidencing the authenticity of the applicant's signature or seal (for a Korean applicant, this will be a certificate of registered seal and certificate of use; for a non-Korean applicant, this may be a notarized or legalized specimen signature form containing the name, specimen signature, and title of the applicant (or the applicant's authorized signatory if a corporation) or equivalent documents); and
 - (d) any other documents specified in the ITB or required by a separate notice.
- (2) Each document provided under paragraph (1)(b) above must be provided in its original form or if a copy is provided, the copy must be certified as a true and correct copy of the original document and must be signed or have its registered seal affixed thereto.
 - (3) The documents, including the bid application form, submitted under paragraph (1) above cannot be amended except to correct matters such as typographical errors.
 - (4) If a representative is designated for submitting the bid application, such representative may participate in the Tender. If a bidding representative is designated or replaced after submission of the bid application but prior to the opening of bids, the designated representative may participate in the Tender.
 - (5) Where some or all of the documents specified in paragraph (1) above have been provided to the Employer before the Application Submission Deadline (for example as part of a pre-qualification screening process), such relevant documents may be deemed submitted for the purposes of the application to participate in the Tender under paragraph (1). In this case, the applicant must submit a list specifying those relevant documents that have already been submitted to the Employer.

Article 6 Bid-related Documents

- (1) All prospective Bidders shall have access to the following documents (collectively, the **"Bid-related Documents"**):
 - (a) the notice of tender or the ITB;
 - (b) these Instructions;
 - (c) a bid application form (in the prescribed form);
 - (d) the Bid Proposal (in the prescribed form);
 - (e) the Standard International Technical Services Contract (in the standard form);
 - (f) specifications of the goods;
 - (g) general conditions of contract;
 - (h) particular conditions of contract;
 - (i) the Performance Guarantee (in the prescribed form); and
 - (j) any other documents that state matters relevant to the Tender.

- (2) The Employer may request that the prospective Bidder submitting the Bid-related Documents listed in paragraph (1) above provide a bid deposit or bid guarantee for the amount prescribed in the ITB or notice of tender. The relevant prospective Bidder must comply with such request.

Article 7 Knowledge of Applicable Laws and Regulations

- (1) Any prospective Bidder must ensure that it is familiar with all laws and regulations applicable to the Tender and each of the Bid-related Documents specified in Article 6(1) above.
- (2) Any prospective Bidder shall have until the day before the Bid Proposal submission deadline (the “**Bid Proposal Deadline**”) to request clarification from the Employer of any mistakes or errors (including matters missing) in any of the Bid-related Documents that the prospective Bidder may have discovered during its review thereof.

Article 8 Bid Consortiums

- (1) Joint contracts may be permitted as long as the scope of services to be rendered by a consortium’s representative (the “**Representative Member**”) is at least 50% of all the services to be rendered by that consortium.
- (2) If joint contracts are permitted and parties wish to form a consortium to participate in the Tender, each consortium member must submit to the Employer: (a) all of the Bid-related Documents listed in Article 6(1) above; and (b) an executed (by way of seal or signature) joint supply agreement.
- (3) The ITB or the notice of tender shall state whether joint contracts are permitted and if so, shall specify the scope of such joint contracts.
- (4) A party cannot be a member of multiple consortia participating in the same Tender.
- (5) Where the relevant services are not subject to a pre-screening process, the relevant joint supply agreement must be executed by the consortium members and submitted to the Employer by the day before the date of the bid opening. Where the relevant services are subject to a pre-screening process, the relevant joint supply agreement must be executed by the consortium members, attached to the pre-screening application and submitted to the Employer.
- (6) Where the Tender involves a pre-screening process, the composition of the consortium must be the same as was stated in the joint supply agreement that was submitted with the pre-screening application.
- (7) The consortium’s eligibility to participate in the Tender shall be assessed based on the Representative Member and where such Representative Member is found to be ineligible to participate in the Tender (due to bankruptcy or other reasons giving rise to disqualification) the consortium as a whole shall not be permitted to participate in the Tender.
- (8) If any person participates in a Tender in violation of any of paragraphs (1) through (4) above, the Bid Proposal submitted by such person shall be eligible for nullification under Article 19 hereto.

Article 9 Criteria for Pre-qualification Screening

Where the ITB states that the Tender is to be subject to a pre-qualification screening process, such pre-qualification screening process shall be conducted in accordance with the KOICA's pre-qualification guideline.

Article 10 Bid Deposit or Bid Guarantee

- (1) Any prospective Bidder must submit by the Application Submission Deadline (if the submission deadline falls on a public holiday in the country in which the Tender is to be conducted, then by the immediately preceding business day) a cash bid deposit amounting to at least five percent (5%) of the bid price or a bid guarantee issued by a financial institution (e.g. a bank or an insurance company) issued a credit rating of A or higher from an internationally-recognized credit rating agency or which is pre-approved by KOICA.
- (2) If the selected Bidder fails to enter into the Relevant Contract within the prescribed period, the bid deposit or the bid guarantee that was submitted by such selected Bidder shall vest in KOICA.
- (3) The bid deposits or bid guarantees submitted by unsuccessful Bidders shall be returned to them as soon as the successful Bidder is selected. The bid deposit or bid guarantee of the successful Bidder shall be returned immediately following execution (by such successful Bidder) of the Relevant Contract.
- (4) The bid guarantee provided in accordance with subparagraph (1) above must be valid for a period beginning on a date before the Bid Proposal submission date and ending on a date at least 30 days after the Bid Proposal Deadline.

Article 11 Exemptions to Providing a Bid Deposit/Guarantee

- (1) The following applicants (each an “**Exempted Applicant**”) shall be exempt from providing a bid deposit or bid guarantee under Article 10 above:
 - (a) governmental agencies and local municipalities of the Republic of Korea;
 - (b) public institutions established under the laws of the Republic of Korea;
 - (c) foreign corporations, 50% or more of whose net worth has been contributed by the government (including where such foreign corporation legally becomes a subsidiary of a governmental entity); and
 - (d) a prospective bidder whom KOICA reasonably assesses to be a low flight-risk based on track records for performing contracts with KOICA during the immediately preceding two (2)-year period.
- (2) An Exempted Applicant must submit to KOICA a written undertaking to pay the applicable penalty. The undertaking may be deemed (at the sole discretion of KOICA) the same as a bid application that promises the payment of a bid deposit.

Article 12 Participation in the Tender

- (1) Any person wishing to participate in a Tender must:
 - (a) have submitted a bid application by the Application Submission Deadline;
 - (b) have completed a partner registration, where the Tender is subject to a partner registration is stated to be required in the ITB and/or the Bid-related Documents; and
 - (c) have attended a briefing session regarding the Tender, where the Tender is subject to a briefing session, and attendance of such briefing session is stated to be mandatory in the ITB and/or the Bid-related Documents.
- (2) When participating in the Tender, the Bidder (including any designated representative) must have in his/her possession his identification card and the same seal that was affixed to the bid application.
- (3) A person who has been restricted in accordance with Korean law and KOICA's internal regulations, from participating in a Tender for impropriety trading, cannot be designated as a representative under paragraph (2) above.
- (4) The Employer may issue instructions to the Bidders to ensure that order is maintained and shall have the authority to expel a Bidder from the Tender process or nullify his/her its bid if such Bidder fails to abide by such instructions.

Article 13 Preparation of the Bid Proposal

- (1) The Bid Proposal must be prepared in accordance with the guidance provided in the Bid-related Documents and in the prescribed form. The bid price must be stated as a lump sum where the Tender is for a lump-sum Project and as a unit price where the Tender is for a unit-price Project.
- (2) The Bid Proposal must be signed by the same person that signed the bid application. The signature must be accompanied by the signatory's full name. Where the Bidder is a corporation, the company's full name and the representative director's signature must be provided on the Bid Proposal. Where the bid application was executed by way of seal, the same seal must be affixed to the Bid Proposal.
- (3) To the extent there are any deletions or corrections to be made on the Bid Proposal following submission thereof, such deletions or corrections shall be accompanied by the Bidder's signature or seal that was provided on the bid application.

Article 14 Submission of the Bid Proposal

- (1) The Bid Proposal shall be submitted in a sealed envelope and a Bidder shall only be permitted to submit one envelope; provided, however, that where a two-stage bidding process involving a separate technical stage and a fee proposal stage is conducted, a single Bidder shall submit two envelopes, one containing the technical proposal and the other containing the fee proposal.
- (2) A Bidder shall submit its Bid Proposal at such time, on such date and at such venue as instructed by the Employer, except if the ITB allows for submission by post, the Bidder need not comply with such instructions.

- (3) Submission of the Bid Proposal by post will only be effective if it arrives by the Bid Proposal Deadline. For the avoidance of doubt, KOICA shall not be responsible for any Bid Proposal lost, damaged, or delayed during transit.
- (4) A Bidder who intends to submit its Bid Proposal by post in accordance with the proviso in paragraph (2) above, must specify the following details on the cover of the sealed envelope: the name of the Tender, the date and time of the Tender, the name of the Bidder (and where it is a corporation, the company name and the name of the representative director) and a contact telephone number.
- (5) Upon receipt of a Bid Proposal by post, the Employer shall record on the cover of the envelope the date and time of receipt accompanied by a confirmatory signature or seal and shall hold the envelope unopened until the bid opening stage.
- (6) A Bidder cannot replace, modify or withdraw a Bid Proposal that has already been submitted. However, a Bidder may be allowed to withdraw its Bid Proposal if: (a) it expresses its intention to do so at the bid opening due to significant errors in the Bid Proposal; and (b) the Employer accepts and acknowledges such a request to withdraw. In a two-stage bidding process, a Bidder may be permitted to amend its technical bid proposal if: (i) there are no Qualifying Bids; or (ii) a Bidder is determined by the Employer as having satisfied the technical specifications except for a few minor matters requiring supplementation.

Article 15 Submission Deadline for Documents

- (1) All Bid-related Documents evidencing the Bidder's eligibility to participate in the Tender must be submitted on or prior to the Bid Proposal Deadline as specified in the ITB or the notice of tender.
- (2) Where the deadline including the Bid Proposal Deadline prescribed in the Bid-related Documents (the "**Relevant Deadline**") is set to be 0:00 and the date immediately preceding such deadline is an official public holiday in the jurisdiction in which the Tender is being conducted, the deadline for submitting relevant documents shall be the business day immediately preceding that.

Article 16 Bidder's Obligation regarding Fair Competition

- (1) Bidders must not engage in any unfair trade practices, including (without limitation) colluding on the bid price or assisting a specific Bidder to become the successful Bidder.
- (2) Where a Bidder violates the provisions of paragraph (1) above, KOICA may nullify his/its Bid Proposal in accordance with Article 18 hereto and may request a competent governmental agency to investigate the unfair trade practice of such Bidder.

Article 17 Tenders for Services on a Long-Term Basis

In the case of long-term contracts for services, Bidders participating in the relevant Tender shall bid relating to the total volume of services.

Article 18 Competitive Bidding

- (1) Competitive bidding may only be constituted by two or more valid bids by Bidders.
- (2) For the avoidance of doubt, where a Tender is by a two-stage process and there is only one Qualifying Bid for the second stage (the fee proposal stage), the Employer may open the fee proposal for that one Qualifying Bid, as long as at least two valid technical proposals (that led to the one Qualifying Bid) were submitted at the first stage.

Article 19 Nullification of Bids

Bids that fall under any one of the following criteria may be nullified:

- (a) bids submitted by persons not eligible to participate in a Tender;
- (b) bids submitted by those persons without the right of representation;
- (c) bids submitted by those persons who failed to submit required documentation listed in the ITB or the Bid-related Documents at such specified date and time and place;
- (d) where multiple bids have been submitted by one and the same person (and where one person is a related party to multiple corporate entities, such entities shall be deemed to constitute one and the same person) or bids submitted on behalf of a third-party;
- (e) where important information, such as the bid price, has been omitted or is unclear in the Bid Proposal or where any corrections in the Bid Proposal have not been marked by a signature or seal;
- (f) bids submitted by those persons engaged in collusion or those persons interfering with the fair process of the Employer;
- (g) bids submitted without the Bidder's seal or signature (including those bids that bear the name of the proxy or the company rather than the Bidder and those bids that have affixed a seal or signature (as applicable) but where such seal or signature is different from that affixed to the bid application);
- (h) bids regarding which the Bidder has expressed at the bid opening an intention to withdraw due to significant errors therein, which withdrawal has been accepted by the Employer;
- (i) to the extent it was specified to be required, bids not accompanied by an estimate (or statement of calculation) or where the bid price contained in the Bid Proposal and the amount stated in the estimate (or statement of calculation) are inconsistent or where the specifications contained in the Bid Proposal and in the estimate are inconsistent with each other or where Bid Proposals contains inappropriate reservations clauses;
- (j) bids for which the prescribed bid deposit or a bid guarantee (in accordance with Article 10(1) above) has not been submitted by the applicable due date;
- (k) bids for which documents required to confirm eligibility of the Bidder or the Bidder's ability to implement the Project have not been submitted; or
- (l) bids submitted in violation of Article 12 above (i.e. without using the prescribed form) or where the bid price has only been specified in Arabic numerals or where electronic submissions have

been damaged or not processed properly for failure to comply with electronic entry guidelines.

Article 20 Extension of the Bid Proposal Deadline

- (1) The Employer may extend the Bid Proposal Deadline as first specified in the ITB or notice of tender if:
 - (a) it determines it necessary because the matters requiring clarification pursuant to Article 7(2) above are too significant; or
 - (b) it is not possible to conduct the Tender or bid opening for other unavoidable reasons.
- (2) Details of any extension of the Bid Proposal Deadline pursuant to paragraph (1) above and the reasons for such extension must be provided to the Bidders in the same manner in which the initial ITB or notice of tender was provided.

Article 21 Cancellation of Tender

- (1) At any time before confirming its selection of a successful Bidder, KOICA may cancel the relevant Tender in unavoidable circumstances (including budgetary reasons and changes to the business plan).
- (2) No Bidder shall be entitled to object to KOICA's decisions to cancel under paragraph (1) above or to claim damages relating thereto.

Article 22 Re-Tender and Re-Issuance of ITB

- (1) The Employer may re-initiate a bid process at the same original location of Tender if a competitive bidding process does not result in two or more valid Bid Proposals or a successful Bidder (the "**Re-Tender**"). The Re-Tender shall not be construed as a new bid process and shall not be subject to any restrictions on tenders or to the number of repeated bid processes.
- (2) If there are no valid Bid Proposals or no successful Bidder or if a successful Bidder is selected but then fails to execute the Relevant Contract, the Employer may re-issue the relevant ITB.
- (3) Where a Tender has been conducted as a two-stage bidding process and the opening of the fee proposals in the second stage results in more than two potential successful Bidders, the Employer may request that only the Bidders of those Qualifying Bids re-submit their respective fee proposals.
- (4) In cases of a Re-Tender or a re-issuance of ITB under paragraphs (1) through (3) above, the terms and conditions of the initial Tender (other than the Bid Proposal Deadline) must remain unchanged.

Article 23 Bid Opening

- (1) Bid opening shall be conducted at such place, time, and date as is specified in the ITB, and such bid opening may be attended by Bidders or their representatives. The Employer may request that each attendee presents his/her identification card and a certificate evidencing eligibility to participate in the Tender.
- (2) Following the opening of bids, where the bid price offered in a Bid Proposal is extraordinarily lower than the bid prices offered in any other Bid Proposal, the Employer may undertake a separate screening

process of that Bidder to ascertain such Bidder's capacity to comply with and implement the Relevant Contract. In such a case, the relevant Bidder must participate in this screening process in good faith.

Article 24 Selection of a Successful Bidder

- (1) The successful Bidder shall be selected in accordance with the relevant criteria prescribed in the Regulations.
- (2) The selection of a successful Bidder shall only take effect upon receipt by the relevant Bidder of a written notice of confirmation from the Employer. At any time before the execution of the Relevant Contract, KOICA shall be entitled to accept or reject any portion of the Bid Proposal, to cancel the Tender process or to nullify all Bid Proposals. In such a case, KOICA shall bear no liability to any Bidder affected by KOICA's actions.
- (3) In cases falling under paragraph (1), if there are two or more Bidders of the same rank, where (a) a two-stage bidding process has been conducted, the Bidder with a better technical proposal; and (b) a Bidder has been screened for his/its contractual capabilities, the highest-ranking Bidder shall be selected as the successful Bidder. However, where it is found that the lowest bids also have the same contractual capabilities, the successful Bidder shall then be selected by way of draw.
- (4) The draw under paragraph (3) above shall be conducted by an employee of the Employer who is not involved in any business or matter relating to the relevant Tender.

Article 25 Expenses

The costs and expenses relating to a Tender shall be borne by each participating Bidder.

Article 26 Language

- (1) In principle, the Bid-related Documents shall be prepared in English or Korean. However, the Employer may also provide the Bid-related Documents: (a) in the local language of the Recipient Country, or (b) in any language commonly used in the Recipient Country.
- (2) The contract must be prepared in the same language as that used to prepare the Bid-related Documents. The English version shall prevail in cases of any conflict between the English version, and the Korean version or the version prepared in the language commonly used in the Recipient Country.
- (3) Notwithstanding paragraphs (1) and (2) above, the default language for International Tenders conducted by KOICA HQ shall be Korean. However, where the use of a foreign language is deemed necessary, English or the language of that specific country involved in the Tender process (e.g. language widely used in the relevant country, such as French) may be used. Where the ITB is issued in Korean, KOICA HQ shall state certain important details (e.g. the subject-matter of the contract, submission deadline, etc.) in English at the bottom of the ITB or in an attachment to the ITB. In this case, where there are conflicts between the Korean and English versions, the Korean version shall prevail.

Article 27 Execution of Contract

- (1) Within seven (7) days of receiving notice of selection, the successful Bidder must submit all requisite documents in their prescribed forms, a statement of calculation of the bid price, and a business implementation plan. Within ten (10) days of receiving the same notice, the successful Bidder must execute the Relevant Contract for which it tendered.
- (2) In cases falling under paragraph (1), where the successful Bidder is prevented from executing a Relevant Contract due to a force majeure event, the period of such force majeure event shall not count towards the prescribed period under paragraph (1) above.
- (3) The successful Bidder intending to conclude a contract with the Employer under paragraph (1) above must submit all such related documents as specified in all applicable laws and requested by the Employer.
- (4) Where a long-term contract for services is to be executed with the successful Bidder, calculation of the contract value shall be based on the entire pool of services (the “**Total Value**”), and the first contract for services shall be executed having due regard for the scope of budget for the relevant year. In such case, it shall be further agreed by the parties by way of addendum that from the second contract for services onwards, the relevant contract value shall be the Total Value minus the value of the immediately preceding contract. For the purposes of this Article 27(4), “**Total Value**” shall mean the total value of the services to be provided).
- (5) The value of the contract for services following the first and second contracts for services (as provided for under paragraph (4) above), shall be based on the contract unit price which shall be based on the selected bid price which is based upon the Total Value. In the case of a long-term contract, where the Bid-related Documents allowed for price adjustment, the contract value may be adjusted subject to such adjustment provisions and to the extent the unit price of a contract for services is so adjusted that adjusted price shall be the relevant contract value.

Article 28 Conclusion of Contract

The contract shall be finally concluded when the Employer and the successful Bidder each affix their respective seal or signature to the Relevant Contract.

Article 29 Performance Bonds

- (1) Prior to the execution of the Relevant Contract in accordance with Article 28 above, the successful Bidder must provide a performance bond to guarantee the performance of its obligations under such contract.
- (2) If the successful Bidder provides a performance bond by means of a guarantee insurance policy, the guarantee period thereof shall expire at least 60 days after the date the supply of goods is completed and not before.
- (3) A successful Bidder may be exempt (in whole or in part, at the discretion of the Employer) from

providing a performance bond if any of the following circumstances apply:

- (a) if the successful Bidder is a governmental agency or local municipality of the Republic of Korea;
 - (b) if the successful Bidder is a public institution established under the laws of the Republic of Korea;
 - (c) if the successful Bidder is a foreign corporation, 50% or more of whose net worth has been contributed by the government (including where such foreign corporation legally becomes a subsidiary of a governmental entity); or
 - (d) if the collection of a performance bond would not be appropriate having regard generally to the fair and reasonable customs of contract.
- (4) In the event that the payment of all or part of the performance bond can be waived, the successful Bidder shall provide an undertaking to promptly pay in cash an equivalent amount of the value of the performance bond should any circumstances arise that would have caused the performance bond to vest in the Employer.

Article 30 Confidentiality

Bidders shall not use any of the Bid-related Documents or other materials provided by the Employer as part of a particular Tender process and any information acquired as a result of their participation in a particular Tender process for any purpose other than to participate in the relevant Tender process.

Article 31 Undertaking to Act with Integrity

- (1) The Employer may require Bidders to submit a letter of undertaking, (a) covenanting to act with integrity and to refrain from engaging in acts of collusion and other practices of unfair trade, including offering money and other valuables, treats, and other gains (collectively a “**Bribe**”) to KOICA’s officers, employees, and related public officials regarding the Tender process, the selection process, execution , and performance of the Relevant Contract; and (b) agreeing to submit to sanctions (such as, but not limited to, early termination of contract) should they breach the terms of such letter.
- (2) The successful Bidder shall consent to the incorporation of the letter of undertaking provided pursuant to paragraph (1) above into the Relevant Contract and shall comply with all such undertakings and covenants contained therein.
- (3) Any person who is found to have provided KOICA’s officers, employees, and/or related public officials with a Bribe in connection with a Tender process, selection process, contract negotiations, execution , and performance of a contract, shall be subject to the following sanctions regarding the Relevant Contract in question:
- (a) if the Relevant Contract has been executed but the relevant Project not yet commenced, that Relevant Contract shall be rescinded; or
 - (b) if performance of the Relevant Contract has already commenced, such Relevant Contract shall be rescinded or terminated, in whole or in part, unless unavoidable circumstances exist (having due

regard for the subject matter, progress, size , and period of performance of the contract) that prevent such rescission or termination.

Article 32 Electronic Bidding and Other Matters

The process of electronic bidding and such other matters not otherwise covered by these Instructions shall be subject to separate regulations and policies of KOICA.

Article 33 Application of Other Procurement-related Regulations

Unless otherwise provided for in these Instructions, the Regulations, the Regulations for Procurement and Contracts in Foreign Affairs and Trade Projects, and their related enforcement regulations shall apply to the subject matter hereunder.

INSTRUCTIONS ON INTERNATIONAL BIDDING FOR CONSTRUCTION WORKS

Article 1 Purpose

These Instructions on International Bidding for Construction Works (these “**Instructions**”) state the matters by which a Bidder participating in an International Tender or Local Tender (collectively, the “**Tenders**”) for construction works conducted by KOICA must abide.

Article 2 Definitions

Unless otherwise provided herein, the terms used in these Instructions shall have the meanings given to them in the KOICA Regulations for International Procurement (the “**Regulations**”) and the General Conditions of International Construction Contract.

Article 3 Registration as a KOICA Partner

- (1) Anyone wishing to participate in an International Tender must register as a partner of KOICA. Registration may be through KOICA’s Data Processing Unit or by downloading the partner registration form (English version) from KOICA’s Data Processing Unit, completing it, and then submitting the same in person (at KOICA’s head office), by post or electronically.
- (2) Anyone wishing to participate in a Local Tender must complete the partner registration form and then submit the same in person (at the relevant KOICA’s Overseas Office), by post or electronically. In the case of Local Tenders only, the partner registration process hereunder may be substituted by the submission of the Bid Proposal pursuant to Article 14 hereto.

Article 4 Eligibility to Participate in the Tender

- (1) Any person intending to participate in a Tender must satisfy the eligibility requirements stated in the relevant ITB or Bid-related Documents (as defined below).
- (2) In deciding the eligibility requirements for the Bidders in a competitive bidding process, if necessary and depending on the type and size of the contract for which the Tender is being conducted (the “Relevant Contract”), KOICA may refer to the same or similar contracts previously executed by such bid applicant, the performance results thereof, availability of technical personnel, manufacturing capacity, and managerial and financial status thereunder.

Article 5 Application to Participate in the Tender

- (1) Any person intending to participate in a Tender must submit the following documents to the Employer by no later than the submission due date stated in the ITB or the Bid-related Documents (as defined below) (the “**Application Submission Deadline**”):

- (a) a duly completed bid application form (in the prescribed form);
 - (b) one set of documents evidencing the applicant's eligibility to participate in the Tender;
 - (c) documents evidencing the authenticity of the applicant's signature or seal (for a Korean applicant, this will be a certificate of registered seal and certificate of use; for a non-Korean applicant, this may be a notarized or legalized specimen signature form containing the name, specimen signature, and title of the applicant (or the applicant's authorized signatory if a corporation) or equivalent documents); and
 - (d) any other documents specified in the ITB or required by a separate notice.
- (2) Each document provided under paragraph (1)(b) above must be provided in its original form or if a copy is provided, the copy must be certified as a true and correct copy of the original document and must be signed or have its registered seal affixed thereto.
- (3) The documents, including the bid application form, submitted under paragraph (1) above cannot be amended except to correct matters such as typographical errors.
- (4) If a representative is designated for submitting the bid application, such representative may participate in the Tender. If a bidding representative is designated or replaced after submission of the bid application but prior to the opening of bids, the designated representative may participate in the Tender.
- (5) Where some or all of the documents specified in paragraph (1) above have been provided to the Employer before the Application Submission Deadline (for example as part of a pre-qualification screening process), such relevant documents may be deemed submitted for the purposes of the application to participate in the Tender under paragraph (1). In this case, the applicant must submit a list specifying those relevant documents that have already been submitted to the Employer.

Article 6 Bid-related Documents

- (1) All prospective Bidders shall have access to the following documents (collectively, the “**Bid-related Documents**”):
- (a) the notice of tender or the ITB;
 - (b) these Instructions;
 - (c) a bid application form (in the prescribed form);
 - (d) the Bid Proposal (in the prescribed form);
 - (e) the International Technical Services Standard Contract (in the standard form);
 - (f) specifications of the goods;
 - (g) general conditions of contract;
 - (h) particular conditions of contract;
 - (i) the Performance Guarantee (in the prescribed form); and
 - (j) any other documents that state matters relevant to the Tender.
- (2) The Employer may request that the prospective Bidder submitting the Bid-related Documents listed in

paragraph (1) above provide a bid deposit or bid guarantee for the amount prescribed in the ITB or notice of tender. The relevant prospective Bidder must comply with such request.

Article 7 Knowledge of Applicable Laws and Regulations

- (1) Any prospective Bidder must ensure that it is familiar with all laws and regulations applicable to the Tender and each of the Bid-related Documents specified in Article 6(1) above.
- (2) Any prospective Bidder shall have until the day before the Bid Proposal submission deadline (the “**Bid Proposal Deadline**”) to request clarification from the Employer of any mistakes or errors (including matters missing) in any of the Bid-related Documents that the prospective Bidder may have discovered during its review thereof.

Article 8 Bid Consortiums

- (1) Joint contracts may be permitted as long as the scope of services to be rendered by the consortium’s representative (the “**Representative Member**”) is at least 50% of all services to be rendered by that consortium.
- (2) If joint contracts are permitted and parties wish to form a consortium to participate in the Tender, each consortium member must submit to the Employer: (a) all of the Bid-related Documents listed in Article 6(1) above; and (b) an executed (by way of seal or signature) joint supply agreement.
- (3) The ITB or the notice of tender shall state whether joint contracts are permitted and if so, shall specify the scope of such joint contracts.
- (4) A party cannot be a member of multiple consortia participating in the same Tender.
- (5) Where the relevant services are not subject to a pre-screening process, the relevant joint supply agreement must be executed by the consortium members and submitted to the Employer by the day before the date of the bid opening. Where the relevant services are subject to a pre-screening process, the relevant joint supply agreement must be executed by the consortium members, attached to the pre-screening application and submitted to the Employer.
- (6) Where the Tender involves a pre-screening process, the composition of the consortium must be the same as was stated in the joint supply agreement that was submitted with the pre-screening application.
- (7) The consortium’s eligibility to participate in the Tender shall be assessed based on the Representative Member and where such Representative Member is found to be ineligible to participate in the Tender (due to bankruptcy or other reasons giving rise to disqualification) the consortium as a whole shall not be permitted to participate in the Tender.
- (8) If any person participates in a Tender in violation of paragraphs (1) through (4) above, the Bid Proposal submitted by such person shall be eligible for nullification under Article 20 hereto.

Article 9 Criteria for Pre-qualification Screening

Where the ITB states that the Tender is to be subject to a pre-qualification screening process, such pre-

qualification screening process shall be conducted in accordance with the KOICA's pre-qualification guideline.

Article 10 Bid Deposit or Bid Guarantee

- (1) Any prospective Bidder must submit by the Application Submission Deadline (if the submission deadline falls on a public holiday in the country in which the Tender is to be conducted, then by the immediately preceding business day) a cash bid deposit amounting to at least five percent (5%) of the bid price or a bid guarantee issued by a financial institution (e.g. a bank or an insurance company) issued a credit rating of A or higher from an internationally-recognized credit rating agency or which is pre-approved by KOICA.
- (2) If the selected Bidder fails to enter into the Relevant Contract within the prescribed period, the bid deposit or the bid guarantee that was submitted by such selected Bidder shall vest in KOICA.
- (3) The bid deposits or bid guarantees submitted by unsuccessful Bidders shall be returned to them as soon as the successful Bidder is selected. The bid deposit or bid guarantee of the successful Bidder shall be returned immediately following execution (by such successful Bidder) of the Relevant Contract.
- (4) The bid guarantee provided in accordance with subparagraph (1) above must be valid for a period beginning on a date before the Bid Proposal submission date and ending on a date at least 30 days after the Bid Proposal Deadline.

Article 11 Exemptions to Providing a Bid Deposit/Guarantee

- (1) The following applicants (each an “**Exempted Applicant**”) shall be exempt from providing a bid deposit or bid guarantee under Article 10 above:
 - (a) governmental agencies and local municipalities of the Republic of Korea;
 - (b) public institutions established under the laws of the Republic of Korea;
 - (c) foreign corporations, 50% or more of whose net worth has been contributed by the government (including where such foreign corporation legally becomes a subsidiary of a governmental entity); and
 - (d) a prospective bidder whom KOICA reasonably assesses to be a low flight-risk based on track records for performing contracts with KOICA during the immediately preceding two (2)-year period.
- (2) An Exempted Applicant must submit to KOICA a written undertaking to pay the applicable penalty. The undertaking may be deemed (at the sole discretion of KOICA) the same as a bid application that promises the payment of a bid deposit.

Article 12 Participation in the Tender

- (1) Any person wishing to participate in a Tender must:
 - (a) have submitted a bid application by the Application Submission Deadline;

- (b) have completed a partner registration, where the Tender is subject to a partner registration is stated to be required in the ITB and/or the Bid-related Documents; and
 - (c) have attended a briefing session regarding the Tender, where the Tender is subject to a briefing session, and attendance of such briefing session is stated to be mandatory in the ITB and/or the Bid-related Documents.
- (2) When participating in the Tender, the Bidder (including any designated representative) must have in his/her possession his identification card and the same seal that was affixed to the bid application.
 - (3) A person who has been restricted in accordance with Korean law and KOICA's internal regulations, from participating in a Tender for impropriety trading, cannot be designated as a representative under paragraph (2) above.
 - (4) The Employer may issue instructions to the Bidders to ensure that order is maintained and shall have the authority to expel the Bidder from the Tender process or nullify a bid where such Bidder fails to abide by such instructions.

Article 13 Preparation of the Bid Proposal

- (1) The Bid Proposal must be prepared in accordance with the guidance provided in the Bid-related Documents and in the prescribed form. The bid price must be stated as a lump sum where the Tender is for a lump-sum Project and as a unit price where the Tender is for a unit-price Project.
- (2) The Bid Proposal must be signed by the same person that signed the bid application. The signature must be accompanied by the signatory's full name. Where the Bidder is a corporation, the company's full name and the representative director's signature must be provided on the Bid Proposal. Where the bid application was executed by way of seal, the same seal must be affixed to the Bid Proposal.
- (3) To the extent there are any deletions or corrections to be made on the Bid Proposal following submission thereof, such deletions or corrections shall be accompanied by the Bidder's signature or seal that was provided on the bid application.

Article 14 Submission of the Bid Proposal

- (1) The Bid Proposal shall be submitted in a sealed envelope and a Bidder shall only be permitted to submit one envelope; provided, however, that where a two-stage bidding process involving a separate technical stage and a fee proposal stage is conducted, a single Bidder shall submit two envelopes, one containing the technical proposal and the other containing the fee proposal.
- (2) A Bidder shall submit its Bid Proposal at such time, on such date and at such venue as instructed by the Employer, except if the ITB allows for submission by post, the Bidder need not comply with such instructions.
- (3) Submission of the Bid Proposal by post will only be effective if it arrives by the Bid Proposal Deadline. For the avoidance of doubt, KOICA shall not be responsible for any Bid Proposal lost, damaged, or delayed during transit.

- (4) A Bidder who intends to submit its Bid Proposal by post in accordance with the proviso in paragraph (2) above, must specify the following details on the cover of the sealed envelope: the name of the Tender, the date and time of the Tender, the name of the Bidder (and where it is a corporation, the company name and the name of the representative director) and a contact telephone number.
- (5) Upon receipt of a Bid Proposal by post, the Employer shall record on the cover of the envelope the date and time of receipt accompanied by a confirmatory signature or seal and shall hold the envelope unopened until the bid opening stage.
- (6) A Bidder cannot replace, modify, or withdraw a Bid Proposal that has already been submitted. However, a Bidder may be allowed to withdraw its Bid Proposal if: (a) it expresses its intent to do so at the bid opening due to significant errors in the Bid Proposal; and (b) the Employer accepts and acknowledges such a request to withdraw. In a two-stage bidding process, a Bidder may be permitted to amend its technical bid proposal if: (i) there are no Qualifying Bids; or (ii) a Bidder is determined by the Employer as having satisfied the technical specifications except for a few minor matters requiring supplementation.

Article 15 Submission of Statement of Calculation

- (1) Where the Tender is for a lump-sum/unit-price contract, the Bid Proposal must have attached to it a detailed statement of calculation as distributed by the Employer.
- (2) Where the Tender is for a lump-sum contract for construction works, the successful Bidder must submit detailed statements of calculation until a certificate of commencement of construction works is issued.
- (3) Each statement of a calculation submitted pursuant to paragraphs (1) and (2) above must bear the seal on each page (or each page must be initialed where only a signature is available).

Article 16 Submission Deadline for Documents

- (1) All Bid-related Documents evidencing the Bidder's eligibility to participate in the Tender must be submitted on or prior to the Bid Proposal Deadline as specified in the ITB or the notice of tender.
- (2) Where the deadline including the Bid Proposal Deadline prescribed in the Bid-related Documents (the "**Relevant Deadline**") is set to be 0:00 and the date immediately preceding such deadline is an official public holiday in the jurisdiction in which the Tender is being conducted, the deadline for submitting relevant documents shall be the business day immediately preceding that.

Article 17 Bidder's Obligation regarding Fair Competition

- (1) Bidders must not engage in any unfair trade practices, including (without limitation) colluding on the bid price or assisting a specific Bidder to become the successful Bidder.
- (2) Where a Bidder violates the provisions of paragraph (1) above, KOICA may nullify his/its Bid Proposal in accordance with Article 18 hereto and may request a competent governmental agency to investigate the unfair trade practice of such Bidder.

Article 18 Tenders for Construction Works on a Long-Term Basis

In the case of long-term contracts for construction works, Bidders participating in the relevant Tender shall bid relating to the total volume of construction works.

Article 19 Competitive Bidding

- (1) Competitive bidding may only be constituted by two or more valid bids by Bidders.
- (2) For the avoidance of doubt, where a Tender is by a two-stage process and there is only one Qualifying Bid for the second stage (the fee proposal stage), the Employer may open the fee proposal for that one Qualifying Bid, as long as at least two valid technical proposals (that led to the one Qualifying Bid) were submitted at the first stage.

Article 20 Nullification of Bids

Bids that fall under any one of the following criteria may be nullified:

- (a) bids submitted by persons not eligible to participate in a Tender;
- (b) bids submitted by those persons without the right of representation;
- (c) bids submitted by those persons who failed to submit required documentation listed in the ITB or the Bid-related Documents at such specified date and time and place;
- (d) where multiple bids have been submitted by one and the same person (and where one person is a related party to multiple corporate entities, such entities shall be deemed to constitute one and the same person) or bids submitted on behalf of a third-party;
- (e) where important information, such as the bid price, has been omitted or is unclear in the Bid Proposal or where any corrections in the Bid Proposal have not been marked by a signature or seal;
- (f) bids submitted by those persons engaged in collusion or those persons interfering with the fair process of the Employer;
- (g) bids submitted without the Bidder's seal or signature (including those bids that bear the name of the proxy or the company rather than the Bidder and those bids that have affixed a seal or signature (as applicable) but where such seal or signature is different from that affixed to the bid application);
- (h) bids regarding which the Bidder has expressed at the bid opening an intention to withdraw due to significant errors therein, which withdrawal has been accepted by the Employer;
- (i) to the extent it was specified to be required (except for in the case of Article 15(2) above), bids not accompanied by an estimate (or statement of calculation) or where the bid price contained in the Bid Proposal and the amount stated in the estimate (statement of calculation) are inconsistent or where the specifications contained in the Bid Proposal and in the estimate are inconsistent with each other or where Bid Proposals contains inappropriate reservations clauses;
- (j) bids for which the prescribed bid deposit or a bid guarantee (in accordance with Article 10(2)

- above) has not been submitted by the applicable due date;
- (k) bids for which documents required to confirm eligibility of the Bidder or the Bidder's ability to implement the Project have not been submitted; or
 - (l) bids submitted in violation of Article 12 above (i.e. without using the prescribed form) or where the bid price has only been specified in Arabic numerals or where electronic submissions have been damaged or not processed properly for failure to comply with electronic entry guidelines.

Article 21 Extension of the Bid Proposal Deadline

- (1) The Employer may extend the Bid Proposal Deadline as first specified in the ITB or notice of tender if:
 - (a) it determines it necessary because the matters requiring clarification pursuant to Article 7(2) above are too significant; or
 - (b) it is not possible to conduct the Tender or bid opening for other unavoidable reasons.
- (2) Details of any extension of the Bid Proposal Deadline pursuant to paragraph (1) above and the reasons for such extension must be provided to the Bidders in the same manner in which the initial ITB or notice of tender was provided.

Article 22 Cancellation of Tender

- (1) At any time before confirming its selection of a successful Bidder, KOICA may cancel the relevant Tender in unavoidable circumstances (including budgetary reasons and changes to the business plan).
- (2) No Bidder shall be entitled to object to KOICA's decisions to cancel under paragraph (1) above or to claim damages relating thereto.

Article 23 Re-Tender and Re-Issuance of ITB

- (1) The Employer may re-initiate a bid process at the same original location of a Tender if a competitive bidding process does not result in two or more valid Bid Proposals or a successful Bidder (the "**Re-Tender**"). The Re-Tender shall not be construed as a new bid process and shall not be subject to any restriction on tenders or to the number of repeated bid processes.
- (2) If there are no valid Bid Proposals or no successful Bidder or if a successful Bidder is selected but then fails to execute the Relevant Contract, the Employer may re-issue the relevant ITB.
- (3) Where a Tender has been conducted as a two-stage bidding process and the opening of the fee proposals in the second stage results in more than two potential successful Bidders, the Employer may request that only the Bidders of those Qualifying Bids re-submit their respective fee proposals.
- (4) In cases of a Re-Tender or a re-issuance of ITB under paragraphs (1) through (3) above, the terms and conditions of the initial Tender (other than the Bid Proposal Deadline) must remain unchanged.

Article 24 Bid Opening

- (1) Bid opening shall be conducted at such place, time, and date as is specified in the ITB, and such bid

opening may be attended by Bidders or their representatives. The Employer may request that each attendee presents his/her identification card and a certificate evidencing eligibility to participate in the Tender.

- (2) Following the opening of bids, where the bid price offered in a Bid Proposal is extraordinarily lower than the bid prices offered in any other Bid Proposal, the Employer may undertake a separate screening process of that Bidder to ascertain such Bidder's capacity to comply with and implement the Relevant Contract. In such a case, the relevant Bidder must participate in this screening process in good faith.

Article 25 Selection of a Successful Bidder

- (1) The successful Bidder shall be selected in accordance with the relevant criteria prescribed in the Regulations.
- (2) The selection of a successful Bidder shall only take effect upon receipt by the relevant Bidder of a written notice of confirmation from the Employer. At any time before the execution of the Relevant Contract, KOICA shall be entitled to accept or reject any portion of the Bid Proposal, to cancel the Tender process or to nullify all Bid Proposals. In such a case, KOICA shall bear no liability to any Bidder affected by KOICA's actions.
- (3) In cases falling under paragraph (1), there are two or more Bidders of the same rank, where: (a) a two-stage bidding process has been conducted, the Bidder with a better technical proposal; and (b) a Bidder has been screened for his/its contractual capabilities, the highest-ranking Bidder, shall be selected as the successful Bidder. However, where it is found that the Bidders with the lowest bids also have the same contractual capabilities, the successful Bidder shall then be selected by way of draw.
- (4) The draw under paragraph (3) above shall be conducted by an employee of the Employer who is not involved in any business or matter relating to the relevant Tender.

Article 26 Expenses

The costs and expenses relating to a Tender shall be borne by each participating Bidder.

Article 27 Language

- (1) In principle, the Bid-related Documents shall be prepared in English or Korean. However, the Employer may also provide the Bid-related Documents: (a) in the local language of the Recipient Country, or (b) in any language commonly used in the Recipient Country.
- (2) The contract must be prepared in the same language as that used to prepare the Bid-related Documents. The English version shall prevail in cases of any conflict between the English version, and the Korean version or the version prepared in the language commonly used in the Recipient Country.
- (3) Notwithstanding paragraphs (1) and (2) above, the default language for International Tenders conducted by KOICA HQ shall be Korean. However, where the use of a foreign language is deemed necessary, English or the language of that specific country involved in the Tender process (e.g. language widely

used in the relevant country, such as French) may be used. Where the ITB is issued in Korean, KOICA HQ shall state certain important details (e.g. the subject-matter of the contract, submission deadline, etc.) in English at the bottom of the ITB or in an attachment to the ITB. In this case, where there are conflicts between the Korean and English versions, the Korean version shall prevail.

Article 28 Execution of Contract

- (1) Within seven (7) days of receiving notice of selection, the successful Bidder must submit all requisite documents in their prescribed forms, a statement of calculation of the bid price, and a business implementation plan. Within ten (10) days of receiving the same notice, the successful Bidder must execute the Relevant Contract for which it tendered.
- (2) In cases falling under paragraph (1), where the successful Bidder is prevented from executing a Relevant Contract due to a force majeure event, the period of such force majeure event shall not be included in counting the prescribed period under paragraph (1) above.
- (3) The successful Bidder intending to conclude a contract with the Employer under paragraph (1) above must submit all such related documents as specified in all applicable laws and requested by the Employer.
- (4) Where a long-term contract for construction works is to be executed with the successful Bidder, calculation of the contract value shall be based on the entire pool of such works (the “**Total Value**”), and the first contract for construction works shall be executed having due regard for the scope of budget for the relevant year. In such case, it shall be further agreed by the parties by way of addendum that from the second contract for construction works onwards, the relevant contract value shall be the Total Value minus the value of the immediately preceding contract. For the purposes of this Article 27(4), “**Total Value**” shall mean the total value of the construction works to be performed).
- (5) The value of the contract for construction works following the first and second contracts for construction works (as provided for under paragraph (4) above), shall be calculated on the contract unit price which shall be based on the selected bid price which is based upon the Total Value. In the case of a long-term contract, where the Bid-related Documents allowed for price adjustment, the contract value may be adjusted subject to such adjustment provisions prescribed in the Bid-related Documents and to the extent the unit price of a contract for construction works is so adjusted that adjusted price shall be the relevant contract value.

Article 29 Conclusion of Contract

The contract shall be finally concluded when the Employer and the successful Bidder each affix their respective seal or signature to the Relevant Contract.

Article 30 Performance Bonds

- (1) Prior to the execution of the Relevant Contract pursuant to Article 29 above, the successful Bidder must

provide a performance bond to guarantee the performance of its obligations under such contract.

- (2) If the successful Bidder provides a performance bond by means of a guarantee insurance policy, the guarantee period thereof shall expire at least 60 days after the date the supply of goods is completed and not before.
- (3) A successful Bidder may be exempt (in whole or in part, at the discretion of the Employer) from providing a performance bond if any of the following circumstances apply:
 - (a) if the successful Bidder is a governmental agency or local municipality of the Republic of Korea;
 - (b) if the successful Bidder is a public institution established under the laws of the Republic of Korea;
 - (c) if the successful Bidder is a foreign corporation, 50% or more of whose net worth has been contributed by the government (including where such foreign corporation legally becomes a subsidiary of a governmental entity); or
 - (d) if the collection of a performance bond would not be appropriate having regard generally to the fair and reasonable customs of contract.
- (4) In the event that the payment of all or part of the performance bond can be waived, the successful Bidder shall provide an undertaking to promptly pay in cash an equivalent amount of the value of the performance bond should any circumstances arise that would have caused the performance bond to vest in the Employer.

Article 31 Confidentiality

Bidders shall not use any of the Bid-related Documents or other materials provided by the Employer as part of a particular Tender process and any information acquired as a result of their participation in a particular Tender process for any purpose other than to participate in the relevant Tender process.

Article 32 Undertaking to Act with Integrity

- (1) The Employer may require Bidders to submit a letter of undertaking, (a) covenanting to act with integrity and to refrain from engaging in acts of collusion and other practices of unfair trade, including offering money and other valuables, treats, and other gains (collectively a “**Bribe**”) to KOICA’s officers, employees, and related public officials regarding the Tender process, the selection process, execution , and performance of the Relevant Contract; and (b) agreeing to submit to sanctions (such as but not limited to early termination of contract) should they breach the terms of such letter.
- (2) The successful Bidder shall consent to the incorporation of the letter of undertaking provided pursuant to paragraph (1) above into the Relevant Contract and shall comply with all such undertakings and covenants contained therein.
- (3) Any person who is found to have provided KOICA’s officers, employees, and/or related public officials with a Bribe in connection with a Tender process, selection process, contract negotiations,

execution , and performance of a contract, shall be subject to the following sanctions regarding the Relevant Contract in question:

- (a) if the Relevant Contract has been executed but the relevant Project not yet commenced, that Relevant Contract shall be rescinded; or
- (b) if performance of the Relevant Contract has already commenced, such Relevant Contract shall be rescinded or terminated, in whole or in part, unless unavoidable circumstances exist (having due regard for the subject matter, progress, size , and period of performance of the contract) that prevent such rescission or termination.

Article 33 Electronic Bidding and Other Matters

The process of electronic bidding and such other matters not otherwise covered by these Instructions shall be subject to separate regulations and policies of KOICA.

Article 34 Application of Other Procurement-related Regulations

Unless otherwise provided for in these Instructions, the Regulations, the Regulations for Procurement and Contracts in Foreign Affairs and Trade Projects, and their related enforcement regulations shall apply to the subject matter hereunder.