

## INSTRUCTIONS TO BIDDERS (SERVICES)

### Article 1 Purpose

These Instructions to Bidders (these “**ITB**”) set out 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 ITB 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 via KOICA’s Data Processing Unit or by downloading the partner registration form (English version) from KOICA’s Data Processing Unit, filling it in 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 fill in 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 set out in the relevant Bid Data Sheet (the “**BDS**”) (as defined below).
- (2) In deciding the eligibility requirements for the Bidders in a competitive bidding process, KOICA may, if necessary and depending on the type and size of the contract for which the Tender is being conducted (the “**Relevant Contract**”), 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 BDS (as defined below) (the “**Application Submission Date**”):
  - (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 authorised signatory if a corporation) or equivalent documents); and
  - (d) any other documents specified in the BDS 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 confirmed to be a true and accurate copy of the original document and must be signed or affix its registered seal.
- (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 Date (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 Document**

- (1) All prospective Bidders shall have access to the following documents (collectively, the “**Bid Document**”):
  - (a) the BDS;
  - (b) these ITB;
  - (c) a bid application form (in the prescribed form);
  - (d) the Bid Proposal (in the prescribed form);
  - (e) contract forms (in the standard form);

- (f) Request for Proposal;
- (g) general conditions of contract;
- (h) special conditions of contract;
- (i) bid security (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 Document listed in paragraph (1) above provide a bid security for the amount set forth in the BDS. 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 Document 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 Document that it may have discovered during its review thereof.

#### **Article 8 Bid Consortium**

- (1) For joint contracts that allow the participation of consortia, the members of a consortium must have mutual discussion to designate a representative (the “**Representative**”) who is deemed the most appropriate for the performance of the contract in view of the required qualifications as well as the scope of services specified in the notice of tender.
- (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 Document listed in Article 6(1) above; and (b) an executed (by way of a seal or signature) joint supply agreement.
- (3) The BDS 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 date before the Bid Proposal Deadline. 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 (for reasons of 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 19 hereto.

#### **Article 9 Criteria for Pre-qualification Screening**

Where the BDS 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 Standard of Prequalification Criteria.

#### **Article 10 Bid Security**

- (1) Any prospective Bidder must submit by the Bid Proposal Deadline a cash bid deposit amounting to at least two per cent (2%) of the bid price or a bid guarantee issued by a financial institution (e.g. a bank or an insurance company) which has received 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 to immediately following execution (by such successful Bidder) of the Relevant Contract.
- (4) The bid guarantee provided in accordance with sub-paragraph (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 90 days after the Bid Proposal Deadline.

#### **Article 11 Exemptions to Providing a Bid Security**

- (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) to be the same as a bid application that promises 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 on or before 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 BDS and/or the Bid Document; and
- (2) When participating in the Tender, the Bidder (including any designated representative) must have in its/his 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 its/his 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 Document 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 a 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 BDS 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 on or before 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/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 the Bid Proposal by post, the Employer shall record on the cover of the envelope the date/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 for reasons of 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 save for a few minor matters requiring supplementation.

#### **Article 15 Submission Deadline for Documents**

- (1) All Bid Document 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 BDS.
- (2) ~~Where the deadline including the Bid Proposal Deadline set forth in the Bid Document (the "Relevant Deadline") is set to be 0:00 and the date immediately preceding such deadline is a governmental 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 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 19 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 in relation 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 or more 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 those 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 requisite documentation listed in the BDS or the Bid Document at such specified date/time and place;
- (d) where multiple bids have been submitted by the one and the same person (and where one person is a related party to multiple corporate entities, such entities shall be deemed to constitute the 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 which was affixed to the bid application);
- (h) bids regarding which the Bidder has expressed at the bid opening an intention to withdraw for reasons of significant errors therein, which withdrawal has been accepted by the Employer;
  - (i) to the extent it was specified to be required, bids that are 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 13 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 BDS if:
  - (a) it determines it to be 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 BDS 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 if unavoidable circumstances (including budgetary reasons, changes to the business plan) exist or arise.
- (2) No Bidder shall be entitled to object to KOICA's decisions to cancel under paragraph (1) above or to claim damages in relation thereto.

#### **Article 22 Re-Tender and Re-Issuance of BDS**

- (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 process.

- (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 BDS.
- (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 case of a Re-Tender or a re-issuance of BDS 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 BDS, 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 in order 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 set forth 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) If, in case of paragraph (1), there are two or more Bidders of the same rank, (a) in the case where a two-stage bidding process has been conducted, the Bidder with a better technical proposal; and (b) in the case where a Bidder has been screened for his/its contractual capabilities, the highest-ranking Bidder shall be

selected as the successful Bidder. However, in the case where it is found that the lowest bids also have the same contractual capabilities, the successful Bidder shall then be selected by way of a 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 Document shall be prepared in English or Korean. However, the Employer may also provide the Bid Document (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 Document. The English version shall prevail in case of any discrepancy 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 it is deemed that the use of foreign language is 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 BDS is issued in Korean, KOICA HQ shall state certain important details (e.g. the object of the contract, submission deadline, etc.) in English at the bottom of the BDS or in an attachment to the BDS. In this case, where there are discrepancies 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 the case of 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 an 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 based on the Total Value. In the case of a long-term contract, where the Bid Document 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 Bond**

- (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 on which 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 Document 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 with regard 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 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 in respect of 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 ITB shall be subject to separate regulations and policies of KOICA.

**Article 33 Application of Other Procurement-related Regulations**

Unless otherwise provided for in these ITB, 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.