

# **Standard Tender Document for the Procurement of Goods and Related Services**

**Tendering Procedures**

**Instructions to Tenderers**

# Section I: Instructions to Tenderers

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## Section I. Instructions to Tenderers

### A. GENERAL

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|---|--|
| <b>Scope of Tender</b>                                  | <p>1.1 The Purchaser indicated in Section II, Tender Data Sheet (herein after referred to as “TDS”) issues this Tender Document for the procurement of Goods as specified in Section VI, Supply Requirements. The name, identification, and number of lots are provided in the TDS.</p> <p>1.2 Unless otherwise stated, throughout this Tender Document definitions and interpretations shall be as prescribed in Section VII, General Conditions of Contract (herein after referred to as “GCC”).</p>   |
| <b>Source of Funds and Applicable Procurement Rules</b> | <p>2.1 The Borrower or Recipient (hereinafter called “Borrower”) indicated in the TDS has applied for or received financing (hereinafter called “funds”) from the European Bank for Reconstruction and Development (hereinafter called “the Bank”) toward the cost of the project named in the TDS. The Borrower intends to apply a portion of the funds to eligible payments under the Contract(s) for which this Tender Document is issued.</p> <p>2.2 Payments by the Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of the financing agreement between the Borrower and the Bank (hereinafter called the “Loan Agreement”), and will be subject in all respects to the terms and conditions of that Loan Agreement. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the funds.</p> <p>2.3 The applicable procurement rules are the Bank’s Procurement Policies and Rules (PP&amp;Rs) which can be located at: <a href="http://www.ebrd.com/news/publications/policies/procurement-policies-and-rules.html">http://www.ebrd.com/news/publications/policies/procurement-policies-and-rules.html</a></p>   |
| <b>Prohibited Practices</b>                             | <p>3.1 The Bank requires that Borrowers (including beneficiaries of Bank loans), as well as Tenderers, suppliers, sub-suppliers, contractors, sub-contractors, concessionaires, consultants and sub-consultants under Bank financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Bank:</p> <p>(a) defines, for the purposes of this provision, Prohibited Practices as one or more of the following:</p> <p>(i) a <b>coercive practice</b> which means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;</p> <p>(ii) a <b>collusive practice</b> which means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;</p> <p>(iii) a <b>corrupt practice</b> which means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;</p> <p>(iv) a <b>fraudulent practice</b> which means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;</p> |

(v) a **misuse of the Bank's resources** which means improper use of the Bank's resources, committed either intentionally or through reckless disregard;

(vi) an **obstructive practice** which means (i) destroying, falsifying, altering or concealing of evidence material to a Bank investigation, which impedes the Bank's investigation; (ii) making false statements to investigators in order to materially impede a Bank investigation into allegations of a Prohibited Practice; (iii) failing to comply with requests to provide information, documents or records in connection with a Bank investigation; (iv) threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to a Bank investigation or from pursuing the investigation; or (v) materially impeding the exercise of the Bank's contractual rights of audit or inspection or access to information; and

(vii) a **theft** which means the misappropriation of property belonging to another party.

(b) will reject a proposal for award if it determines that the tenderer, supplier, sub-supplier, contractor, sub-contractor, concessionaire, consultant or sub-consultant recommended for award has engaged in Prohibited Practices in competing for the Contract in question;

(c) will cancel the portion of the Bank financing allocated to a Contract for goods, works, services or concessions if it at any time determines that Prohibited Practices were engaged in by representatives of the Borrower or of a beneficiary of the Bank financing during the procurement or the execution of that Contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation;

(d) may declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed Contract if it at any time determines that the firm has engaged in Prohibited Practices in competing for, or in executing, a Bank-financed Contract;

(e) reserves the right, where a Borrower or a firm has been found by the final judgement of a judicial process in a member country or by the enforcement (or similar) mechanism of another international organisation, including Mutual Enforcement Institutions to have engaged in Prohibited Practices;

(i) to cancel all or part of the Bank financing for such Borrower; and

(ii) to declare that such a firm is ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed Contract; and

(f) will have the right to require that, in contracts financed by the Bank, a provision be included requiring suppliers, sub-suppliers, contractors, sub-contractors, concessionaires, consultants and sub-consultants to permit the Bank to inspect their accounts and records relating to the performance of the Contract and to have them audited by auditors appointed by the Bank.

3.2 Furthermore, Tenderers shall be aware of the provisions stated in Section VII and VIII, General and Particular Conditions of Contract.

#### Eligible Tenderers

4.1 A Tenderer may be a natural person, private entity, government-owned entity—subject to Instructions to Tenderers (hereinafter referred to as "ITT") 4.5—or any combination of such entities in the form of a Joint Venture, Consortium, or Association (JVCA). In the case of a JVCA:

a) unless otherwise specified in the TDS, all partners shall be jointly

and severally liable, and

- b) the JVCA shall nominate a Representative who shall have the authority to conduct all businesses for and on behalf of any and all the partners of the JVCA during the Tender process and, in the event the JVCA is awarded the Contract, during Contract execution.

4.2 A Tenderer, and all parties constituting the Tenderer, shall have the nationality of an eligible country, in accordance with Section V, Eligible Countries. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers and sub-suppliers for any part of the Contract including Related Services.

4.3 A Tenderer shall not have a conflict of interest. All Tenderers found to have in conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this Tender process, if:

- (a) they have controlling partners in common; or
- (b) they receive or have received any direct or indirect subsidy from any of them; or
- (c) they have the same legal representative for purposes of this tender; or
- (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the tender of another Tenderer, or influence the decisions of the Purchaser regarding this tendering process; or
- (e) a Tenderer submits or participates as a joint venture partner or consortium member in more than one tender in this Tender process. Participation by a Tenderer in more than one Tender will result in the disqualification of all Tenders in which it is involved. However, this does not limit the inclusion of the same subcontractor, not otherwise participating as a Tenderer, in more than one tender; or
- (f) a Tenderer, its affiliates or parent organisation has participated in the feasibility or design stages of a project, that tenderer, its affiliates or parent organisation shall not be eligible to participate in a tender for contracts involving the supply of goods, works or services, including architectural or engineering services, for the project, unless it can be demonstrated that such participation would not constitute a conflict of interest. Such determination must be made prior to the submission of a tender; or
- (g) a Tenderer participated as a consultant in the preparation of Section VI, Supply Requirements that are the subject of the tender; or
- (h) a Tenderer or any of its affiliates has been hired, or is proposed to be hired, by the Purchaser or the Borrower for the supervision of the Contract.

4.4 A Tenderer shall be disqualified if the tenderer, an affiliate of the tenderer, a party constituting the tenderer or an affiliate of a party constituting the tenderer, is under a declaration of ineligibility by the Bank in accordance with ITT 3, at the date of the deadline for tender submission or thereafter.

4.5 No affiliate of the Purchaser shall be eligible to tender or participate in a

tender in any capacity whatsoever unless it can be demonstrated that there is not a significant degree of common ownership, influence or control amongst the affiliate and the Purchaser or the Borrower.

4.6 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Purchaser, as the Purchaser shall reasonably request.

4.7 Firms shall be excluded if:

(a) as a matter of law or official regulation, the Borrower's country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition; or

(b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of Goods from that country or any payments to persons or entities in that country.

4.8 In case a prequalification process has been conducted prior to the Tender process, this Tender is open only to pre-qualified Tenderers.

**Eligible Goods and Related Services**

5.1 All Goods and Services to be supplied under the Contract and financed by the Bank, shall have as their country of origin an eligible country of the Bank as listed in Section V, Eligible Countries.

5.2 For purposes of this paragraph, the term "Goods" includes commodities, raw material, machinery, equipment, and industrial plants; and Related Services includes services such as insurance, transportation, installation, commissioning, training, and initial maintenance.

5.3 The term "country of origin" means the country where the Goods have been mined, grown, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components.

5.4 The nationality of the firm that produces, assembles, distributes, or sells the Goods shall not determine their origin.

**B. CONTENTS OF TENDER DOCUMENT**

**Sections of Tender Document**

6.1 The Tender Document consist of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITT 8.

**PART 1 Tendering Procedures**

- Section I. Instructions to Tenderers (ITT)
- Section II. Tender Data Sheet (TDS)
- Section III. Evaluation and Qualification Criteria
- Section IV. Tender Forms
- Section V. Eligible Countries

**PART 2 Supply Requirements**

- Section VI. Supply Requirements

**PART 3 Contract Forms**

- Section VII. General Conditions of Contract (GCC)
- Section VIII. Particular Conditions of Contract (PCC)

- Section IX. Annex to the PCC Contract Forms

6.2 The Invitation for Tenders issued by the Purchaser is not part of the Tender Document.

6.3 The Tenderer shall obtain the Tender Document from the source stated by the Purchaser in the Invitation for Tenders; otherwise the Purchaser is not responsible for the completeness of the Tender Document.

6.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender Document. Failure to furnish all information or documentation required by the Tender Document may result in the rejection of the tender.

**Clarification of  
Tender  
Document, Site  
Visit, Pre-Tender  
Meeting**

7.1 A prospective Tenderer requiring any clarification of the Tender Document shall contact the Purchaser in writing at the Purchaser address indicated in the TDS or raise his enquiries during the pre-tender meeting if provided for in accordance with ITT 7.4. The Purchaser will respond to any request for clarification, provided that such request is received prior to the deadline for submission of tenders, within the number of days specified in the TDS. The Purchaser response shall be in writing with copies to all Tenderers who have acquired the Tender Document in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. Should the Purchaser deem it necessary to amend the Tender Document as a result of a request for clarification, it shall do so following the procedure under ITT 8 and ITT 22.2.

- 7.2 Where applicable, the Tenderer is advised to visit and examine the project site and obtain for itself on its own responsibility all information that may be necessary for preparing the tender and entering into a Contract for the provision of the Supply Requirements. The costs of visiting the site shall be at the Tenderer's own expense.

- 7.3 Pursuant to ITT 7.2, where the Tenderer and any of its personnel or agents have been granted permission by the Purchaser to enter upon its premises and lands for the purpose of such visit, the Tenderer, its personnel, and agents will release and indemnify the Purchaser and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the visit.

- 7.4 The Tenderer's designated representative is invited to attend a pre-tender meeting, if provided for in the TDS. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. If so provided for in the TDS, the Purchaser will organise a site visit.

- 7.5 The Tenderer is requested, as far as possible, to submit any questions in writing, to reach the Purchaser not later than one week before the meeting.

- 7.6 Minutes of the pre-tender meeting, including the text of the questions raised without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Document in accordance with ITT 6.3. Any modification to the Tender Document that may become necessary as a result of the pre-tender meeting shall be made by the Purchaser exclusively through the issue of an Addendum pursuant to ITT 8 and not through the minutes of the pre-tender meeting.

- 7.7 Non-attendance at the pre-tender meeting will not be a cause for



disqualification of a Tenderer.

- Amendment of Tender Document**
- 8.1 At any time prior to the deadline for submission of tenders, the Purchaser may amend the Tender Document by issuing addenda.
- 8.2 Any addendum issued shall be part of the Tender Document and shall be communicated in writing to all who have obtained the Tender Document from the Purchaser in accordance with ITT 6.3.
- 8.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their tenders, the Purchaser may, at its discretion, extend the deadline for the submission of tenders, pursuant to ITT 22.2

## C. PREPARATION OF TENDERS

- Cost of Tendering**
- 9.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Purchaser shall not be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- Language of Tender**
- 10.1 The Tender, as well as all correspondence and documents relating to the tender exchanged by the Tenderer and the Purchaser, shall be written in the language specified in the TDS. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate translation of the relevant passages in that language, in which case, for purposes of interpretation of the Tender, such translation shall govern.
- Documents Comprising the Tender**
- 11.1 The Tender shall comprise the following:
- (a) Letter of Tender and Attachment 1 to the Letter of Tender – Covenant of Integrity;
  - (b) completed Schedules as provided in Section IV, Tender Forms;
  - (c) tender Security, in accordance with ITT 19;
  - (d) at the Tenderer’s option, alternative proposals, if permissible, in accordance with ITT 13;
  - (e) written confirmation authorising the signatory of the Tender to commit the Tenderer, in accordance with ITT 20.2;
  - (f) documentary evidence establishing the eligibility of the Goods and Services offered by the tenderer, in accordance with ITT 17.1;
  - (g) documentary evidence establishing the Tenderer’s qualifications in accordance with the requirements of Section III, Evaluation and Qualification Criteria, using the relevant forms furnished in Section IV, Tender Forms;
  - (h) documentary evidence as specified in the TDS, establishing the conformity of the Goods and Services offered by the Tenderer with the Tender Document, using the relevant forms furnished in Section IV, Tender Forms;
  - (i) in the case of a tender submitted by a JVCA, a JVCA agreement, indicating at least the parts of the Supply Requirements to be executed by the respective partners and

(j) any other document required in the TDS.

**Letter of Tender and Price Schedules**

12.1 The Tenderer shall submit the Letter of Tender using the form furnished in Section IV, Tender Forms. This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

**Alternative Tenders**

13.1 Unless otherwise indicated in the TDS, alternative proposals shall not be considered. If alternative proposals are permitted, their method of evaluation shall be as stipulated in Section III, Evaluation and Qualification Criteria.

- 13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the TDS, as will the method of evaluating different times for completion.

- 13.3 Except as provided under ITT 13.4 below, Tenderers wishing to offer technical alternatives to the requirements of the Tender Document must first price the Purchaser's requirements as described in the Tender Document and shall further provide all information necessary for a complete evaluation of the alternative by the Purchaser, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements shall be considered by the Purchaser.

- 13.4 When specified in the TDS, Tenderers are permitted to submit alternative technical solutions for specified parts of the requirements, and such parts shall be identified in the TDS, as will the method for their evaluation, and described in Section VI, Supply Requirements.

**Tender Prices and Discounts**

14.1 The prices and discounts quoted by the Tenderer in the Letter of Tender and in the Price Schedules shall conform to the requirements specified in ITT 14.2.

14.2 Unless otherwise provided in the TDS and the Contract, the prices quoted by the Tenderer shall be fixed.

14.3 The price to be quoted in the Letter of Tender in accordance with ITT 12.1, shall be the total price of the Tender excluding any discounts offered.

14.4 The Tenderer shall quote any unconditional discounts and the methodology for their application in the Letter of Tender in accordance with ITT 14.1.

14.5 The terms EXW, CIP, DAP, DDP and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by The International Chamber of Commerce, Paris.

14.6 The Tenderer shall quote prices as required in each Price Schedule included in Section IV, Tender Forms. The Tenderer shall indicate on the appropriate Price Schedule the unit price (where applicable) and total Tender price of the Goods it proposes to supply under the Contract. The Tenderer's separation of price components will be solely for the purpose of facilitating the comparison of tenders by the Purchaser and will not in any way limit the Purchaser's right to Contract on any of the terms offered. Prices indicated on the price schedule shall be entered separately in the following manner unless otherwise specified in the TDS:

- (a) For Goods to be supplied from within the Purchaser's country:
  - (i) the price of the Goods, quoted EXW inclusive of all customs duties or import taxes and sales and other taxes already paid

- or payable on the components and raw materials used in the manufacture or assembly of Goods, but exclusive of any sales and other taxes on the finished Goods which will be payable in the Purchaser's country if this Contract is awarded;
  - (ii) any customs duties or other similar import taxes paid or payable on directly imported components incorporated or to be incorporated in the Goods;
  - (iii) any VAT, sales and other similar taxes on the finished Goods which will be payable in the Purchaser's country if this Contract is awarded;
- (b) For Goods to be supplied from outside the Purchaser's country:
- (i) the price of the Goods quoted CIP (border point or place of destination as specified in the TDS) exclusive of customs duties and other taxes payable in the Purchaser's country;
  - (ii) the price of the Goods quoted on the basis of any other Incoterms specified in the TDS;
- (c) Related Services:
- (i) the price for inland transportation, insurance and other local costs related to transportation of the Goods (delivered EXW or CIP (border or port)) to their final destination, if specified in the TDS;
  - (ii) the price of incidental (associated) services outlined in the TDS and detailed in the Section VI – Supply Requirements, the Conditions of Contract and Technical Specifications.

The price of Related Services shall be inclusive of all taxes, duties, levies and charges payable in the Purchaser's country as of thirty (30) days prior to the deadline for submission of tenders, but exclusive of any VAT, sales or other similar taxes on the services which will be payable in the Purchaser's country if the Contract is awarded.

14.7 Unless otherwise specified in the TDS, prices quoted by the Tenderer shall be fixed during the Tenderer's performance of the Contract and not subject to variation on any account. A tender submitted with an adjustable price quotation which is not consistent with this paragraph will be rejected by the Purchaser as non-responsive pursuant to ITT 28. However, if in accordance with the TDS, prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract, a tender submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

14.8 If so indicated pursuant to ITT 1.1, tenders are being invited for individual contracts (lots) or for any combination of contracts (packages). Unless otherwise indicated in the TDS, prices quoted shall correspond to 100% of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Tenderers wishing to offer any price reduction for the award of more than one Contract shall specify the applicable price reductions in accordance with ITT 14.4, provided the tenders for all lots are submitted and opened at the same time.

**Currencies of Tender**

15.1 The currency(ies) of the tender and the currency(ies) for payment shall be as specified in the TDS.

**Documents Establishing the Qualifications of the Tenderer**

16.1 To establish its qualifications to perform the Contract the Tenderer shall provide the information requested in Section III, Evaluation and Qualification Criteria, the Tenderer shall provide the information requested in Section IV, Tender Forms.

16.2 If so required in the TDS, a Tenderer shall submit the Manufacturer's Authorisation, using the form included in Section IV, Tender Forms where

the Tenderer does not manufacture or produce the Goods it offers to supply.

- 16.3 If so required in the TDS, a Tenderer shall submit evidence that it will be represented by an Agent in the country, equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and Supply Requirements, where a Tenderer does not conduct business within the Purchaser's Country.

**Documents  
Establishing the  
Eligibility of Goods  
and Related  
Services**

17.1 To establish the eligibility of the Goods and Services in accordance with ITT Clause 5, Tenderers shall complete the forms, included in Section IV, Tender Forms.

**Period of Validity  
of Tenders**

18.1 Tenders shall remain valid for the period specified in the TDS after the tender submission deadline date prescribed by the Purchaser. A tender valid for a shorter period shall be rejected by the Purchaser as non-responsive.

18.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Purchaser may request Tenderers to extend the period of validity of their tenders. The request and the responses shall be made in writing. If a tender security is requested in accordance with ITT 19, the Tenderer granting the request shall also extend the tender security for twenty-eight (28) calendar days beyond the deadline of the extended validity period. A Tenderer may refuse the request without forfeiting its tender security. A Tenderer granting the request shall not be required or permitted to modify its tender, except as provided in ITT 18.3.

18.3 In the case of fixed price contracts, if the award is delayed by a period exceeding fifty-six (56) calendar days beyond the expiry of the initial Tender validity, the Contract price shall be adjusted as specified in the request for extension. Tender evaluation shall be based on the Tender Price without taking into consideration the above adjustment.

**Tender Security**

19.1 The Tenderer shall furnish as part of its tender, the original of a tender security using the form included in Section IV, Tender Forms. The tender security amount and currency shall be as specified in the TDS.

19.2 If a tender security is specified pursuant to ITT 19.1, the tender security shall be a demand guarantee in any of the following forms at the Tenderer's option:

- (a) an unconditional guarantee issued by a bank;
- (b) an irrevocable letter of credit; or
- (c) a cashier's or certified check;

from a reputable source. In the case of a bank guarantee, the tender security shall be issued by a reputable bank. If specified in the TDS, the issuing bank shall have the minimum credit rating stated in the TDS. The bank guarantee shall be submitted either using the Tender Security Form included in Section IV, Tender Forms or in another substantially similar format approved by the Purchaser prior to Tender submission. In either case, the form must include the complete name of the Tenderer. The tender security shall be valid for twenty-eight days (28) beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 18.2.

19.3 If a tender security is specified pursuant to ITT 19.1, any Tender not accompanied by a substantially responsive tender security shall be rejected by the Purchaser as non-responsive.

19.4 If a tender security is specified pursuant to ITT 19.1, the tender security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's furnishing of the performance security pursuant to ITT 38.

19.5 The tender security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required performance security.

19.6 The tender security may be forfeited:

- (a) if a Tenderer withdraws its tender during the period of Tender validity specified by the Tenderer in the Letter of Tender or
- (b) if the successful Tenderer fails to:
  - (i) sign the Contract in accordance with ITT 37; or
  - (ii) furnish a performance security in accordance with ITT 38.
  - (iii) accept the arithmetical correction of its Tender in accordance with ITT 30.

- 19.7 The Tender Security of a JVCA shall be in the name of the JVCA that submits the tender, or as otherwise stated in the TDS.

#### **Format and Signing of Tender**

20.1 The Tenderer shall prepare one original set of the documents comprising the tender as described in ITT 11 and clearly mark it "ORIGINAL." In addition, the Tenderer shall submit copies of the tender, in the number specified in the TDS and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

20.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by a person duly authorised to sign on behalf of the Tenderer. This authorisation shall consist of a written confirmation as specified in the TDS and shall be attached to the tender. The name and position held by each person signing the authorisation must be typed or printed below the signature. The number of copies of the Tender required shall be specified in the TDS.

20.3 A Tender submitted by a JVCA shall comply with the following requirements:

- (a) Unless not required in accordance with ITT 4.1 (a), be signed so as to be legally binding on all partners and
- (b) Include the Representative's authorisation referred to in ITT 4.1 (b), consisting of a power of attorney signed by those legally authorised to sign on behalf of the JVCA.

20.4 Any amendments, interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the tender.

#### **D. SUBMISSION AND OPENING OF TENDERS**

#### **Submission, Sealing and Marking of**

21.1 Tenderers may always submit their Tenders by mail or by hand. If so specified in the TDS, Tenderers shall have the option of submitting their tenders electronically. Procedures for submission, sealing and marking are

**Tenders**

as follows:

- (a) Tenderers submitting Tenders by mail or by hand shall enclose the original and copies of the Tender in separate sealed envelopes. If so permitted in accordance with ITT 13 alternative proposals, and copies thereof, shall also be placed in separate envelopes. The envelopes shall be duly marked as “ORIGINAL,” “ALTERNATIVE,” “ORIGINAL COPY,” and “ALTERNATIVE COPY” These envelopes shall then be enclosed in one single package. The rest of the procedure shall be in accordance with ITT 21.2 and 21.3.
- (b) Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the TDS.

21.2 The inner and outer envelopes shall:

- (a) bear the name and address of the Tenderer;
- (b) be addressed to the Purchaser in accordance with ITT 22.1;
- (c) bear the specific identification of this Tendering process pursuant to ITT 1.1; and
- (d) bear a warning not to open before the time and date for Tender opening

21.3 If envelopes and packages are not sealed and marked as required, the Purchaser will assume no responsibility for the misplacement or premature opening of the Tender.

**Deadline for Submission of Tenders**

22.1 Tenders must be received by the Purchaser at the address and no later than the date and time indicated in the TDS.

22.2 The Purchaser may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender Document in accordance with ITT 8, in which case all rights and obligations of the Purchaser and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

**Late Tenders**

23.1 The Purchaser shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT 22. Any Tender received by the Purchaser after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

**Withdrawal, Substitution, and Modification of Tenders**

24.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorised representative, and shall include a copy of the authorisation in accordance with ITT 20.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

- (a) prepared and submitted in accordance with ITT 20 and ITT 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Withdrawal,” “Substitution,” “Modification;” and
- (b) received by the Purchaser prior to the deadline prescribed for submission of Tenders, in accordance with ITT 22.

24.2 Tenders requested to be withdrawn in accordance with ITT 24.1 shall be

returned unopened to the Tenderers.

24.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Letter of Tender or any extension thereof.

#### **Tender Opening**

25.1 The Purchaser shall conduct the Tender opening in public, in the presence of Tenderers` designated representatives and anyone who chooses to attend, and at the address, date and time specified in the TDS. Any specific electronic Tender opening procedures required if electronic Tendering is permitted in accordance with ITT 21.1, shall be as specified in the TDS.

25.2 First, envelopes marked "Withdrawal" shall be opened and read out and the envelope with the corresponding Tender shall not be opened, but returned to the Tenderer. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorisation to request the withdrawal and is read out at Tender opening. Next, envelopes marked "Substitution" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorisation to request the substitution and is read out at Tender opening. Envelopes marked "Modification" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorisation to request the modification and is read out at Tender opening. Only Tenders that are opened and read out at Tender opening shall be considered further.

25.3 The Purchaser shall open all other envelopes one at a time and read out: the name of the Tenderer, the Tender Price(s), any discounts and their application methodology, alternative Tenders, the presence or absence of a Tender security; and any other details as the Purchaser may consider appropriate. Only discounts and alternative Tenders read out at Tender opening shall be considered for evaluation. No Tender shall be rejected at Tender opening except for late Tenders, in accordance with ITT 23.1.

25.4 The Purchaser shall prepare a record of the Tender opening that shall include, as a minimum: the name of the Tenderer and whether there is a withdrawal, substitution, or modification; the Tender Price, per lot if applicable, including any discounts and alternative proposals; and the presence or absence of a Tender security. The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Tenderers who submitted tenders in time, and posted online when electronic Tendering is permitted.

### **E. EXAMINATION OF TENDERS**

#### **Confidentiality**

26.1 Information relating to the evaluation of Tenders shall not be disclosed to Tenderers or any other persons not officially concerned with such process until information on Contract award is communicated to all Tenderers.

26.2 Any attempt by a Tenderer to influence improperly the Purchaser in the evaluation of the Tenders or Contract award decisions may result in the rejection of its Tender.

26.3 Notwithstanding ITT 26.1, from the time of Tender opening to the time of Contract award, if any Tenderer wishes to contact the Purchaser on any

matter related to the Tendering process, it should do so in writing.

#### **Clarification of Tenders**

- 27.1 To assist in the examination, evaluation, and comparison of the Tenders, and qualification of the Tenderers, the Purchaser may, at its discretion, ask any Tenderer for a clarification of its Tender, allowing a reasonable time for response. Any clarification submitted by a Tenderer that is not in response to a request by the Purchaser shall not be considered. The Purchaser's request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the evaluation of the Tenders, in accordance with ITT 30.
- 27.2 If a Tenderer does not provide clarifications of its Tender by the date and time set in the Purchaser's request for clarification, its Tender may be rejected.

#### **Determination of Responsiveness**

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- 28.1 The Purchaser's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 11.
- 28.2 A substantially responsive Tender is one that meets the requirements of the Tender Document without material deviation, reservation, or omission as defined as follows:
- (a) "Deviation" is a departure from the requirements specified in the Tender Document;
  - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tender Document; and
  - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Tender Document.
- 28.3 A material Deviation, Reservation, or Omission is one that,
- (a) if accepted, would:
    - (i) affect in any substantial way the scope, quality, or performance of the Supply Requirements as specified in Section VI; or
    - (ii) limit in any substantial way, inconsistent with the Tender Document, the Purchaser's rights or the Tenderer's obligations under the proposed Contract; or
  - (b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.
- 28.4 The Purchaser shall examine the technical aspects of the Tender in particular, to confirm that all requirements of Section VI have been met without any material Deviation, Reservation, or Omission.
- 28.5 If a Tender is not substantially responsive to the requirements of the Tender Document, it shall be rejected by the Purchaser and may not subsequently be made responsive by correction of the material Deviation, Reservation, or Omission.

#### **Nonmaterial Nonconformities**

- 29.1 Provided that a Tender is substantially responsive, the Purchaser may waive any quantifiable nonconformity in the Tender that does not constitute a material Deviation, Reservation or Omission.
- 29.2 Provided that a Tender is substantially responsive, the Employer may request the Tenderer to submit any necessary missing information or documentation, within a reasonable period of time, to rectify nonmaterial



nonconformities in the Tender. Requested information or documentation on such nonconformities shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.

#### F. TENDER EVALUATION AND COMPARISON

<b>Evaluation of Tenders and Correction of Arithmetical Errors</b>	<p>30.1 The Purchaser shall use the criteria and methodologies indicated in Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted.</p> <p>30.2 Provided that the Tender is substantially responsive, the Purchaser shall correct arithmetical errors as indicated in Section III, Evaluation and Qualification Criteria.</p> <p>30.3 If a Tenderer does not accept the correction of errors, its Tender shall be declared non-responsive and rejected and its Tender security may be forfeited.</p>
<b>Conversion to Single Currency</b>	<p>31.1 For evaluation and comparison purposes, the currency (ies) of the tender shall be converted into a single currency as specified in Section III, Evaluation and Qualification Criteria.</p>
<b>Tender Adjustments</b>	<p>32.1 For the evaluation and comparison purposes the Purchaser shall adjust the Tender prices using the criteria and methodology specified in Section III, Evaluation and Qualification Criteria.</p>
<b>Qualification of the Tenderer</b>	<p>33.1 The Purchaser shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated and substantially responsive Tender meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.</p>
•	<p>33.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 16.</p> <p>33.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Purchaser shall proceed to the next lowest evaluated Tender to make a similar determination of that Tenderer's qualifications to perform satisfactorily.</p> <p>33.4 Notwithstanding the provisions of ITT 33.3, the Employer reserves the right to waive any minor deviations from the qualifying criteria specified in Section III, Evaluation and Qualification Criteria that do not materially affect the capability of the Tenderer to perform the Contract.</p> <p>33.5 The capabilities of the manufacturers and subcontractors proposed in its Tender to be used by the lowest evaluated Tenderer for identified major items of the Supply Requirements will also be evaluated for acceptability in accordance with the criteria and methodologies defined in Section III, Evaluation and Qualification Criteria. Their participation should be confirmed with a letter of intent between the parties, as needed. Should a manufacturer or subcontractor be determined to be unacceptable, the Tender will not be rejected, but the Tenderer will be required to substitute an acceptable manufacturer or subcontractor without any change to the Tender price.</p>
<b>Purchaser's Right to Accept Any Tender, and to Reject Any or All</b>	<p>34.1 The Purchaser reserves the right to accept or reject any Tender, and to annul the Tendering process and reject all Tenders at any time prior to Contract award, without thereby incurring any liability to Tenderers. In case of annulment, all Tenders submitted and specifically, Tender securities,</p>

**Tenders** shall be promptly returned to the Tenderers.

#### **G. AWARD OF CONTRACT**

<b>Award Criteria</b>	<p>35.1 The Purchaser shall award the Contract to the Tenderer whose offer has been determined to be the lowest evaluated Tender and is substantially responsive to the Tender Document, provided further that the Tenderer is determined to be qualified to perform the Contract satisfactorily.</p> <p>• 35.2 At the time the Contract is awarded, the Purchaser reserves the right to increase or decrease the quantity of Goods and Services originally specified in Section VI, Supply Requirements, provided this does not exceed the percentages specified in the TDS, and without any change in the unit prices or other terms and conditions of the Tender and the Tender Document.</p>
<b>Notification of Award</b>	<p>36.1 Prior to the expiration of the period of Tender validity, the Purchaser shall notify the successful Tenderer, in writing, that its Tender has been accepted.</p> <p>36.2 Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.</p> <p>36.3 At the same time, the Purchaser shall also notify all other Tenderers of the results of the Tendering, and shall publish on the Bank's website the results identifying the Tender and lot numbers and the following information: (i) name of each Tenderer who submitted a Tender; (ii) Tender prices as read out at Tender opening; (iii) name and evaluated prices of each Tender that was evaluated; (iv) name of Tenderers whose Tenders were rejected and the reasons for their rejection; and (v) name of the winning Tenderer, and the price it offered, as well as the duration and summary scope of the Contract awarded. After publication of the award, unsuccessful Tenderers may request in writing to the Purchaser for a debriefing seeking explanations on the grounds on which their Tenders were not selected. The Purchaser shall promptly respond in writing to any unsuccessful Tenderer who, after Publication of Contract award, requests a debriefing.</p>
<b>Signing of Contract Agreement</b>	<p>37.1 Promptly upon notification, the Purchaser shall sign and send the successful Tenderer the Contract Agreement.</p> <p>37.2 Within twenty-eight (28) calendar days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Purchaser.</p> <p>37.3 Upon the successful Tenderer's furnishing of the signed Contract Agreement and Performance Security pursuant to ITT 38, the Purchaser will discharge its Tender Security, pursuant to ITT 19.</p>
<b>Performance Security</b>	<p>38.1 Within twenty-eight (28) calendar days of the receipt of notification of award from the Purchaser, the successful Tenderer shall furnish the performance security in accordance with the conditions of Contract, using for that purpose the Performance Security Form included in Section IX, Contract Forms, or another form acceptable to the Purchaser. If the performance security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to the Purchaser. A foreign institution providing a bond shall have a correspondent financial institution located in the Purchaser's Country.</p> <p>38.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender security. In that event the Purchaser may award the Contract to the next</p>

lowest evaluated Tenderer whose offer is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily.

## **Complaints**

- 39.1 In the event that any tenderer wishes to submit a formal complaint with regard to any aspect of the procurement process, the tenderer shall follow the procedures contained in Annex 1: Guidance to Tenderers of the Bank's Procurement Policies and Rules (PP&R) (see - <http://www.ebrd.com/news/publications/policies/procurement-policies-and-rules.html>). Further information in this respect is also published on the Bank's website (see - <http://www.ebrd.com/work-with-us/procurement/project-procurement-complaints.html>).