

Section I Instructions to Bidders

This Standard Instructions to Bidders set forth in Section I shall be used without modification. Any necessary changes, acceptable to JICA, shall be introduced only through the Bid Data Sheet.

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A. General

1. Scope of Bid

- 1.1 The Employer **as specified in Section II, Bid Data Sheet (BDS)**, issues this Bidding Document for the procurement of Plant and Installation Services **as specified in Section V, Employer's Requirements**, and the Consultant **specified in the BDS**, duly authorized by the Employer, distributes this Bidding Document on behalf of the Employer.

The name of the Project is **specified in the BDS**.

- 1.2 Throughout this Bidding Document:

- (a) the term "in writing" means communicated in written form and delivered against receipt;
- (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
- (c) "day" means calendar day.

2. Source of Funds

- 2.1 The Recipient **specified in the BDS** has received a Japanese ODA Grant from the Japan International Cooperation Agency (hereinafter referred to as "JICA"), in the amount and on the signed date of the Grant Agreement **specified in the BDS**, towards the cost of the Project. The Recipient intends to apply the Grant to payments under the contract for which this Bidding Document is issued.

- 2.2 Disbursement of a Japanese ODA Grant by JICA will be subject, in all respects, to the terms and conditions of the Grant Agreement, including the disbursement procedures and the applicable Guidelines for Procurement under Japanese ODA Grants **specified in the BDS**. No party other than the Recipient shall derive any rights from the Grant Agreement.

- 2.3 The above Grant Agreement will cover only a part of the project cost. The other expenses not covered by the Japanese ODA Grant will be borne by the Recipient.

3. Corrupt and Fraudulent Practices

- 3.1 It is JICA's policy to require that the bidders and the contractors, as well as the recipient, and the employers, under contracts funded with Japanese ODA Grants and other Japanese ODA, to observe the highest standard of ethics during the procurement and execution of such contracts.

- 3.2 In pursuance of this policy, JICA:

- (a) will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.
- (b) will recognize a contractor as ineligible, for a period determined by JICA, to be awarded a contract funded with Japanese ODA Grants if it at any time determines that the bidder or the contractor has engaged in any corrupt or fraudulent practice in competing for, or in executing, another contract funded with Japanese ODA Grants or other expenditure by the Japanese governments.

- 3.3 If the Employer determines, based on reasonable evidence, that any Bidder has engaged in any corrupt or fraudulent practice, the Employer may disqualify such Bidder after notifying the grounds of such disqualification.

4. Eligible Bidders

- 4.1 The Bidder may be a single firm or a joint venture (JV). In the case of a JV:
- (a) All members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms.
 - (b) The JV shall nominate a representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.
 - (c) A Bid submitted by a JV shall include a copy of the JV agreement entered into by all members. Alternatively, a formal letter of intent to enter into a JV agreement in the event of a successful Bid shall be signed by all members and submitted with the Bid, together with a copy of the proposed agreement. The JV agreement or the proposed JV agreement, as the case may be, shall indicate at least the part(s) of the plant and installation services to be executed by each member.
- 4.2 The Bidder shall not have a conflict of interest. The Bidder shall be disqualified under any of the circumstances set forth below, where it is determined to have a conflict of interest throughout the bidding/selection process and/or the execution of the Contract unless the conflict has been resolved in a manner acceptable to JICA.
- (a) A firm shall be disqualified from providing goods or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of a project that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm. This provision does not apply to the various firms (consultants, contractors, or suppliers) only due to the reason that those firms together are performing the contractor's obligations under a turnkey or design and build contract.
 - (b) A firm that has a close business relationship with a professional personnel of the Recipient, who are directly or indirectly involved in any part of: (i) the preparation of the Prequalification Document (if any prepared) and/or this Bidding Document, (ii) the prequalification evaluation (if any conducted) and/or the Bid evaluation, or (iii) the supervision of such contract, shall be disqualified.
 - (c) Based on the "One Bid Per Bidder" principle, which is to ensure fair competition, a firm and any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm shall not be allowed to submit more than one Bid, either individually as a single firm, or as a member of a JV.
 - (d) A firm may not involve any individual (whether as an employee, a contractor or otherwise) in the provision of products or non-consulting services for the project who is, has been or is intended to be assigned (whether by a consultant, or any other party) to provide consulting services for the preparation or implementation of the project.
 - (e) A firm or an individual having any other form of conflict of interest other than (a) through (d) above shall also be disqualified or excluded.

- 4.3 The Bidder, or all members constituting the Bidder in the case of a JV, shall be Japanese juridical persons controlled by Japanese physical persons. Any firms, who fall under any of the items of Article 26, paragraph 1 of the Foreign Exchange and Foreign Trade Act (Law No.228 of 1949, Japan), shall not be regarded as being controlled by Japanese physical persons.
- 4.4 The Bidder that has been determined to be ineligible by JICA in accordance with ITB 3.2 shall not be eligible to be awarded a Contract.
- 4.5 The Bidder shall provide such evidence of its eligibility satisfactory to the Consultant, as the Consultant may reasonably request.

5. Eligible Equipment and Materials

- 5.1 The equipment and materials **specified in the BDS** comprising the Plant and Installation Services to be supplied under the Contract shall have the origin of Japan or the country **specified in the BDS**. **Unless specified in the BDS**, the origin of the equipment and materials comprising the Plant and Installation Services shall not be limited to specific countries.
- 5.2 The term “origin” means the country where the equipment and materials have been produced, manufactured or processed; or, through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

B. Contents of Bidding Document

6. Sections of Bidding Document

- 6.1 The Bidding Document consists of Parts 1, 2, and 3, which include all the Sections specified below, and which should be read in conjunction with any addenda issued in accordance with ITB 8.
- PART 1 Bidding Procedures
- Section I Instructions to Bidders (ITB)
 - Section II Bid Data Sheet (BDS)
 - Section III Evaluation and Qualification Criteria (EQC)
 - Section IV Bidding Forms
- PART 2 Employer's Requirements
- Section V Employer's Requirements
- PART 3 Conditions of Contract and Contract Forms
- Section VI General Conditions of Contract (GCC)
 - Section VII Particular Conditions of Contract (PCC)
 - Section VIII Contract Forms (CF)
- 6.2 Unless obtained directly from the Consultant, neither the Employer nor the Consultant is responsible for the completeness of the Bidding Document, responses to requests for clarification, or addenda to the Bidding Document in accordance with ITB 8. In case of any contradiction, documents obtained directly from the Consultant shall prevail.
- 6.3 The Bidder is expected to examine all instructions, forms, terms, and

specifications in the Bidding Document, and to furnish with its Bid all information and documentation as is required by the Bidding Document. The information or documentation shall be complete, accurate, current, and verifiable.

- 6.4 Photocopies of the Exchange of Notes and the Grant Agreement for the Project, and the Note Verbale confirming the exemption and/or reimbursement of customs duties, internal taxes and other fiscal levies in the country of the Recipient are attached to the Bidding Document for reference only, and in any case shall not be constituted a part of the Contract. The Bidders shall hold them in confidence.

7. Clarification of Bidding Document and Site Visit

- 7.1 The Bidder requiring any clarification of the Bidding Document shall contact the Consultant in writing at the Consultant's address **specified in the BDS**. The Consultant will respond in writing to any request for clarification, provided that such request is received before the deadline **specified in the BDS**. The Consultant shall forward copies of its response to all Bidders who have acquired the Bidding Document from the Consultant, including a description of the inquiry but without identifying its source, on or before the date **specified in the BDS**. Should the clarification result in changes to the essential elements of the Bidding Document, the Employer shall amend the Bidding Document following the procedure under ITB 8.
- 7.2 The Bidder is advised to visit and examine the Site where the Plant is to be installed and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Bid and entering into a Contract for execution of Plant and Installation Services. The costs of visiting the Site shall be at the Bidder's own expense.
- 7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer 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 inspection.

8. Amendment of Bidding Document

- 8.1 At any time prior to the deadline for submission of Bids, the Employer may amend the Bidding Document by issuing addenda.
- 8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Consultant.
- 8.3 To give the Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Employer may extend the deadline for the submission of Bids, pursuant to ITB 22.2.

C. Preparation of Bids

9. Cost of Bidding

- 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer and/or the Consultant shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

10. Language of Bid

- 10.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Employer and/or the Consultant, shall be written in the language **specified in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language of Bid, in which case, for purposes of interpretation of the Bid, such translation shall govern.

11. Documents Comprising the Bid

- 11.1 The Bid shall comprise two types of Bid submitted simultaneously, one called the Technical Bid containing the documents listed in ITB 11.2 and the other the Price Bid containing the documents listed in ITB 11.3.
- 11.2 The Technical Bid shall comprise the following:
- (a) Letter of Technical Bid in accordance with ITB 12;
 - (b) Power of Attorney, authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2 and ITB 20.3;
 - (c) copy of the JV agreement, or Letter of Intent to enter into a JV including a draft agreement in the case of a Bid submitted by a JV in accordance with ITB 4.1;
 - (d) documentary evidence in accordance with ITB 17 establishing the Bidder's eligibility and qualifications to perform the Contract if its Bid is accepted;
 - (e) documentary evidence in accordance with ITB 16 establishing that the Plant and Installation Services conform to the Bidding Document;
 - (f) Acknowledgement of Compliance with the Guidelines for Procurement under Japanese ODA Grants (Form ACK), which shall be signed and dated by the Bidder's authorized representative; and
 - (g) any other document **required in the BDS**.
- 11.3 The Price Bid shall comprise the following:
- (a) Letter of Price Bid, in accordance with ITB 12;
 - (b) Bid Price Schedules in accordance with ITB 14; and
 - (c) any other document **required in the BDS**.

12. Bidding Forms

- 12.1 The Bidder shall complete the Letters of Technical Bid and Price Bid, using the relevant forms furnished in **Section IV, Bidding Forms**. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

13. Alternative Bids

13.1 Alternative bids shall not be considered.

14. Bid Prices

14.1 The Contract shall be lump-sum basis, and the contract price shall not be subject to adjustment, unless otherwise specified in the Contract, or modified by the amendment of the Contract.

14.2 The Bidders shall quote for the entire Plant and Installation Services on a “single responsibility” basis such that the total Bid Price covers all the Contractor’s obligations mentioned in or to be reasonably inferred from the Bidding Document in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the Plant. This includes all requirements under the Contractor’s responsibilities for testing, pre-commissioning and commissioning of the Plant; the training services for operation and maintenance, and such other items and services as may be specified in the Bidding Document, all in accordance with the requirements of the Conditions of Contract.

Items against which no price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed to be covered by the prices for other items.

14.3 The Bidder shall give a breakdown of the prices in the manner and detail called for in the Bid Price Schedules **included in Section IV, Bidding Forms**. In the Schedules, Bidders shall give the required details and a breakdown of their prices as follows:

(a) Plant/Equipment Supplied from Abroad (Schedule-1): The price of the Plant, or each equipment composing the Plant, shall be quoted on CIP (their final destination) basis.

(b) Plant/Equipment Supplied from Within the Employer’s Country (Schedule-2): The price of the Plant, or each equipment composing the Plant, shall be quoted on EXW basis, and the price for inland transportation, insurance, and other local services required to convey the Plant and/or equipment to their final destination.

(c) Design Services (Schedule-3).

(d) Installation and Other Services (Schedule-4): The price shall be quoted separately and shall include all labor, contractor’s equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, including the provision of operations and maintenance manuals, training, etc., where identified in Section V, Employer’s Requirement, as necessary for the proper execution of the installation, recommissioning and other services.

(e) Designated Spare Parts (Schedule-5): The price of the spare parts, etc. designated in the Bid Data Sheet (BDS) shall be quoted, and shall be **subject to Clause 37**.

14.4 The price to be quoted in the Letter of Price Bid shall be the total price of the Bid. Absence of the total bid price in the Letter of Price Bid may result in the rejection of the Bid.

14.5 It has been confirmed that customs duties, internal taxes and other fiscal levies assessed in the country of the Recipient payable by the Contractor under the

Contract are exempt and/or borne by the Recipient, to the extent based on the Note Verbale exchanged between the Government of Japan and the Recipient. Any other duties, taxes, and other levies payable by the Contractor under the Contract shall be included in the total Bid Price submitted by the Bidder.

15. Currency of Bid

15.1 The currency of the Bid shall be Japanese Yen.

16. Technical Proposal

16.1 The Bidder shall furnish as part of the Technical Bid, a Technical Proposal comprising, for example, a design methodology, general statement of installation method, schedule, safety plan and any other information **as stipulated in Section IV, Bidding Forms**, in sufficient detail to demonstrate substantial responsiveness of the Bidder's proposal to meet the Employer's Requirements and the completion time.

16.2 In addition to the contents of the Technical Proposal **defined in Sub-Clause 16.1** above, the Bidder shall also furnish a document demonstrating after-sales services and a list giving full particulars, including available sources, of all spare parts, special tools, etc., necessary for the proper and continuing functioning of the plant for roughly two (2) years.

16.3 The Bidder shall note that standards for workmanship, materials and equipment designated by the Employer in the Bidding Document are intended to be descriptive (establishing standards of quality and performance) only and not restrictive. The Bidder may substitute alternative standards, brand names and/or catalogue numbers in its Technical Proposal, provided that it demonstrates to the Employer's satisfaction that the substitutions are substantially equivalent or superior to the standards designated in the Employer's Requirements.

16.4 The Bidder may list one or more subcontractor(s) for any of the major items of the Plant, and shall provide required documents demonstrating that they meet the minimum criteria described **in Section III, Evaluation and Qualification Criteria**.

17. Documents Establishing the Qualifications of the Bidder

17.1 To establish its qualifications to perform the Contract in accordance with **Section III, Evaluation and Qualification Criteria**, the Bidder shall provide the information requested in the corresponding information sheets included in **Section IV, Bidding Forms**.

18. Period of Validity of Bids

18.1 Bids shall remain valid for a period of sixty (60) days after the Bid submission deadline date in accordance with ITB 22.1.

18.2 In exceptional circumstances, prior to the expiration of the Bid validity period, the Employer may request the Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. A Bidder may refuse the request. A Bidder granting the request shall not be required or permitted to modify its Bid.

19. Bid Security

19.1 Bid Security shall not be required.

20. Format and Signing of Bid

20.1 The Bidder shall prepare one (1) original of the Technical Bid and one (1) original of the Price Bid comprising the documents as described in ITB 11 and clearly mark them "TECHNICAL BID - ORIGINAL" and "PRICE BID – ORIGINAL", as appropriate. In addition, the Bidder shall submit one (1) copy of the Technical and Price Bids and clearly mark each of them "TECHNICAL BID – COPY", and "PRICE BID - COPY", as appropriate.

In the event of any discrepancy between the original and the copy, the original shall prevail.

20.2 The original of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall be in the form of a Power of Attorney included in the Technical Bid. All pages of the Bid where entries or amendments have been made shall be signed or initialed by the person signing the Bid.

20.3 A bid submitted by a JV shall be signed by an authorized representative of the JV accompanied by a Power of Attorney from each member of the JV giving that authorized representative the power to sign on their behalf and legally bind them all. Such power shall also be given by a person duly authorized to do so on behalf of each member evidenced by a Power of Attorney.

20.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

20.5 The Bidders shall clearly mark "CONFIDENTIAL" any information which they regard as confidential to their business. Such information may include proprietary information, trade secrets, or commercial or financially sensitive information.

D. Submission and Opening of Bids

21. Sealing and Marking of Bids

21.1 The Bidder shall enclose:

- (a) in a sealed envelope, duly marked as "TECHNICAL BID - ORIGINAL", all documents comprising the Technical Bid, as described in ITB 11.2;
- (b) in a sealed envelope, duly marked as "PRICE BID - ORIGINAL", all documents comprising the Price Bid, as described in ITB 11.3;
- (c) in a sealed envelope, duly marked as "TECHNICAL BID - COPY", all required copies of the Technical Bid; and
- (d) in a sealed envelope, duly marked as "PRICE BID - COPY", all required copies of the Price Bid.

These four envelopes (inner envelopes) containing the originals and the copies shall then be enclosed in one single envelope (outer envelope).

21.2 The inner and outer envelopes shall be:

- (a) clearly marked with the name and address of the Bidder;
- (b) addressed to the Consultant; and
- (c) clearly marked with the name of the Project specified in ITB 1.1.

21.3 The outer envelopes and the inner envelopes containing the Technical Bid shall be clearly marked with a warning "NOT TO BE OPENED BEFORE THE TIME AND DATE FOR THE OPENING OF TECHNICAL BID".

21.4 The inner envelopes containing the Price Bid shall be clearly marked with a warning "NOT TO BE OPENED UNTIL ADVISED BY THE CONSULTANT".

21.5 If all envelopes are not sealed and marked as required, the Employer and/or the Consultant will assume no responsibility for the misplacement or premature opening of the Bid.

22. Deadline for Submission of Bids

22.1 Bids must be submitted by hand and received by the Consultant at the address and no later than the date and time **specified in the BDS**.

22.2 The Employer may, at its discretion, extend the deadline for the submission of Bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Employer and the Bidders subject to the previous deadline shall thereafter be subject to the deadline as extended.

23. Late Bids

23.1 Any Bid that arrives after the deadline for submission of Bids, in accordance with ITB 22.1 above, shall not be considered. Any Bid received by the Consultant after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.

24. Withdrawal of Bids

24.1 No Bid may be withdrawn in the interval between the deadline for submission of Bids and the expiration of the period of Bid validity specified by the Bidder on the Letters of Technical Bid and Price Bid or any extension thereof.

25. Bid Opening

25.1 Except in the cases specified in ITB 23, the Consultant duly authorized by the Employer, shall open and read out all Technical Bids received by the deadline, at the date, time and place **specified in the BDS**, in the presence of the Bidders' representatives who choose to attend. The Price Bids will remain unopened and will be held in custody of the Consultant until the time of their opening to be specified in accordance with ITB 25.4.

If the Technical Bid and the Price Bid are submitted together in one envelope, the Employer may reject the entire Bid.

25.2 All envelopes holding the Technical Bids shall be opened one at a time, reading out:

- (a) the name of the Bidder;
- (b) the presence or absence of required documents as the Technical Bid;

- (c) whether the envelope of the Price Bid has been sealed; and
- (d) any other details as the Consultant may consider appropriate.

Only Technical Bids read out and recorded at the opening of Technical Bids shall be considered for evaluation. The Employer and/or the Consultant shall neither discuss the merits of any Bid nor reject any Bid.

25.3 The Consultant shall prepare a record of the opening of Technical Bids that shall include, as a minimum:

- (a) the name of the Bidder;
- (b) the presence or absence of required documents constituting the Technical Bid;
- (c) whether the envelope of the Price Bid has been sealed; and
- (d) a list of attendance.

The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder'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 Bidders who submitted Bids in time, and to JICA.

25.4 At the end of the evaluation of the Technical Bids, the Consultant will invite the Bidders who have submitted substantially responsive Technical Bids and who have been determined as being qualified for award to attend the opening of the Price Bids. The date, time, and location of the opening of Price Bids will be advised in writing by the Consultant. The opening date should allow the Bidders sufficient time to make arrangements for attending the opening of Price Bids.

25.5 The Employer will notify, in writing, the Bidders who have been rejected on the grounds of their Technical Bids being substantially non-responsive to the requirements of the Bidding Document and/or who have been determined as being disqualified for award, and the Consultant will return their Price Bids unopened.

25.6 The Consultant, duly authorized by the Employer, shall conduct the opening of Price Bids of all Bidders who submitted substantially responsive Technical Bids and who were determined as being qualified for award, in the presence of the Bidders' representatives who choose to attend at the address, date and time specified by the Consultant. The Bidder's representatives who are present shall be requested to sign a register evidencing their attendance.

25.7 All envelopes containing Price Bids shall be opened one at a time, reading out:

- (a) the name of the Bidder;
- (b) the Bid Price; and
- (c) any other details as the Consultant may consider appropriate.

Only Price Bids read out and recorded at the opening of Price Bids shall be considered for evaluation. The Employer and/or the Consultant shall neither discuss the merit of any Price Bid nor reject any Price Bid at the opening of Price Bids.

25.8 The Consultant shall prepare a record of the opening of Price Bids that shall include, as a minimum:

- (a) the name of the Bidder;
- (b) the Bid Price; and
- (c) a list of attendance.

The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder'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 Bidders who submitted Bids in time, and to JICA.

E. Evaluation and Comparison of Bids

26. Confidentiality

26.1 Information relating to the evaluation of Bids and recommendation of Contract award shall not be disclosed to the Bidders or any other persons not officially concerned with the bidding process until information on Contract award is communicated to all Bidders in accordance with ITB 38 and 40.

The use by any Bidder of confidential information related to this bidding process may result in the rejection of its Bid.

26.2 Any attempt by a Bidder to influence the Employer and/or the Consultant in the evaluation of the Bids or Contract award decisions may result in the rejection of its Bid.

26.3 Notwithstanding ITB 26.2, from the time of Bid opening to the time of Contract award, if any Bidder wishes to contact the Employer and/or the Consultant on any matter related to the bidding process, it shall do so in writing to the Consultant.

27. Clarification of Bids

27.1 To assist in the examination, evaluation, and comparison of the Technical and Price Bids, and qualification of the Bidders, the Consultant duly authorized by the Employer may, at its discretion, ask any Bidder for a clarification of its Bid, giving a reasonable time for a response. Any clarification submitted by a Bidder that is not in response to a request by the Consultant shall not be considered. The Consultant's request for clarification and the response shall be in writing. No change in the substance of the Technical Bid or prices in the Price Bid, including any voluntary increase or decrease in the prices, shall be sought, offered, or permitted, in the evaluation of the Price Bids.

27.2 If a Bidder does not provide clarifications of its Bid by the date and time set in the Consultant's request for clarification, its Bid may be rejected.

28. Deviations, Reservations, and Omissions

28.1 During the evaluation of Bids, the following definitions apply:

- (a) "Deviation" is a departure from the requirements specified in the Bidding Document;
- (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and
- (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.

29. Qualification of the Bidders

29.1 The Bidder shall substantially meet or exceed the specified qualification requirements. The Employer shall determine to its satisfaction whether the

Bidders meet the qualifying criteria specified in **Section III, Evaluation and Qualification Criteria**, during the evaluation of Technical Bids.

- 29.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17.
- 29.3 The Employer reserves the right to waive minor (nonmaterial) deviations in the qualification criteria if they do not materially affect the technical capability and financial resources of the Bidder to perform the Contract.
- 29.4 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the Bid.

30. Determination of Responsiveness of Technical Bids

- 30.1 The Employer's determination of a Technical Bid's responsiveness is to be based on the contents of the Technical Bid itself.
- 30.2 For the purposes of this determination, a substantially responsive Technical Bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. 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 Plant and Installation Services specified in the Contract; or
 - (ii) limit in any substantial way, inconsistent with the Bidding Document, the Employer's rights or the Bidder's obligations under the proposed Contract; or
 - (b) if rectified, would unfairly affect the competitive position of the other Bidders presenting substantially responsive Bids.
- 30.3 The Employer shall examine the Technical Bid submitted in accordance with **Section III, Evaluation and Qualification Criteria**, to confirm that all requirements of **Section V, Employer's Requirements** have been met without any material deviation, reservation or omission.
- 30.4 If a Technical Bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer and shall not subsequently be made responsive by correction of the material deviation, reservation, or omission.

31. Nonmaterial Nonconformities

- 31.1 Provided that a Technical Bid is substantially responsive, the Employer may waive any nonconformities (deviation, reservation, or omission) in the Bid.
- 31.2 Provided that a Technical Bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Technical Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the Price Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

32. Evaluation of Price Bids

32.1 To evaluate a Price Bid, the Employer shall consider the following:

- (a) the Bid Price as quoted in accordance with ITB 14; and
- (b) the additional evaluation factors specified in **Section III, Evaluation and Qualification Criteria** (if any).

32.2 Where there is a discrepancy between words and figures, the amount in words shall prevail. Where there is a discrepancy between the Letter of Price Bid and Bid Price Schedule, the Letter of Price Bid shall prevail.

33. Comparison of Bids

33.1 The Employer shall compare the evaluated prices of all substantially responsive Bids established in accordance with ITB 32.1 to determine the lowest evaluated Bid.

33.2 If there are two or more lowest evaluated Bids, the determination shall be the Employer's discretion, considering qualification of Bidders and/or responsiveness of their Technical Bids.

33.3 If the Bid, which results in the lowest evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Consultant, the Consultant may require the Bidder to produce detailed price analyses for any or all items of the Bid Price Schedule, to demonstrate the internal consistency of those prices with the scope of Plant Design, Supply and Installations, proposed methodology, schedule and any other requirements of the Bidding Document.

33.4 In the event of identification of a potentially abnormally low Bid, the Consultant shall seek written clarifications from the Bidder, including detailed price analyses of its Bid Price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Bidding Document.

After evaluation of the price analyses, in the event that the Employer determines that the Bidder has failed to demonstrate its capability to perform the Contract for the offered Bid Price, the Employer shall reject the Bid.

34. Price Negotiation with the Revision of the Requirements

34.1 In the case that the lowest Bid Price exceeds the budget prepared by the Employer based on the cost estimate by the Consultant, and prior consultation with JICA, the Employer may request the lowest evaluated Bidder to enter into price negotiation with the revision of requirements **specified in Section V, Employer's Requirements**, such as reduction in the scope and/or revision of the specifications, within the range, which may not violate the result of the Bidding process.

34.2 When the Employer fails to obtain a satisfactory result in the price negotiation with the lowest evaluated Bidder, the Employer may request the next lowest evaluated Bidder to enter into price negotiation in the same way, after notification to terminate the price negotiation to the lowest evaluated Bidder in a written form. This procedure may be followed until the Employer obtains a satisfactory result.

34.3 If the lowest evaluated Bid Price, and the following lowest evaluated Bid Prices in

case of the Sub-Clause 34.2 above, exceed the budget prepared by the Employer to a considerable degree, the Employer shall not enter into the price negotiation of this Clause.

35. Employer's Right to Accept Any Bid, and to Reject Any or All Bids

35.1 The Employer reserves the right to accept or reject any Bid, and to annul the bidding process and reject all Bids at any time prior to Contract award, without thereby incurring any liability to the Bidders.

F. Award of Contract

36. Award Criteria

36.1 Subject to ITB 35.1, the Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated Bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

37. Employer's Right to Vary Quantities of Spare Parts

37.1 At the time of award of the Contract, the Employer reserves the right to increase or decrease the quantity of spare parts etc., specified in Bid Price Schedule (Schedule-5), provided that the total price of such variation does not exceed one percent (1%) of the Bid Price offered by the Bidder, and that there is no change to the unit prices or other terms and conditions of the Bid and the Bidding Documents.

38. Notification of Award

38.1 Prior to the expiration of the period of Bid validity, and after JICA's concurrence of the bid evaluation by the Employer, the Employer shall notify the successful Bidder, in writing, that its Bid has been accepted.

38.2 After a contract has been determined to be eligible for financing under Japanese ODA Grants, the following information may be made public by JICA:

- (a) name of each Bidder who submitted a Bid;
- (b) Bid Prices as read out at Bid opening;
- (c) name and address of the successful Bidder; and
- (d) signing date, verification date and amount of the contract.

38.3 Until a formal Contract is prepared and executed, the notification letter in accordance with ITB 38.1 shall constitute a binding Contract.

39. Signing of Contract

39.1 Promptly upon notification, the Employer shall send the successful Bidder the Contract Agreement.

39.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer.

40. Notification to Unsuccessful Bidders

40.1 As promptly as possible upon the notification of award to the successful Bidder, the Consultant duly authorized by the Employer shall notify all unsuccessful Bidders of the results of the bidding.