

## SECTION II

### INSTRUCTIONS TO BIDDERS

#### 1. INFORMATION FOR BIDDERS

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Bidders are invited to submit a bid for the works described in the Bid Particulars in Section I, and further described in the Contract in Section V, in accordance with this ITB.

All correspondence, notification and bids in relation to this ITB shall be sent to the contact person and address set out in the Bid Particulars in Section I. Please note that the address for Bid Submission may be different.

#### 2. INTERPRETATION OF THE ITB

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This ITB is an invitation to treat and shall not be construed as an offer capable of being accepted or as creating any contractual, other legal or restitutionary rights.

No binding contract, including a process contract or other understanding or arrangement, will exist between the bidder and UNOPS and nothing in or in connection with this ITB shall give rise to any liability on the part of UNOPS unless and until the Contract is signed by UNOPS and the successful bidder.

#### 3. AMENDMENTS TO THE ITB

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Prior to the Deadline for Bid Submission, UNOPS may at its discretion modify the bidding documents by way of a written addendum. All written addenda to the bidding documents shall form part of the ITB.

In the event UNOPS modifies the ITB, UNOPS will notify in writing all bidders that have received the ITB from UNOPS of such modification.

In order to give the bidders reasonable time to take such modification into account, UNOPS may extend the Deadline for Bid Submission as may be appropriate under the circumstances.

#### 4. BIDDER ELIGIBILITY

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A bidder may be a private, public or government-owned legal entity or any association, including a joint venture or consortium with legal capacity to enter into a binding contract with UNOPS.

A bidder, and all parties constituting the bidder, may have the nationality of any country with the exception of the nationalities, if any, listed in the Bid Particulars in Section I.

A bidder shall not be eligible to submit a bid if and when at the time of bid submission, the bidder:

- (i) has been suspended or declared ineligible by UNOPS or any other entity of the United Nations system, including the Work Bank;
- (ii) is on the UN 1267 terrorist list issued by the Security Council resolution 1267 which establishes a sanctions regime to cover individuals and entities associated with Al-Qaida and/or the Taliban; or

- (iii) has not attended a mandatory site inspection or mandatory clarification meeting, if applicable, in accordance with Articles 9 and 10.
- (iv) does not comply with any additional requirements as may be set out in the Bill of Particulars.

If a bidder does not have all the expertise required for the provision of the works to be provided under the Contract, such bidder may submit a bid in association with other entities, particularly with an entity in the country where the works are to be provided. An entity may not submit more than one bid in response to this ITB, whether alone or in association with other entities.

In the case of a joint venture, consortium or association:

- (i) all parties of such joint venture, consortium or association shall be jointly and severally liable to UNOPS for any obligations arising from their bid and the Contract that may be awarded to them as a result of this ITB;
- (ii) the bid shall clearly identify the designated entity designated to act as the contact point to deal with UNOPS. Such entity shall have the authority to make decisions binding upon the joint venture, association or consortium during the bidding process and, in the event that a contract is awarded, during the duration of the contract; and
- (iii) The composition or the constitution of the joint venture, consortium or association shall not be altered without the prior consent of UNOPS.

## **5. ERRORS OR OMISSIONS**

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Bidders shall immediately notify UNOPS in writing of any ambiguities, errors, omissions, discrepancies, inconsistencies or other faults in any part of the ITB, with full details of those ambiguities, errors, omissions, discrepancies, inconsistencies or other faults.

Bidders shall not benefit from such ambiguities, errors, omissions, discrepancies, inconsistencies or other faults.

## **6. BIDDERS' RESPONSIBILITY TO INFORM THEMSELVES & ACKNOWLEDGEMENT**

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Bidders shall be responsible to inform themselves in preparing their bid. In this regard, bidders shall ensure that they:

- (i) examine and fully inform themselves in relation to all aspects of the ITB, including the Contract and all other documents included or referred to in this ITB;
- (ii) review the ITB to ensure that they have a complete copy of all documents;
- (iii) obtain and examine all other information relevant to the project and the scope of the works available on reasonable enquiry;
- (iv) verify all relevant representations, statements and information, including those contained or referred to in the ITB or made orally during any clarification

- meeting or site inspection or any discussion with UNOPS, its employees or agents;
- (v) attend any Clarification Meeting or Site Inspection that is mandatory under this ITB;
  - (vi) fully inform and satisfy themselves as to requirements of any relevant authorities and laws that apply, or may in the future apply, to the execution of the works; and
  - (vii) form their own assessment of the nature and extent of work required to execute the works and properly account for all work in their bid.

Bidders acknowledge and agree that the ITB does not purport to contain all relevant information in relation to the works and is provided solely on the basis that bidders shall be responsible for making their own assessment of the matters referred to in the ITB, including the Contract (see Section V).

Bidders acknowledge and agree that UNOPS, its directors, employees and agents make no representations or warranties (express or implied) as to the accuracy, currency or completeness of this ITB or any other information provided to the bidders.

## **7. UNOPS SHORT FORM CONSTRUCTION CONTRACT**

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Bidders shall be willing to sign the Contract (see Section V), without departure, qualification, amendment, limitation or exclusion should they be selected as a result of this bid process.

## **8. CLARIFICATION OF THE ITB**

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Bidders may request clarification of the ITB or bid process by submitting a written request to the contact stated in the Bid Particulars in Section I up to the time stated in the Bid Particulars in Section I and thereafter requests for clarification will not be accepted.

UNOPS shall gather all requests for clarification and may respond in writing to all such requests at the same time. Responses to requests for clarification shall be communicated to all bidders that received the ITB directly from UNOPS if the ITB was not available online, and/or, if the ITB was available online or if stated in the Bid Particulars in Section I, responses will be posted online without disclosing the names of the bidders who submitted the requests for clarification.

## **9. CLARIFICATION MEETINGS**

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Unless otherwise instructed in writing by UNOPS, a clarification meeting will only be held if stated in the Bid Particulars in Section I, at the time and place and in accordance with any instructions set out in the Bid Particulars in Section I.

If the Bid Particulars in Section I state that a clarification meeting shall be mandatory, a bidder which does not attend the clarification meeting shall become ineligible to submit a bid under this ITB.

The names of representatives of bidders who will attend the clarification meeting shall be submitted in writing by bidders to the UNOPS contact person listed in the Bid Particulars in

Section I, including the full name and position of each representative at least 24 hours before the clarification meeting is to be held.

UNOPS will not issue any formal answers to questions from bidders regarding the ITB or bid process during the clarification meeting. All questions shall be submitted in accordance with Article 8.

The clarification meeting shall be conducted for the purpose of providing background information only. Without limiting Article 6, bidders shall not rely upon any information, statement or representation made at the clarification meeting unless that information, statement or representation is confirmed by UNOPS in writing.

UNOPS shall prepare minutes of the clarification meeting and communicate them in writing directly to all bidders which received the bid documents directly from UNOPS if the ITB was not available online, and/or, if the ITB was available online or if stated in the Bid Particulars in Section I, the minutes will be posted online without disclosing the names of the bidders who attended the clarification meeting, shortly after the clarification meeting.

## **10. SITE INSPECTION**

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Unless otherwise instructed in writing by UNOPS, a site visit will only be held if stated in the Bid Particulars in Section I, at the time and place and in accordance with any instructions set out in the Bid Particulars in Section I.

If the Bid Particulars in Section I state that a site inspection shall be mandatory, a bidder which does not attend the site inspection shall become ineligible to submit a bid under this ITB.

Bidders participating in a site inspection shall be responsible for:

- (i) arranging for and wearing personal protective equipment, including at a minimum safety helmets, boots and reflective vests; and
- (ii) making and obtaining any visa arrangements that may be required for the bidders to participate in a site inspection.

Prior to attending a site inspection, bidders shall execute an indemnity and a waiver releasing UNOPS in respect of any liability that may arise from:

- (i) loss of or damage to any real or personal property;
- (ii) personal injury, disease or illness to, or death of, any person;
- (iii) financial loss or expense, arising out of the carrying out of that site inspection; and
- (iv) transportation by UNOPS to the site (if provided) as a result of any accidents or malicious acts by third parties.

UNOPS will not issue any formal answers to questions from bidders regarding the ITB or bid process during a site visit. All questions shall be submitted in accordance with Article 8.

A site visit will be conducted for the purpose of providing background information only. Without limiting Article 6, bidders shall not rely upon any information, statement or representation made at a site visit unless that information, statement or representation is confirmed by UNOPS in writing.

## **11. CONTENT OF BID SUBMISSIONS**

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### **11.1**

#### **Returnable Bid Schedules**

Bids shall include only a fully completed and dated set of the Returnable Bid Schedules, including only the information required by each Returnable Bid Schedule, either completed on the Returnable Bid Schedule document or annexed to the document, as the case may be, each signed in accordance with Article 19 by a person authorised by the bidder to bind it. The Returnable Bid Schedules are set out in Section IV.

### **11.2**

#### **Other Information**

Bids submitted shall only include information required to be submitted in accordance with the ITB.

## **12. REMUNERATION FOR AND COSTS OF BIDS**

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Bidders shall not be entitled to any remuneration or compensation for the preparation and submission of their bid.

Bidders acknowledge that their participation in any stage of the bid process for this ITB is at the bidders' own risk and cost. UNOPS shall not be responsible for any costs or expenses incurred by bidders in the preparation and submission of bids or participation in the bid process, including as part of any clarification meeting or site or plant inspection.

UNOPS is not liable to bidders for any costs, expense or loss on any legal, contractual, quasi contractual or restitutionary basis incurred or suffered in connection with the ITB or bidders' participation in the bid process, including where:

- (i) clarifications and addenda are provided or not provided to bidders;
- (ii) a bidder is not selected or not engaged to carry out the works;
- (iii) UNOPS varies, terminates, suspends or delays any aspect of the bid process or conducts another process in its place;
- (iv) UNOPS elects not to proceed with the ITB in whole or in part; or
- (v) UNOPS exercises any rights under the ITB.

## **13. BID VALIDITY PERIOD**

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Bids shall remain valid for acceptance by UNOPS for the entire period set out in the Bid Particulars in Section I. A bid valid for a shorter period of time shall be rejected.

Prior to expiration of the bid validity period, UNOPS may request in writing that the bidders extend the validity of their bids with the same conditions. The bid of Bidders who decline to extend the validity of their bid shall become disqualified as no longer valid.

#### **14. PARTIAL BIDS**

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Bidders shall respond to all applicable Returnable Bid Schedules and shall bid for all sections of the works. UNOPS will NOT accept bids for one or several sections of the works only, nor will UNOPS accept bids for only part of the works or part of any section of the works.

#### **15. ALTERNATIVE BIDS**

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Alternative bids will not be evaluated unless stated otherwise in the Bid Particulars in Section I.

If a bidder submits an alternative bid, it shall mark the original bid as “Initial Bid” and any subsequent bid as “Alternative Bid”.

If the Bid Particulars in Section I do not state that alternative bids may be evaluated, and a bidder submits more than one bid:

- (i) All bids marked as “Alternative Bid” will be disqualified and only the bid marked as “Initial Bid” will be evaluated; or,
- (ii) All bids will be rejected if no indication is provided as to which bid is the original bid and which is/are the alternative bid(s).

If:

- (i) the Bid Particulars in Section I state that alternative bids may be evaluated;
- (ii) the bidder has submitted an Initial Bid and an Alternative Bid which meets the requirements of this Article 15; and
- (iii) the bidder's Initial Bid has been evaluated and that bidder has been assessed as the preferred bidder,

then UNOPS may consider, entirely in its own discretion, the Alternative Bid of the preferred bidder.

#### **16. BID SECURITY**

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If the Bid Particulars in Section I state that bidders shall provide bid security, the bid security shall be in the form set out in Returnable Bid Schedule 2 – Form of Bid Security (see Section IV) and shall be for the amount set out in the Bid Particulars in Section I.

The bid security shall be issued by a reputable banking institution. Reputable banking institutions are banks certified by the central bank of the country where the bank is located, to operate as a commercial bank. UNOPS may, at its discretion, reject any bid security that does not comply with this requirement.

The bid security shall be valid for a period of 30 days beyond the Bid Validity Period, as may be extended, after which this bank guarantee will automatically become null and void, unless a dispute arises in relation to this bank guarantee.

UNOPS shall have the right to request payment under the bid security:

- (i) if the bidder withdraws its bid after the Deadline for Submission of Bids and prior to the end of the Bid Validity Period, as may be extended; or
- (ii) in the case of a successful bidder, if the bidder fails to sign the Contract resulting from this bid process in accordance with the terms and conditions set forth in its bid; or
- (iii) if the bidder fails to furnish a performance security in accordance with the Contract, if any is required.

Unsuccessful bidders shall liaise with UNOPS to collect their bid security, which UNOPS shall make available to bidders within fifteen days after it has expired.

## **17. BID CURRENCY(S)**

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Prices in the bid shall be quoted in the currenc(ies) stated in the Bid Particulars in Section I. If applicable, for comparison and evaluation purposes, UNOPS will convert the bid prices into USD at the official United Nations rate of exchange in force at the time of the Deadline for Bid Submission.

Bid Prices shall be fixed. Bids with adjustable Bid Prices shall be disqualified.

## **18. DUTIES AND TAXES**

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UNOPS is a tax exempt entity. All bids shall be submitted net of any direct taxes and any other taxes and duties, unless otherwise specified in the Bid Particulars in Section I.

## **19. BID FORMAT**

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A bid shall contain no interlineations, erasures, or overwriting. If necessary to correct errors made by a Bidder, hand written corrections to the bid may be made before the submission and/or the Deadline for Bid Submission. In this case, such corrections shall be initialed by the person or persons who signed the bid.

Bids shall be signed by the person authorized to do so in Returnable Bid Schedule 1 – Form of Bid (see Section IV). That person shall be authorized by the bidder to bind the bidder. A copy of such authorization shall be submitted along with the bid.

## **20. LANGUAGE OF BIDS**

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All bids, information, documents and correspondence exchanged between UNOPS and the bidders in relation to this bid process shall be in the language set out in the Bid Particulars in Section I.

Supporting documents may be submitted in their original language. If such language is different from that set out in the Bid Particulars in Section I, the supporting documents shall be submitted together with a translation of the supporting documents' relevant excerpts.

## **21. DEADLINE FOR BID SUBMISSION**

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All bids shall be received by UNOPS by no later than the time and date set out in the Bid Particulars in Section I. It shall be the sole responsibility of the bidders to ensure that their bid is received by the Closing Date. UNOPS may reject any bid received after the Deadline for Bid Submission.

Bids submitted after the Deadline for Bid Submission shall be rejected.

## **22. WITHDRAWAL, SUBSTITUTION, AND MODIFICATION OF BIDS**

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Prior to the Deadline for Bid Submission, a bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice to UNOPS. After the deadline for submission of the bids, however, the bids shall remain valid and open for acceptance by UNOPS for the entire Bid Validity Period, as may be extended.

If a bidder withdraws its bid after the Deadline for Submission of Bids and prior to the expiration of the Bid Validity Period, as may be extended, UNOPS may retain the bidder's Bid Security, if any has been required in accordance with Article 16.

Bid for which withdrawal has been requested prior to the deadline for submission of the bids shall be made available for collection by the bidder that submitted it within 15 days of its withdrawal. Otherwise, UNOPS shall have the right to discard such bid unopened without further notice to the Bidder. UNOPS shall not be responsible to return the bid to the Bidder at UNOPS' costs.

## **23. BID SUBMISSION**

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All bids shall be submitted to UNOPS in accordance with the requirements set out in this ITB.

Bids that are not submitted in accordance with the provisions set out in this ITB shall be rejected.

## **24. OPENING OF BIDS**

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Bids will be opened at the time and location, and in accordance with the requirements, set out in the Bid Particulars in Section I.

Bidders may attend the opening of the bids. However, they shall not be allowed to attend the evaluation of the bids.

## **25. EVALUATION METHOD AND CRITERIA**

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UNOPS shall evaluate bids and select a preferred bidder pursuant to Section III of this ITB.

## **26. OTHER UNOPS RIGHTS**

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Subject to Section III of the ITB, UNOPS shall have no obligation to accept any bid, including the bid with the lowest price.

UNOPS may, in its absolute discretion, do all or any of the following:

- (i) require additional information from bidders;
- (ii) change the structure and timing of the ITB;
- (iii) alter, terminate, suspend or defer the bid process or any part of or activity in it;
- (iv) consider or accept or reject any bid which is non-conforming;
- (v) request, attend or conduct any site inspections or clarification meetings;
- (vi) request, attend or observe any product, plant, equipment or other demonstration, trial or test, provided UNOPS acts reasonably in so doing;
- (vii) abandon, cancel or otherwise not proceed with the bid process at any time prior to the award of a contract, without any liability toward the bidders and without providing any reason or notice to bidders.

## **27. COLLECTION OF REJECTED OR UNSUCCESSFUL BIDS**

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UNOPS shall not return any rejected or unsuccessful bids to the bidders, except for late bids, which will be available for collection by the bidders within fifteen days of the rejection.

## **28. CONFIDENTIALITY**

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All information and documents provided to the bidders by UNOPS shall be treated as confidential by the bidders and shall:

- (i) remain the property of UNOPS;
- (ii) not be used for any purpose other than the purpose of preparing a bid; and
- (iii) be immediately returned to UNOPS in the event the bidder declines to respond to this ITB, or, in the event of a rejected or an unsuccessful bid, within fifteen days of being notified by UNOPS that its bid was rejected or unsuccessful.

All information and documents provided to the bidders by UNOPS shall not be disclosed to any third party, except:

- (i) with the prior written consent of UNOPS;
- (ii) where the third party is assisting a bidder in preparing the bid, provided the bidder has previously ensured that party's adherence to this duty of confidentiality;
- (iii) if the information or documents is/are at the time of this ITB lawfully in the possession of the bidder through a party other than UNOPS;
- (iv) if required by law, and provided that the bidder has previously informed UNOPS in writing of its obligation to disclose the information or documents; or

- (v) if the information is generally and publicly available other than as a result of breach of confidence by the person receiving the information.

## **29. ETHICS AND CORRUPT PRACTICES**

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UNOPS requires that all bidders observe the highest standard of ethics during the entire bid process, as well as the duration of any contract that may be awarded as a result of this bid process. Therefore, all bidders shall represent and warrant that they:

- (i) have not unduly obtained, or attempted to unduly obtain, any confidential information in connection with the bid process and any contract that may be awarded a result of this bid process;
- (ii) have no conflict of interest that would prevent them from entering into a contract with UNOPS, and shall have no interest in other bidders or parties involved in this bid process or in the project underlying this bid process;
- (iii) have not engaged, or attempted to engage, in any Corrupt Practices in connection with this bid process or the contract that may be awarded as a result of this bid process. For the purposes of this provision, Corrupt Practices shall mean any of the following:
- bribery: the act of unduly offering, giving, receiving or soliciting anything of value to influence the process of procuring works, or executing contracts;
  - extortion or coercion: the act of attempting to influence the process of procuring works, or executing contracts by means of threat of injury to person, property or reputation;
  - fraud: the misrepresentation of information or facts for the purpose of influencing the process of procuring works, or executing the contracts, to the detriment of UNOPS or other participants; or
  - collusion: the agreement between bidders designed to result in bids at artificial prices that are not competitive.
- (iv) have not been involved in, either directly or indirectly, nor have they funded, either directly or indirectly, any terrorist activities, notably upon basis of the consolidated list of individuals belonging to or associated with terrorist entities as established and maintained by the United Nations 1267 Committee.

In the event that a bidder fails to comply with any of the above representations and warranties, UNOPS shall have the right to reject the bid submitted by such bidder, and to terminate any contract that may have been awarded as a result of this bid process immediately upon notice, without any liability for termination charges or any other liability of any kind of UNOPS. In addition, the bidder may be precluded from doing business with UNOPS and any other entity of the United Nations System in the future.

## **30. AUDIT**

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Any bidder participating in this bid process shall agree to cooperate with the Office of Internal Oversight Services of the United Nations, UNOPS Internal Audit and Investigations Group as well as with any other investigation units authorized by UNOPS Executive Director and UNOPS Ethics Officer to investigate any allegation of misconduct, and in particular any

allegation of a breach of Article 29 above, in connection with this bid process or any contract that may be awarded as a result of this bid process.

In cooperating with UNOPS, the bidders shall give access to UNOPS, upon written request, to all employees, representatives, agents and assignees, as well as to all documents, records and other elements of the bidder that may be required to conduct such investigation. The failure of a bidder to comply with any of the above representations and warranties shall give UNOPS the right to disqualify the bid submitted by such bidder, and to terminate any contract that may have been awarded as a result of this bid process immediately upon notice, without any liability for termination charges or any other liability of any kind of UNOPS. In addition, the bidder may be precluded from doing business with UNOPS and any other entity of the United Nations System in the future.

### **31. BID PROTEST**

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Any bidder that believes to have been unjustly treated in connection with this bid process or any contract that may be awarded as a result of such bid process may submit a complaint to UNOPS' General Counsel. More information about bid protests can be found on UNOPS' website at [www.unops.org](http://www.unops.org).