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General Instructions for Bidders

The following General Instructions for Bidders shall apply to all solicitations issued by the OPCW.

1. DEFINITIONS

The following terms will have the following meaning:

- “Solicitation” will mean any solicitation to Bidders to provide in writing an Offer to supply goods, services and/or works to the OPCW which is issued in any form (*i.e.*, *Request for quotation, Invitation to Bid, or Request for Proposal*) by the OPCW;
- “Offer” will mean a proposal, quotation, offer or bid submitted in writing to the OPCW in response to a Solicitation;
- “Bidder” will mean a subject (*i.e.*, company, organisation or other entity) submitting an Offer in response to a Solicitation;
- “Contract” will mean any written agreement which is concluded between the OPCW and the selected Bidder as a result of the Offer being accepted by the OPCW; and
- “in writing” or “written” will mean by letter, fax or any standard electronic communication means (*i.e.*, E-mail).

2. SUBMISSION OF THE OFFER

Form of submission of Offers: Detailed instructions for the submission of Offers are defined in each Solicitation. Failure to observe such instructions may lead to rejection of the Offer.

Costs of submission: The Bidder shall bear all costs associated with the preparation and submission of an Offer and the OPCW will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Solicitation.

Language of submissions: Offers and any related communications shall be submitted in English unless specified otherwise in the Solicitation. In any event, if documents are submitted in English and another language, the English version of the text shall prevail.

Closing Date: Offers must be received by the OPCW by the closing date and time as specified in the Solicitation. Offers received after this date and time WILL NOT BE CONSIDERED and will be returned unopened to the concerned Bidder(s) or, in case of submissions by electronic communications means, will be deleted.

Withdrawal or modification of Offers: Bidders may withdraw, replace or modify their Offer until the closing date for the submission of Offers, provided that this is done in writing. Any modification or replacement of an Offer must be done in the same format as defined in the Solicitation. Bidders shall not be permitted to alter their Offers after the expiry of the deadline for the submission of Offers.

Clarifications: Bidders may request additional information or clarifications during the Solicitation process with respect to the requirements set out in the Solicitation documents. Any clarifications required by a Bidder must be requested in writing by email to *procurement@OPCW.org*. Such requests must be submitted in due time before the closing date for the submission of Offers, and in any case no later than the deadline for seeking clarifications specified in the Solicitation, in order to allow proper consideration and a reply. The response to a request for clarifications submitted by any Bidder will be provided by the OPCW simultaneously in writing to all known potential Bidders without disclosing the source of the query. The OPCW reserves the right to modify the Solicitation documents through a Solicitation Clarification communicated to all bidders. In the event of an amendment to the Solicitation documents, the OPCW reserves the right to extend the closing date for the submission of Offers. No information shall be provided to any Bidders regarding the probability of acceptance of an Offer.

Validity of an Offer: An Offer shall remain valid for acceptance for a period of at least 90 days from the closing date indicated in the Solicitation, unless otherwise stated.

Due diligence: The Bidders are expected to fully familiarize themselves with all instructions, forms, Contract conditions, terms and specifications contained in the Solicitation documents. Bidders shall also examine any maps, locations, drawings, technical specifications, schedules and other instructions. Failure to do so will be at the Bidder's own risk and responsibility and will not give rise to the right to modify or withdraw an Offer after the closing date.

No obligation to contract: The issuance of a Solicitation, whether public or not, does not commit the OPCW to award a Contract as a result of the Solicitation process. The OPCW will not pay any costs incurred by a Bidder in the preparation or submission of an Offer. Any Offer submitted will be regarded as an Offer made by the Bidder and not as an acceptance by the Bidder of an Offer made by the OPCW.

Cancellation of Solicitation: The OPCW reserves the right to cancel a Solicitation at any stage of the procurement process prior to the final notice of award of a Contract. In this case, all Bidders shall be informed thereof.

Confidentiality: All Offers and communications with the Bidders relating to such Offers will be kept strictly confidential by the OPCW before, during and after the award. All Solicitation documentation is the property of the OPCW; no part thereof, or any information contained therein, may be published, used or copied without the prior written consent of the OPCW.

Use of former OPCW employees in the preparation of Offers: A Bidder must not be associated, or must have not been associated in the past, with a person who contributes to, or participates in, any process relating to the preparation of an Offer and/or in the procurement process, if that person:

- a) at any time during the 12 months immediately preceding the date of issuance of the Solicitation was an official, agent, servant or employee of, or otherwise engaged by the OPCW; or
- b) at any time during the 24 months immediately preceding the date of issuance of the Solicitation was an official, agent, servant or employee of the OPCW or otherwise engaged by the OPCW, personally involved, directly or indirectly, in the definition of the requirements, project or activity to which the Solicitation relates.

In addition to any other remedies available to it, the OPCW may, at its sole discretion, immediately reject any Offer submitted by a Bidder that, in the OPCW's sole opinion, has been found to be associated with a person as described above.

Corrupt practices: The Bidders shall not at any time in the course of the procurement process, be it before or after the award of the Contract, grant, promise or offer any direct or

indirect benefit, whether of financial or other nature, to any official, agent, servant or employee of, or any person otherwise engaged by, the OPCW. In addition to any other remedies available to it, the OPCW may, at its sole discretion, immediately reject any Offer submitted by a Bidder that, in the OPCW's sole opinion, has engaged in corrupt practices.

Conflict of Interest: A Bidder must ensure that its employees, officers, advisers, agents or subcontractors do not place themselves in a position that may give rise to an actual, potential or apparent conflict of interest between the interests of the OPCW and the Bidder's interests during the procurement process. *Conflict of interest* means having an interest, whether personal, financial or otherwise, which interferes or may be perceived as interfering with the ability of the Bidder to submit a fair and objective Offer or the ability of the OPCW to evaluate Offers fairly and objectively. In addition to any other remedies available to it, the OPCW may, at its sole discretion, immediately reject any Offer submitted by a Bidder that, in the OPCW's sole opinion, has an actual, potential or apparent conflict of interest.

Collusive Bidding and other Unethical Conduct: Bidders and their employees, officers, advisers, agents or sub-contractors must not engage in any collusive bidding or other anti-competitive conduct, or any other similar conduct, in relation to:

- the preparation or submission of Offers;
- the clarification of Offers; or
- the conduct and content of negotiations, including final Contract negotiations,

in respect of the Solicitation or the procurement process, or any other process being conducted by the OPCW.

In addition to any other remedies available to it, the OPCW may, at its sole discretion, immediately reject any Offer submitted by a Bidder that, in the OPCW's sole opinion, has engaged in any collusive bidding, other anti-competitive conduct, or any other similar conduct with any other Bidder, person or entity in relation to the preparation or submission of Offers, or any other procurement process being conducted by the OPCW.

Any Bidder can participate in the Solicitation either individually or as a member of a joint venture, consortium. However, participation in both capacities is not allowed and will lead to the disqualification of all Offers submitted with the Bidder's participation. Offers submitted by a joint venture or consortium shall provide the full name and address of all partners and/or Bidders.

Improper Assistance: Any Offers that, in the sole opinion of the OPCW, have been prepared with the assistance of current or former officials, agents, servants or employees of, or persons otherwise engaged by the OPCW in violation of confidentiality obligations, or by using information not otherwise available to other Bidders, or which would provide an undue advantage in the procurement process, may be excluded from further consideration. Depending on the entity of the breach, Bidders may be suspended from temporarily dealing with the OPCW or classified as ineligible and therefore excluded from participation to further OPCW Solicitations.

Ineligibility of debarred and sanctioned Bidders: The OPCW reserves the right to declare ineligible to participate in a Solicitation a Bidder that has been debarred, sanctioned or otherwise declared ineligible on the list available on the United Nations Global Marketplace (UNGM) or has been included in the Consolidated United Nations Security Council Sanctions List.

3. SUPPLIER REGISTRATION PROCEDURE

Pre-Requisites for Eligibility: As part of the supplier registration application all Bidders are required to declare (both for parent and/or subsidiary entities, as applicable) that the company:

- a) is not a company, or associated with a company or individual, under procurement prohibition by the United Nations, including but not limited to prohibitions derived from the "Consolidated United Nations Security Council Sanctions Lists" in force.
- b) is not currently removed or suspended by the United Nations, or other UN agencies (including the World Bank);
- c) is not under formal investigation, nor has been sanctioned within the preceding three (3) years by any national authority of a United Nations Member State for engaging or having engaged in proscribed practices, including but not limited to: corruption, fraud, coercion, collusion, obstruction, or any other unethical practice.
- d) has not declared bankruptcy, are not involved in bankruptcy or receivership proceedings, and there is no judgment or pending legal action against them that could impair their operations in the foreseeable future;
- e) does not employ, or anticipate employing, any person(s) who is, or has been a OPCW staff member within the last year, if said OPCW staff member has or had prior professional dealings with the Bidder in his/her capacity as OPCW staff member within the last three years of service;
- f) undertakes not to engage in proscribed practices (including but not limited to: corruption, fraud, coercion, collusion, obstruction, or any other unethical practice), with the UN or any other party, and to conduct business in a manner that averts any financial, operational, reputational or other undue risk to the OPCW.

Changes in Bidder's Situation: In the case that a Bidder's situation changes with regard to any of the statements listed, after having been included in the Supplier Register, the Bidder shall immediately inform the OPCW thereof. Non-compliance with this requirement will automatically render the Bidder ineligible.

4. EVALUATION OF THE OFFER

Clarifications of Offers: To assist in the examination, evaluation and comparison of Offers the OPCW may, at its discretion, ask a Bidder for clarification about the content of its Offer. The request for clarification and the response shall be made in writing and no change in price or substance of the Offer shall be sought, offered or accepted.

Errors in the Offer: Arithmetical errors that are discovered during the examination of an Offer will be corrected by the OPCW. If the correction will affect the total price of an Offer, the Bidder(s) will be informed of such correction. If there is a discrepancy between words and figures, the amount in words will prevail. If the Bidder does not accept the correction of arithmetical errors, its Offer will be rejected.

Information for Evaluation: The evaluation of an Offer will be conducted on the basis of all the information provided in the documentation submitted in response to the Solicitation, including possible clarifications requested by the OPCW. In addition, a Bidder may be requested to provide evidence of its technical qualifications and financial soundness. The OPCW reserves the right to autonomously verify such information.

Independent Solicitations and Offers: Each Offer from a Bidder will be considered separately and independently from other Offers of the same Bidder submitted in response to other Solicitations. Bidders shall submit a complete Offer for each Solicitation in which they wish to participate. References to previous or on-going Offers will not be considered. Award of a previous Contract with the OPCW will not be considered in itself as a preference

or guarantee for the award of future Contracts with respect to Solicitations on the same subject.

Evaluation Criteria: The selection methods applied to the evaluation of the Offers and to determine the award of a Contract, including evaluation criteria, are defined in each Solicitation.

5. AWARD AND CONTRACT

Acceptance of the Contract and Price Negotiations: Upon acceptance of an Offer by the OPCW and award of a Contract, the selected Bidder shall be prepared to sign the Contract and to perform the work/services or provide the goods as described in the accepted Offer. Refusal or reservations to sign a Contract awarded by the OPCW may lead to exclusion of the Bidder from further OPCW Solicitations, without prejudice to any other remedies that the OPCW may use as a consequence of such refusal or reservations. The OPCW reserves the right to conduct price negotiations until a final agreement is reached.

Written Contract: No contractual relationship with the OPCW is established until a final written Contract document is signed by a duly authorized official of the OPCW and of the selected Bidder. Any activity undertaken or expenses incurred before an actual Contract is signed shall be borne by the Bidder. An advance notice or information of award is NOT to be considered as a Contract.

OPCW General Terms and Conditions of Contract: The final Contract will include the *OPCW General Terms and Conditions for the Purchase of Services* or the *OPCW General Terms and Conditions for the Purchase of Goods*, as applicable. The Bidder shall explicitly state in the submission of its Offer that such *OPCW General Terms and Conditions* are read, understood and accepted. Failure to indicate acceptance of the *OPCW General Terms and Conditions* may lead to rejection of an Offer.

Information to unsuccessful Bidders: Unsuccessful Bidders shall be informed of the outcome of the procurement process after the conclusion of the Contract with the selected Bidder.

6. INQUIRIES AND PROTEST PROCEDURES

The provisions below establish the procedures available to Bidders to address concerns they may have in relation to a procurement process. These procedures are without prejudice to the immunity of the OPCW from legal process:

- (a) "Inquiry" shall mean a written question from the Bidder concerning his/her Offer with respect to the evaluation procedure other than a clarification concerning the content of the Solicitation documents.
- (b) "Protest" shall mean a challenge of the award decision put forward by a Bidder.
- (c) Inquiries from unsuccessful Bidders with respect to Solicitation procedures shall be received by the OPCW Head, Procurement. The OPCW Head, Procurement shall ensure that a written acknowledgment to an inquiry be issued within five (5) working days. Information provided by the OPCW Head, Procurement, in response to an inquiry, shall be limited to the reasons for the failure of the Bidder's Offer and the relevant information on the evaluation process. No information shall be provided to the Bidders on the Offers of other Bidders of the procurement process concerned.
- (d) If, following the conclusion of the process under paragraph 5(c) above, the Bidder remains dissatisfied, the Bidder may submit a formal Protest within two weeks to the OPCW Principal Financial Officer. A Protest shall be in writing and shall consist of a detailed statement of all factual and legal grounds for the Protest; a detailed

explanation as to how the Bidder considers that it was prejudiced; and any evidence or documentation supporting the Protest.

- (e) Upon receipt of a written Protest, the OPCW Principal Financial Officer shall issue a written acknowledgement within five (5) working days. The Principal Financial Officer may decide to recommend the following procedures to the OPCW Director-General:
 - (f) If the Protest concerns issues related to alleged cases of unsatisfactory conduct of staff members, the OPCW Director-General may assign two senior officers (referred to as the "Investigation Panel") to conduct an investigation in accordance with the applicable OPCW Regulations, Rules and Directives.
 - (g) If the Protest concerns any matter other than issues addressed under paragraphs 5(c) and 5(f) above in respect of the award of Contract, the protest shall be reviewed by an independent review committee, established by the OPCW Director-General, composed of three members chosen by the Director-General, serving in their individual capacity. As part of the review process, each member of the committee shall sign a statement declaring that there is no conflict of interest, whether actual, potential or perceived, in relation to the review. The committee shall report to the OPCW Director-General on the outcome of its review. The OPCW Director-General, taking into account the outcome of the review by the committee, shall determine whether the procurement process and the award of Contract was appropriate; or if all Offers should be rejected and a new Solicitation process initiated.
 - (h) In the event that a Bidder challenges the decision of the Director-General made under paragraph 5(g) above, the complaint or dispute shall be settled through negotiation. If the matter remains unresolved following negotiation, it shall be settled by arbitration as described in the *OPCW General Terms and Conditions for the Purchase of Services* or the *OPCW General Terms and Conditions for the Purchase of Goods*. Such dispute resolution shall occur without prejudice to the privileges and immunities of the OPCW.
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