



Republic of the Sudan

Ministry of Water Resources, Irrigation and Electricity

Promoting the use of electric water pumps for irrigation in Sudan Project (SWP)

Tender No: *SWP-2-2017*

Qualification of a Contractor to Procure and Build a Solar Pump Laboratory

PART1

BIDDING PROCEDURE

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Section I. Instructions to Bidders (ITB)

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A. General

1 Scope of Bid

- 1.1 The Client indicated in the Bidding Data Sheet (BDS), issues these Bidding Documents for the supply of goods/Equipment and related services incidental thereto as specified in Section V, Schedule of Requirements. The name, identification number of this Competitive Bidding (CB) procurement and number of lots are all specified in the BDS.
- 1.2 Throughout these Bidding Documents:
 - (a) The term "in writing" means communicated in written form (e.g. by mail, e-mail, fax) with proof of receipt;
 - (b) if the context so requires, "singular" means "plural" and vice versa;
 - (c) "Day" means calendar day.
 - (d) The "committee" means the "*Procurement Committee*" for this current Bid.
 - (e) The "project" means "*The promotion of the use of electric water pumps for irrigation in Sudan*"
 - (f) The "Government" means "*The government of the Republic of Sudan*"

2 Payment

- 2.1 Payments will be made only at the request of the Client and upon approval by a designated official of the Ministry of Water Resources, Irrigation and Electricity in accordance with terms and conditions of the contract agreement between the Client and the Contractor. It will be subject in all respects to the financial procedures of UNDP and that of the Republic of Sudan. No party other than the Contractor shall derive any rights from the Contract or have any claims to the funds.

3 Fraud and Corruption

- 3.1 It is required that Procuring Entities, as well as bidders, contractors, and consultants under UNDP and Government-financed contracts, observe the highest standard of ethics during the procurement and execution of the Contract. In pursuit of this policy, the Directorate:
 - (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public procurement process or in contract execution;
 - (ii) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
 - (iii) "collusive practice" means a scheme or arrangement between two or more bidders, with or without the knowledge of the Client, designed to establish bid prices at artificial, noncompetitive levels;
 - (iv) "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract;
 - (b) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for the Contract in question;

- (c) will sanction a firm or individual, including declaring them ineligible, either indefinitely or, for a stated period of time, to be awarded a Government-financed contract (GFC) if it at any time determines that they have, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, a Government-financed contract; and
 - (d) will have the right to require that a provision be included in Bidding Documents and in contracts financed by a the Government, requiring bidders, Contractors, contractors and consultants to permit the Government to inspect their accounts, records and other documents relating to the Bid submission and contract performance and to have them audited by auditors appointed by the Government.
- 3.2 Bidders shall be aware of the provision stated in Sub-Clause 31.1 of the General Conditions of Contract.

4 Eligible Bidders

- 4.1 This Invitation To Bid (ITB) is open to all eligible bidders indicated in the Bid Data Sheet.
- 4.2 A Bidder shall not have a Conflict of Interest. All bidders found to have conflict of interest shall be disqualified. Bidders may be considered to have a conflict of interest with one or more parties in this bidding process, if they:
- (a) are or have been associated in the past, with a firm or any of its affiliates which have been engaged by the Client to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods/Equipment to be purchased under these Bidding Documents ; or
 - (b) Submit more than one bid in this bidding process, except for alternative offers permitted under ITB Clause 13. However, this does not limit the participation of subcontractors in more than one bid;
- 4.3 A Bidder that is under a declaration of ineligibility, suspension or debarment by the Directorate at the time of contract award, shall be disqualified.
- 4.4 Government-owned enterprises of the Republic of Sudan shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not a dependent agency of the Client.
- 4.5 Bidders shall provide such evidence of their continued eligibility satisfactory to the Client, as the Client shall reasonably request.

5 Eligible goods/equipment and related services

- 5.1 All the goods/equipment and related services to be supplied under the Contract and financed by the Government may have their origin in any country except those that the Republic of Sudan's law prohibits commercial relation with.
- 5.2 For purposes of this Clause, the term "goods/equipment" includes commodities, raw material, machinery, equipment, and industrial plants; and "related services" includes services such as insurance, installation, training, and initial maintenance.
- 5.3 The term "origin" means the country where the goods/equipment have been mined, grown, cultivated, produced, manufactured or processed; or, through manufacturing, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

B. Contents of Bidding Documents

6 Sections of Bidding Documents

- 6.1 The Bidding Documents consist of Parts 1, 2 and 3 which include all the Sections indicated below, and should be read in conjunction with addenda issued in accordance with ITB Clause 8.

PART 1 Bidding Procedures

- Section I. Instructions to Bidders (ITB)
- Section II. Bidding Data Sheet (BDS)
- Section III. Evaluation and Qualification Criteria
- Section IV. Bidding Forms.

PART 2 Supply Requirements

- Section V. Schedule of Requirements

PART 3 Contract

- Section VI. General Conditions of Contract (GCC)
- Section VII. Special Conditions of Contract (SCC)
- Section VIII. Contract Forms.

- 6.2 The ITB issued by the Client is not part of the Bidding Documents.
- 6.3 The Client is not responsible for the completeness of the Bidding Documents and their addendum, if they were not obtained directly from the Client.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents. Failure to furnish all information or documentation required by the Bidding Documents may result in the rejection of the bid.

7 Clarification of Bidding Documents

A prospective Bidder requiring any clarification of the Bidding Documents shall contact the Client in writing at the Client's address or e-mail specified in the BDS. The Client shall respond in email or in writing to any request for clarification, provided that such request is received no later than the period specified in the BDS prior to the deadline for submission of bids.

The Client shall directly forward copies of its response to all those who have acquired the Bidding Documents, including a description of the inquiry but without identifying its source. Should the Client deem it necessary to amend the Bidding Documents as a result of a clarification, it shall do so following the procedure under ITB Clause 8 and ITB Sub-Clause 22.2.

8 Amendment of Bidding Documents

- 8.1 At any time prior to the deadline for submission of bids, the Client may amend the Bidding Documents by issuing an addendum.
- 8.2 Any addendum issued shall be part of the Bidding Documents and shall be communicated by email or in writing to all who have obtained the Bidding Documents directly from the

Client.

- 8.3 To give prospective Bidders reasonable time to take an addendum into account and prepare their bids, the Client may, at his discretion, extend the deadline for the submission of bids, pursuant to ITB Sub-Clause 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 his bid. The Client shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 9.2 If needed, the Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine the Site of installation and its surroundings and obtain all information that may be necessary for preparing the Bid. The costs of visiting the site shall be at the Bidder's own expense.

10 Language of Bid

The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Client, 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 into the language specified in the BDS, 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 the following:
- (a) Bid Submission Form and the applicable Price Schedules;
 - (b) Company profile showing qualifications and the capabilities, 15 pages, maximum;
 - (c) Copy of certificate of registration of the business, including license/permission of operation in Sudan;
 - (d) At least five years of experience, evidentiary documents show relevant level of experience and knowledge on the Scope of Supply and Services;
 - (e) Bid Security in accordance with ITB Clause 19, if required;
 - (f) Written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB Clause 20;
 - (g) Documentary evidence in accordance with ITB Clauses 16 and 27, that the goods/equipment and related services conform to the bidding documents;
 - (h) Documentary evidence in accordance with ITB Clause 17 establishing the Bidder's qualifications to perform the contract if its bid is accepted; and
 - (i) Any other document specified in the BDS.

12 Bid Submission Form and Price Schedules

- 12.1 The Bidder shall submit the Bid Submission Form using the form furnished in Section IV, Bidding 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.
- 12.2 The Bidder shall submit the Price Schedules for goods/equipment and related services, according to their origin as appropriate, using the forms furnished in Section IV, Bidding Forms.

13 Alternative Bids

Unless otherwise specified in the BDS, alternative bids shall be considered.

14 Bid Prices and Discounts

- 14.1 The prices quoted by the Bidder in the Bid Submission Form and in the Price Schedules shall conform to the requirements specified below.
- 14.2 All lots and items must be listed and priced separately in the Price Schedules. If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. Lots or items not listed in the Price Schedule shall be assumed to be not included in the bid, and provided that the bid is substantially responsive, the corresponding adjustment, as appropriate, shall be applied in accordance with ITB Clause 29.
- 14.3 The price to be quoted in the Bid Submission Form shall be the total price of the bid, excluding any discounts offered.
- 14.4 The Bidder shall quote any unconditional discounts and indicate the method for their application in the Bid Submission Form.
- 14.5 Prices shall be quoted in USD and Sudanese Pounds unless otherwise stated in the BDS, inclusive of all taxes and duties (Delivered Duties Paid – DDP Incoterms 2017).
- 14.6 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account unless otherwise agreed.
- 14.7 Prices shall be quoted in local currency (SDG) or (USD) for local Bidders;
- 14.8 Prices shall be quoted in US Dollars (USD) or major convertible currency for international Bidders;
- 14.9 If so indicated in ITB Sub-Clause 1.1, bids are being invited for individual contracts (lots) or for any combination of contracts (packages). Unless otherwise indicated in the BDS, prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of state. Bidders wishing to offer any price reduction (discount) for the award of more than one Contract shall specify the applicable price reduction in accordance with ITB Sub-Clause 14.4 provided the bids for all lots are submitted and opened at the same time.

15 Documents Establishing the Eligibility of the Bidder

- 15.1 To establish their eligibility in accordance with ITB Clause 4, Bidders shall complete the Bid Submission Form, included in Section IV, Bidding Forms and bidder's profile.

16 Documents Establishing the Conformity of the goods/equipment and related services

- 16.1 To establish the conformity of the goods/equipment and related services to the bidding documents, the Bidder shall furnish as part of its Bid the documentary evidence that the goods/equipment conform to the technical specifications and standards specified in Section V, Schedule of Requirements.
- 16.2 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the goods/equipment and related services, demonstrating substantial responsiveness of the goods/equipment and related services to the technical specification,

and if applicable, a statement of deviations and exceptions to the provisions of the Schedule of Requirements.

- 16.3 The Bidder shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods/equipment during the period specified in the BDS following commencement of the use of the goods/equipment by the Client.
- 16.4 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalog numbers specified by the Client in the Schedule of Requirements, are intended to be descriptive only and not restrictive. The Bidder may offer other standards of quality, brand names, and/or catalog numbers, provided that it demonstrates, to the Client's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Schedule of Requirements.

17 Documents Establishing the Qualifications of the Bidder

- 17.1 The documentary evidence of the Bidder's qualifications to perform the contract if its bid is accepted shall establish to the Client's satisfaction:
- (a) that, if required in the BDS, in case of a Bidder not doing business within Sudan, the Bidder is or will be (if awarded the contract) represented by an Agent in the country equipped and able to carry out the Contractor's installation, maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications; and
 - (b) that the Bidder meets each of the qualification criteria specified in Section III, Evaluation and Qualification Criteria.

18 Period of Validity of Bids

- 18.1 Bids shall remain valid for the period specified in the BDS after the bid submission deadline date prescribed by the Client. A bid valid for a shorter period shall be rejected by the Client as non-responsive.
- 18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Client may request bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB Clause 19, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its Bid Security.

19 Bid Security

- 19.1 The Bidder shall furnish as part of its bid, a Bid Security, if required, as specified in the BDS.
- 19.2 The Bid Security shall be in the amount specified in the BDS and denominated in the currency of Sudan or a freely convertible currency, and shall be in the form of either a bank cheque, or a bank guarantee from a banking institution, and:
- (i) be issued by a reputable institution selected by the bidder.
 - (ii) be substantially in accordance with one of the forms of Bid Security included in Section IV, Bidding Forms, or other form approved by the Client prior to bid submission;
 - (iii) be payable promptly upon written demand by the Client in case the conditions listed in ITB Clause 19.5 are invoked;

- (iv) be submitted in its original form; copies will not be accepted;
 - (v) remains valid for a period of 60 days from the date of issuance.
- 19.3 If a Bid Security is required in accordance with ITB Sub-Clause 19.1, any bid not accompanied by a substantially responsive Bid Security in accordance with ITB Sub-Clause 19.1, shall be rejected by the Client as non-responsive.
- 19.4 The Bid Security of unsuccessful Bidders shall be rebursed as promptly as possible upon the successful Bidder's furnishing of the Performance Security pursuant to ITB Clause 40.
- 19.5 The Bid Security may be forfeited:
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Form, except as provided in ITB Sub-Clause 18.2; or
 - (b) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB Clause 39;
 - (ii) furnish a Performance Security in accordance with ITB Clause 40.
- 19.6 The Bid Security of a Joint Venture (JV) project must be in the name of the JV that submits the bid "JV leader". If the JV has not been legally constituted at the time of bidding, the Bid Security shall be in the names of all future partners as named in the letter of intent mentioned.

20 Format and Signing of Bid

- 20.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB Clause 11 and clearly mark it "ORIGINAL." In addition, the Bidder shall submit copies of the bid, in the number specified in the BDS 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 bid shall be typed and shall be signed by a person duly authorized to sign on behalf of the Bidder.
- 20.3 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

D. Submission and Opening of Bids

21 Submission, Sealing and Marking of Bids

- 21.1 Bidders shall enclose the original and each copy of the Bid, including alternative bids, if permitted in accordance with ITB Clause 13, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB sub- Clauses 21.2 and 21.3.
- 21.2 The inner envelope shall Bear the name and address of the Bidder; The outer envelope shall:
- (a) be addressed to the Client in accordance with ITB Clause 22;
 - (b) bear the specific identification of this bidding process indicated in ITB Sub-Clause 1.1 and any additional identification marks as specified in the BDS; and
 - (c) Bear a warning "*not to open before the time and date for bid opening*", in accordance with ITB Sub-Clause 25.1.

- 21.3 If any envelope is not sealed and marked as required, the Client will assume no responsibility for the misplacement or premature opening of the bid which will be rejected.

22 Deadline for Submission of Bids

- 22.1 Bids must be received by the Client at the stated address and no later than the date and time specified in the BDS.
- 22.2 The Client may, at his discretion, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with ITB Clause 8, in which case all rights and obligations of the Client and Bidders previously subject to the deadline shall thereafter be subject to the extended deadline.

23 Late Bids

- 23.1 In accordance with ITB Clause 22, the Client shall not consider any bid that arrives after the submission deadline. Any bid received by the Client after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder upon its request and on its cost.

24 Withdrawal, substitution, and modification of bids

24.1 A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice in accordance with ITB Clause 10, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB Sub-Clause 20.2, (except that no copies of the withdrawal notice are required). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:

- (a) submitted in accordance with ITB Clauses 20 and 21 (except that withdrawal notices do not require copies). The respective envelopes shall be clearly marked "Withdrawal," "Substitution," or "Modification;" and
 - (b) received by the Client prior to the deadline prescribed for submission of bids, in accordance with ITB Clause 22.
- 24.2 Bids requested to be withdrawn in accordance with ITB Sub-Clause 24.1 shall be returned unopened to the Bidders upon its request and on its cost.
- 24.3 No bid may be withdrawn, substituted, or modified 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 Bid Submission Form or any extension thereof.

25 Bid opening

- 25.1 The Client shall conduct the bid opening in public at the address, date and time specified in the BDS. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB Sub-clause 21.1, shall be as specified in the BDS.
- 25.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Bid. No Bid modification shall be

permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening. Only envelopes that are opened and read out at Bid opening shall be considered further.

- 25.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the Bid Prices, including any discounts and alternative offers; the presence of a Bid Security, if required; and any other details as the Client may consider appropriate. Only discounts and alternative offers read out at Bid opening shall be considered for evaluation. No Bid shall be rejected at Bid opening except for late bids, bids not accompanied by bid security, unsealed bids, and bids received through channels other than the designated Tender box.
- 25.4 The Client shall prepare a record of the Bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot if applicable, including any discounts, and alternative offers if they were permitted; and the presence or absence of a Bid Security, if one was required. The Bidders' representatives who are present shall be requested to sign the attendance sheet. A copy of the record shall be distributed to all Bidders who submitted bids in time, and posted online if electronic bidding is permitted.

E. Evaluation and Comparison of Bids

26 Confidentiality

- 26.1 Information relating to the examination, evaluation, comparison, and post-qualification of bids, and recommendation of contract award, shall not be disclosed to bidders or any other persons not officially concerned with such process until publication of the Contract Award.
- 26.2 Any effort by a Bidder to influence the Client in the examination, evaluation, comparison, and post-qualification of the bids or contract award decisions may result in the rejection of its Bid.
- 26.3 Notwithstanding ITB Sub-Clause 26.2, from the time of bid opening to the time of Contract Award, if any Bidder wishes to contact the Client on any matter related to the bidding process, it should do so in writing.

27 Clarification of Bids

To assist in the examination, evaluation, comparison and post-qualification of the bids, the Client may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder in respect to its Bid and that is not in response to a request by the Client shall not be considered. The Client's request for clarification and the response shall be in writing. No change in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Client in the evaluation of the bids, in accordance with ITB Clause 29.

28 Responsiveness of Bids

- 28.1 The Client's determination of a bid's responsiveness is to be based on the contents of the bid itself.
- 28.2 A substantially responsive Bid is one that conforms to all the terms, conditions, and specifications of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:
 - (a) affects in any substantial way the scope, quality, or performance of the goods/equipment and Related Services specified in the Contract; or
 - (b) limits in any substantial way, inconsistent with the Bidding Documents, the Client's rights or the Bidder's obligations under the Contract; or
 - (c) if rectified would unfairly affect the competitive position of other bidders presenting substantially responsive bids.
- 28.3 If a bid is not substantially responsive to the Bidding Documents, it shall be rejected by the Client and may not subsequently be made responsive by the Bidder by correction of the material deviation, reservation, or omission.

29 Non conformities, errors, and omissions for substantially responsive bid

- 29.1 Provided that a Bid is substantially responsive, the Client may waive any non-conformities or omissions in the Bid that do not constitute a material deviation.
- 29.2 Provided that a bid is substantially responsive, the Client may request the Bidder to submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial, nonconformities or omissions in the bid related to documentation requirements. Such omission shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.
- 29.3 Provided that the Bid is substantially responsive, the Client shall correct arithmetical errors on the following basis:

- (a) if there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of the Client there is an obvious misplacement of the decimal point in the unit price, in which case the line item total as quoted shall govern and the unit price shall be corrected;
- (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

29.4 If the Bidder that submitted the lowest evaluated Bid does not accept the correction of errors, its Bid shall be disqualified and its Bid Security may be forfeited.

30 Preliminary examination of Bids

30.1 The Client shall examine the bids to confirm that all documents and technical documentation requested in ITB Clause 11 have been provided, and to determine the completeness of each document submitted.

30.2 The Client shall confirm that the following documents and information have been provided in the Bid. If any of these documents or information is missing, the offer shall be rejected.

- (a) Bid Submission Form, in accordance with ITB Sub-Clause 12.1;
- (b) Price Schedules, in accordance with ITB Sub-Clause 12.2;
- (c) Bid Security, in accordance with ITB Clause 19 if applicable.

31 Examination of terms and conditions; Technical Evaluation

31.1 The Client shall examine the Bid to confirm that all terms and conditions specified in the General Conditions of Contract (GCC) and the Special Conditions of Contract (SCC) have been accepted by the Bidder without any material deviation or reservation.

31.2 The Client shall evaluate the technical aspects of the Bid submitted in accordance with ITB Clause 16, to confirm that all requirements specified in Section V, Schedule of Requirements of the Bidding Documents have been met without any material deviation or reservation.

31.3 If, after the examination of the terms and conditions and the technical evaluation, the Client determines that the Bid is not substantially responsive in accordance with ITB Clause 28, it shall reject the Bid.

32 Evaluation of Bids

32.1 The Client shall evaluate each bid that has been determined, up to this stage of the evaluation, to be substantially responsive.

32.2 To evaluate a Bid, the Client shall only use all the factors, methodologies and criteria defined in ITB Clause 32. No other criterion or methodology shall be permitted.

32.3 To evaluate a Bid, the Client shall consider the following:

- (a) the Bid Price as quoted in accordance with clause 14;
- (b) price adjustment for correction of arithmetic errors in accordance with ITB Sub-Clause 29.3;

- (c) adjustments due to the application of the evaluation criteria specified in the BDS from amongst those set out in Section III, Evaluation and Qualification Criteria;
- 32.4 The Client's evaluation of a bid may require the consideration of other factors, in addition to the Bid Price quoted in accordance with ITB Clause 14. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the goods/equipment and related services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of bids, unless otherwise specified in Section III, Evaluation and Qualification Criteria. The factors, methodologies and criteria to be used shall be as specified in ITB Sub-Clause 32.3 (d).
- 32.5 If so specified in the BDS, these Bidding Documents shall allow Bidders to quote separate prices for one or more lots, and shall allow the Client to award one or multiple lots to more than one Bidder. The methodology of evaluation to determine the lowest-evaluated lot combinations is specified in Section III, Evaluation and Qualification Criteria.

33 Comparison of Bids

- 33.1 The Client shall compare all substantially responsive bids to determine the lowest-evaluated bid, in accordance with ITB Clause 32.

34 Post-qualification of the Bidder

- 34.1 The Client shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid is qualified to perform the Contract satisfactorily.
- 34.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB Clause 17 and site visit as per ITB clause 9.2.
- 34.3 An affirmative determination in ITB sub clause 34.2 shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Client shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.

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

- 35.1 The Client 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 Bidders.

F. Award of Contract

36 Award Criteria

- 36.1 The Client 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 Documents, provided that the Bidder is determined to be qualified to perform the Contract satisfactorily.

37 Client's right to vary quantities at time of award

At the time the Contract is awarded, the Client reserves the right to increase or decrease the quantity of goods/equipment and related services originally specified in Section V, Schedule of Requirements, provided this does not exceed the percentages specified in the BDS, and without any change in 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, the Client shall notify the successful Bidder, in writing, that its Bid has been accepted.
- 38.2 Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.
- 38.3 Upon the successful Bidder's furnishing of the signed Contract Form and performance security pursuant to ITB Clause 40, the Client will promptly notify each unsuccessful Bidder and will discharge its bid security, pursuant to ITB Clause 19.4.

39 Signing of Contract

- 39.1 Promptly after notification, the Client shall send the successful Bidder the Agreement and the Special Conditions of Contract.
- 39.2 Within the number of days specified in the BDS after receipt of the Agreement, the successful Bidder shall sign, date, and return it to the Client.

40 Performance Security

- 40.1 Within twenty eight (28) days of the receipt of notification of award from the Client, the successful Bidder, if required, shall furnish the Performance Security of 10% of the bid price in accordance with the GCC, using for that purpose the Performance Security Form included in Section VIII Contract forms, or another Form acceptable to the Client. The Client shall promptly notify the name of the winning Bidder to each unsuccessful Bidder and discharge the Bid Securities of the unsuccessful bidders pursuant to ITB Sub-Clause 19.4.

41 Failure to sign the contract or submit Performance Security

- 41.1 Failure of the successful Bidder to submit the Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Client may award the Contract to the next lowest evaluated Bidder, whose offer is substantially responsive and is determined by the Client to be qualified to perform the Contract satisfactorily.

Section II. Bidding Data Sheet (BDS)

The following specific data for the goods/equipment to be procured shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in ITB.

ITB Clause Reference	A. General
ITB 1.1	The Client is: Ministry of Water Resources, Irrigation and Electricity
ITB 1.1	Tender SWP-2-2017
ITB 1.1	Name of Tender: Qualification of a Contractor to procure and build a Solar Pump Laboratory
	B. Contents of Bidding Documents
ITB 7	For the purpose of <u>Bid Clarification</u> , the address is: Email: hashim.siddig@gmail.com, a.abuhassan1996@gmail.com
	C. Preparation of Bids
ITB 10	The language of the bid is: English only

ITB 13	Alternative Bids shall be considered. A bidder may submit an alternative bid only with a bid for the base case. The Client shall only consider the alternative bids offered by the Bidder whose bid for the base case was determined to be the lowest-evaluated bid.
ITB 16.3	Period of time the goods/equipment are expected to be functioning (for the purpose of spare parts): as specified for each item in supply requirements in PART 2.
ITB 17.1 (a)	After sales service is required
ITB 18.1	The bid validity period shall be 60 days.
ITB 19.1	Bid shall include a Bid Security (issued by bank) included in Section IV Bidding Forms;
ITB 19.2	The amount of the Bid Security shall be: 2%
ITB 20.1	In addition to the original of the bid, the number of copies is one copy
D. Submission and opening of Bids	
ITB 21.1	Bidders do not have the option of submitting their bids electronically.
ITB 21.2 (c)	The inner and outer envelopes have no additional identification marks.
ITB 22.1	For bid submission purposes, the Client's address is: <i>Promoting the use of electric water pumps for irrigation in Sudan Project</i> Ministry of Water Resources, Irrigation and Electricity General Directorate of financial and administration affairs. Ground floor, Nile Street, Khartoum- Sudan.

	<p>The deadline for the submission of bids is: 28 Jan 2018.</p> <p>Time: 12:00 Khartoum (Khartoum Local time).</p>
ITB 25.1	<p>The bid opening shall take place at the following address and time: <i>Promoting the use of electric water pumps for irrigation in Sudan Project</i> Ministry of Water resources, Irrigation and Electricity, General Directorate of financial and administration affairs, Ground floor, Nile Street, Khartoum- Sudan.</p> <p>The deadline for the submission of bids is: Date: before 12.00Noon 28th January 2018.</p>
	E. Evaluation and Comparison of Bids
ITB 32.3(d)	<p>The adjustments shall be determined using the following criteria, from amongst those set out in Section III, Evaluation and Qualification Criteria:</p> <p>Deviation in Delivery schedule is to be determined according to the total amount of the Contract.</p>
	F. Award of Contract
ITB 37	<p>The maximum percentage by which quantities may be increased is: 15% of total price. The maximum percentage by which quantities may be decreased is: 15% of total price.</p>
ITB 39.2	<p>The successful Bidder shall sign, date, and return the Agreement to the Client after the submission of the performance security (10%).</p>

Section III. Evaluation and Qualification Criteria

This Section complements the Instructions to Bidders. It contains the criteria that the Client may use to evaluate a Bid and determine whether a Bidder has the required qualifications.

Contents

1. Evaluation Criteria
2. Multiple Contracts
3. Post-qualification Requirements

1. Evaluation Criteria (ITB 32.3 [d])

The Client's evaluation of a bid may take into account, in addition to the Bid Price quoted in accordance with ITB Clause 14.6, one or more of the following factors as specified in ITB Sub-Clause 32.3(d) and in BDS referring to ITB 32.3(d), using the following criteria and methodologies.

Delivery schedule.

The goods/equipment specified in the List of goods/equipment are required to be delivered within the acceptable time range, namely after the earliest and before the final date, as specified in Section V Delivery Schedule. No credit will be given to deliveries before the earliest date, and bids offering delivery after the final date shall be treated as non-responsive. Within this stated period, an adjustment, as specified in BDS Sub-Clause 32.3(d), shall be added, for evaluation purposes only, to the bid price of bids offering deliveries later than the "Earliest Delivery Date" specified in Section V, Delivery Schedule.

2. Post-qualification Requirements (ITB 34.2)

After determining the lowest-evaluated bid in accordance with ITB Sub-Clause 33.1, the Client shall carry out the post-qualification of the Bidder in accordance with ITB Clause 34, using only the requirements specified. Requirements not included in the text below shall not be used in the evaluation of the Bidder's qualifications.

(a) Financial Capability

The Bidder shall furnish documentary evidence that it meets the following financial requirements:

1. Bank statement for the last year
2. Income and financial statement for the last three years
3. Financial solvency certificate from the bank.

(b) Experience and Technical Capacity

The Bidder shall furnish documentary evidence to demonstrate that it meets the following experience requirements:

1. Achieved projects for the last two years
2. Quality certificate
3. Company profile
4. List of involved key persons with their qualifications

The Bidder shall furnish documentary evidence to demonstrate that the goods/equipment it offers has a Guaranteed technical schedule of particulars.

Section IV. Bidding Forms

Table of Forms

Form 1: Bidder Information Form

Form 2: Joint Venture Partner Information

Form 3: Bid Submission Form

Form 4: Bid Security (Bank Guarantee)

Form 1: Bidder Information

The Bidder shall fill in this form in accordance with the instructions indicated. No alterations to its format shall be permitted and no substitutions shall be accepted.

Date:

Tender No.:

Page _____ of _____ pages

1. Bidder's legal name:
2. In case of Joint Venture, legal name of each party:
3. Bidder's actual or intended country of registration:
4. Bidder's year of registration:
5. Bidder's legal address in country of registration:
6. Bidder's Authorized Representative Name: Address: Email/Telephone/Fax numbers:

7. Attached are copies of original documents of:

- ┆ Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITB Sub-Clauses 4.1 and 4.2.
- ┆ In case of Joint Venture, letter of intent to form JV or JV agreement, in accordance with ITB Sub-Clause 4.1.
- ┆ In case of government owned entity from Sudan, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB Sub-Clause 4.5.
- ┆ Tax clearance
- ┆ VAT registration certificate
- ┆ Zakat clearance
- ┆ Membership of Chamber of Commerce
- ┆ Bank Statement
- ┆ Sole Agency Certificate (if applicable)
- ┆ Import registration (if applicable)
- • • Others

Form 2: Joint Venture Partner Information

The Bidder shall fill in this form in accordance with the instructions indicated. No alterations to its format shall be permitted and no substitutions shall be accepted.

Date:

Tender No.:

Page _____ of _____ pages

1. Bidder's Legal Name:
2. Joint Venture Partner legal name:
3. Joint Venture's Partner country of registration:
4. Joint Venture's Partner year of registration:
5. Joint Venture's Partner legal address in country of registration:
6. Joint Venture's Partner authorized representative Name:
Address:
Email/Telephone/Fax numbers:
7. Attached are copies of original documents of: <input type="checkbox"/> Articles of incorporation or registration of firm named in 2, above, in accordance with ITB Sub-Clauses 4.1 and 4.2. <input type="checkbox"/> In case of government owned entity from Sudan, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB Sub-Clause 4.5.

Form 3: Bid Submission

The Bidder shall fill in this form in accordance with the instructions indicated. No alterations to its format shall be permitted and no substitutions shall be accepted.

Date:

Tender No.:

ITB No.:

Alternative No.: *(if this is a Bid for an alternative)*

To We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda No.:
- (b) We offer to supply in conformity with the Bidding Documents and in accordance with the Delivery Schedules specified in the Schedule of Requirements, the following goods/equipment and related services:
.....
- (c) The total price of our Bid, excluding any discounts offered in item (d) below, is:
.....
- (d) Our bid shall be valid for the period of time specified in ITB Sub-Clause 18.1, from the date fixed for the bid submission deadline in accordance with ITB Sub-Clause 22.1, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (e) If our bid is accepted, we commit to obtain a performance security in accordance with ITB Clause 40 and GCC Clause 16 for the due performance of the Contract;
- (f) We have no conflict of interest in accordance with ITB Sub-Clause 4.2;
- (g) Our firm, its affiliates or subsidiaries—including any subcontractors or Contractors for any part of the contract—has not been declared ineligible by the Republic of Sudan, under Sudan laws or official regulations, in accordance with ITB Sub-Clause 4.3;
- (h) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between

us, until a formal contract is prepared and executed.

- (i) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

Signed:

.....

In the capacity of

.....

Name: ID#:

Date and place of issue:

Duly authorized to sign the bid for and on behalf of:

.....

Dated on _____ day of _____, _____

Form 4: Bid Security (Bank Guarantee)

Bank's Name:.....

Address of Issuing Branch.....

Beneficiary:

Date: .../.../.....

BID GUARANTEE No.:

We have been informed that(hereinafter called "the Bidder") has submitted to you its bid dated .../.../..... (hereinafter called "the Bid") for the execution of the contract

Furthermore, we understand that bids must be supported by a Bid Guarantee.

At the request of the Bidder, we hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of in Sudanese Pounds for Local Bidders and US Dollars for Foreign Bidders (amount in words)..... upon receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Bid Submission Form; or
- (b) having been notified of the acceptance of its Bid by the Client during the period of bid validity as stated in the Bid Submission Form or extended by the Client at any time prior to expiration of this period:
 - (i) fails or refuses to execute the Contract, or
 - (ii) fails or refuses to furnish the Performance Security, in accordance with the ITB.

This Guarantee will expire:

- (a) if the Bidder is the successful Bidder, upon our receipt of copies of the Contract signed by the Bidder and the Performance Security issued to you upon the instruction of the Bidder; or
- (b) if the Bidder is not the successful Bidder, upon the earlier of:(i) our receipt of a copy of your notification to the Bidder that the Bidder was unsuccessful; or (ii) twenty-eight days after the expiration of the Bidder's Bid.

Consequently, any demand for payment under this Guarantee must be received by us at the Project's office on or before that date.

This Guarantee is subject to

Signature(s) of authorized bank's representative(s).....



Republic of the Sudan

Ministry of Water Resources, Irrigation and Electricity

Promoting the use of electric water pumps for irrigation in Sudan Project (SWP)

Tender No: *SWP-2-2017*

Qualification of a Contractor to Procure and Build a Solar Pump Laboratory

BIDDING DOCUMENTS

PART 2

**Supply
Requirements**

Issued on: December 2017

Section V. Schedule of Requirements

Contents

- 1- General Information
- 2- Scope of Work
- 3- Inspections
- 4- Technical Requirements
- 5- Technical Specifications and standards

General Information

- 1.1. The *General Directorate of Electricity Generation Using Atomic and Renewable Energy* under *Ministry of Water Resources, Irrigation and Electricity (MWRIE)* is planning to install a Solar Pumps Laboratory in Khartoum State, Sudan. The exact site of the Laboratory shall mainly depend on the specs of the selected laboratory.
- 1.2. MWRIE is pleased to invite companies to submit their offers for the tender:-
Qualification of a Contractor to Procure and Build a Solar Pump Laboratory
- 1.3. The Sponsor of the project is UNDP (Khartoum), through MWRIE.
- 1.4. MWRIE has appointed a Consultant to provide supervision services. The consultant will be responsible for work plan and supervision of activities and associated design work for the construction of the laboratory. The consultant will be acting on behalf of the MWRIE to ensure that the construction activities are carried out in accordance with the project objectives, technical specification and the schedule for completion. The supervision shall extend to the lab commissioning and performance during the liability period.

2. Scope of Work

- 2.1. Supply, install and commission a laboratory to test photovoltaic-powered pumps in accordance with the *Conceptual Design* provided by MWRIE and as described in the Bill of Quantities and Technical Specification provided.
- 2.2. Mobilization and demobilization of all equipment, materials and man powers required to complete the Works.
- 2.3. All necessary temporary works required to provide access to the site, secure storage of materials and to facilitate construction in a safe manner.
- 2.4. All necessary site preparation works including the construction of foundations, the removal of top soil and subsequent backfilling, and all other ground preparation works that may be necessary.
- 2.5. Provide all material that is not listed here but may reasonably be inferred to be necessary for the proper completion of the Works.

3. Technical specifications and standards

For the required specs of the system the Bidder is to refer to the Conceptual Design provided.

4. Inspection

- 4.1. All the required sets of equipment & material shall be check-listed and inspected before installation at site.
- 4.2. The technical specifications require that all goods and materials in the set be new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials.



Republic of the Sudan

Ministry of Water Resources, Irrigation and Electricity

Promoting the use of electric water pumps for irrigation in Sudan Project (SWP)

Tender No: *SWP-2-2017*

Qualification of a Contractor to Procure and Build a Solar Pump Laboratory

BIDDING DOCUMENTS

PART 3: Contract

Issued on: December 2017

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Section VI. General Conditions of Contract

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1. Definitions

- 1.1. The following words and expressions shall have the meanings hereby assigned to them:
- 1.1.1. "Contract" means the Contract Agreement entered into between the Client and the Contractor, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
 - 1.1.2. "Contract Documents" means the documents listed in the Contract Agreement, including any amendments thereto.
 - 1.1.3. "Contract Price" means the price payable to the Contractor as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
 - 1.1.4. "Day" means calendar day.
 - 1.1.5. "Completion" means the fulfillment of the Related Services by the Contractor in accordance with the terms and conditions set forth in the Contract
 - 1.1.6. "GCC" means the General Conditions of Contract
 - 1.1.7. "goods/equipment" means all of the commodities, raw material, machinery and equipment, and/or other materials that the Contractor is required to supply to the Client under the Contract
 - 1.1.8. "Government" means the government of the Republic of Sudan
 - 1.1.9. "SCC" means the Special Conditions of Contract
 - 1.1.10. "Related Services" means the services incidental to the supply of the goods/equipment, such as insurance, installation, training and initial maintenance and other such obligations of the Contractor under the Contract
 - 1.1.11. "Client" means the entity purchasing the goods/equipment and Related Services, as specified in the SCC
 - 1.1.12. "Subcontractor" means any natural person, private or government entity, or a combination of the above, to whom any part of the goods/equipment to be supplied or execution of any part of the Related Services is subcontracted by the Contractor
 - 1.1.13. "Contractor" means the natural person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Client and is named as such in the Contract Agreement
 - 1.1.14. "The Project Site," where applicable, means the place named in the SCC.

2. Contract Documents

Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

3. Fraud and Corruption

- 3.1. It is required that Procuring Entities, as well as Bidders, Contractors, and Consultants under Government-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuit of this policy, the Government defines, for the purposes of this provision, the terms set forth below as follows:
- 3.1.1. "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution
 - 3.1.2. "fraudulent practice" means a misrepresentation or omission of facts in order to influence a

procurement process or the execution of a contract

- 3.1.3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Client, designed to establish bid prices at artificial, non- competitive levels
- 3.1.4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract
- 3.2. will sanction a firm or individual, including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded a Government-financed contract if it at any time determines that they have, directly or through an agent, engaged, in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, a Government-financed contract
- 3.3. will have the right to require that Contractors to permit the Government to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by the Government.

4. Interpretation

- 4.1. If the context so requires, singular means plural and vice versa
- 4.2. Entire Agreement: The Contract constitutes the entire agreement between the Client and the Contractor and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.
- 4.3. Amendment: No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.
- 4.4. Non waiver:
 - 4.4.1. Subject to GCC Sub-Clause 4.4(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract
 - 4.4.2. Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.
- 4.5. Severability: If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

5. Language

- 5.1. The Contract as well as all correspondence and documents relating to the Contract exchanged by the Contractor and the Client, shall be written in the language specified in the **SCC**. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern
- 5.2. The Contractor shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Contractor.

6. Joint Venture, Consortium or Association

If the Contractor is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Client for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Client.

7. Notices

- 7.1. Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the **SCC**. The term "in writing" means communicated in written form with proof of receipt
- 7.2. A notice shall be effective when delivered or on the notice's effective date, whichever is later.

8. Governing Law

The Contract shall be governed by and interpreted in accordance with the laws of Sudan unless otherwise specified.

9. Settlement of Disputes

- 9.1. The Client and the Contractor shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract
- 9.2. Disputes will be settled in accordance with the arbitration Laws of Sudan.

10. Scope of Supply

The goods/equipment and Related Services to be supplied shall be as specified in the Schedule of Requirements.

11. Delivery and Documents

Subject to GCC Sub-Clause 29.1, the Delivery of the goods/equipment and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of shipping and other documents to be furnished by the Contractor are specified in the **SCC**.

12. Contractor's Responsibilities

The Contractor shall supply all the Goods/equipment and Related Services included in the Scope of Supply in accordance with GCC Clause 10, and the Delivery and Completion Schedule, as per GCC Clause 11.

13. Contract Price

Prices charged by the Contractor for the goods/equipment supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Contractor in its bid unless accepted by the Client.

14. Terms of Payment

- 14.1. The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the **SCC**.
- 14.2. The Contractor's request for payment shall be made to the Client in writing, accompanied by invoices describing, as appropriate, the goods/equipment delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 11 and upon fulfillment of all other obligations stipulated in the Contract.
- 14.3. Payments shall be made promptly by the Client, but in no case later than sixty (60) days after submission of an invoice or request for payment by the Contractor, and after the Client has accepted it.

15. Taxes and Duties

All price shall be inclusive of applicable taxes and duties.

16. Performance Security

16.1. If required as specified in the SCC, the Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the **SCC**.

16.2. The proceeds of the Performance Security shall be payable to the Client as compensation for any loss resulting from the Contractor's failure to complete its obligations under the Contract.

16.3. As specified in the SCC, the Performance Security, if required, shall be in one of the format stipulated by the Client in the **SCC**, or in another format acceptable to the Client

16.4. The Performance Security shall be discharged by the Client and returned to the Contractor not later than twenty eight (28) days following the date of Completion of the Contractor's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the **SCC**.

17. Copyright

The copyright in all drawings, documents, and other materials containing data and information furnished to the Client by the Contractor herein shall remain vested in the Contractor, or, if they are furnished to the Client directly or through the Contractor by any third party, including Contractors of materials, the copyright in such materials shall remain vested in such third party.

18. Confidential Information

18.1. The Client and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor such documents, data, and other information it receives from the Client to the extent required for the Subcontractor to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Contractor under GCC Clause 18.

18.2. The Client shall not use such documents, data, and other information received from the Contractor for any purposes unrelated to the contract. Similarly, the Contractor shall not use such documents, data, and other information received from the Client for any purpose other than the performance of the Contract.

18.3. The obligation of a party under GCC Sub-Clauses 18.1 and 18.2 above, however, shall not apply to information that:

18.3.1. the Client or Contractor need to share with the Bank or other institutions participating in the financing of the Contract

18.3.2. now or hereafter enters the public domain through no fault of that party

18.3.3. can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party

18.3.4. Otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality

18.3.5. The above provisions of GCC Clause 18 shall not in any way modify any undertaking of

confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof

18.3.6. The provisions of GCC Clause 18 shall survive completion or termination, for whatever reason, of the Contract.

19. Subcontracting

19.1. The Contractor shall notify the Client in writing of all subcontracts awarded under the Contract if not already specified in the bid. Such notification, in the original bid or later shall not relieve the Contractor from any of its obligations, duties, responsibilities, or liability under the Contract

19.2. Subcontracts shall comply with the provisions of GCC Clause 3.

20. Specifications and Standards

20.1. Technical Specifications and Drawings

20.1.1. The goods/equipment and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Section V, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the goods/equipment' country of origin and Sudanese Standards & Metrology Organization (SSMO) or any other related national body

20.1.2. The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Client, by giving a notice of such disclaimer to the Client

20.1.3. Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Client and shall be treated in accordance with GCC Clause 29.

21. Packaging and Documents

21.1. The Contractor shall provide such packing of the goods/equipment as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packaging shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods/equipment' final destination and the absence of heavy handling facilities at all points in transit

21.2. The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the **SCC**, and in any other instructions ordered by the Client.

22. Insurance

The goods/equipment supplied under the Contract shall be fully insured against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery unless otherwise stated.

23. Inspections and Tests

23.1. The Contractor shall at its own expense and at no cost to the Client carry out all such tests and/or inspections of the Goods/equipment and Related Services as are specified in the **SCC**.

23.2. The inspections and tests may be conducted on the premises of the Contractor or its Subcontractor, at point of delivery, and/or at the goods/equipment' final destination, or in another place in Sudan as specified in the **SCC**. Subject to GCC Sub-Clause 23.3, if conducted on the premises of the Contractor or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production

data, shall be furnished to the inspectors at no charge to the Client.

- 23.3. The Client or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 23.2, provided that the Client bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 23.4. Whenever the Contractor is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Client. The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Client or its designated representative to attend the test and/or inspection.
- 23.5. The Client may require the Contractor to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the goods/equipment comply with the technical specifications codes and standards under the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of manufacturing and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 23.6. The Contractor shall provide the Client with a report of the results of any such test and/or inspection.
- 23.7. The Client may reject any goods/equipment or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Contractor shall either rectify or replace such rejected goods/equipment or parts thereof or make alterations necessary to meet the specifications at no cost to the Client, and shall repeat the test and/or inspection, at no cost to the Client, upon giving a notice pursuant to GCC Sub-Clause 23.4.
- 23.8. The Contractor agrees that neither the execution of a test and/or inspection of the goods/equipment or any part thereof, nor the attendance by the Client or its representative, nor the issue of any report pursuant to GCC Sub-Clause 23.6, shall release the Contractor from any warranties or other obligations under the Contract.

24. Liquidated Damages

Except as provided under GCC Clause 28, if the Contractor fails to deliver any or all of the goods/equipment by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, the Client may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the **SCC** of the delivered price of the delayed goods/equipment or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those **SCC**. Once the maximum is reached, the Client may terminate the Contract pursuant to GCC Clause 31.

25. Warranty

- 25.1. The Contractor warrants that all the goods/equipment are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract
- 25.2. Subject to GCC Sub-Clause 20.1(b), the Contractor further warrants that the goods/equipment shall be free from defects arising from any act or omission of the Contractor or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 25.3. Unless otherwise specified in the **SCC**, the warranty shall remain valid for twelve (12) months after the Goods/equipment, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the **SCC**, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes

earlier

- 25.4. The Client shall give notice to the Contractor stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Client shall afford all reasonable opportunity for the Contractor to inspect such defects
- 25.5. Upon receipt of such notice, the Contractor shall, within the period specified in the **SCC**, expeditiously repair or replace the defective Goods/equipment or parts thereof, at no cost to the Client
- 25.6. If having been notified, the Contractor fails to remedy the defect within the period specified in the **SCC**, the Client may proceed to take within a reasonable period such remedial action as may be necessary, at the Contractor's risk and expense and without prejudice to any other rights which the Client may have against the Contractor under the Contract.

26. Patent Indemnity

- 26.1. The Contractor shall, subject to the Client's compliance with GCC Sub-Clause 26.2, indemnify and hold harmless the Client and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Client may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:
- 26.1.1. the installation of the goods/equipment by the Contractor or the use of the goods/equipment in the country where the Site is located
- 26.1.2. the sale in any country of the products produced by the Goods/equipment.
- Such indemnity shall not cover any use of the goods/equipment or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the goods/equipment or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Contractor, pursuant to the Contract.
- 26.2. If any proceedings are brought or any claim is made against the Client arising out of the matters referred to in GCC Sub-Clause 26.1, the Client shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Client's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 26.3. If the Contractor fails to notify the Client within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Client shall be free to conduct the same on its own behalf.
- 26.4. The Client shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.
- 26.5. The Client shall indemnify and hold harmless the Contractor and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Client.

27. Change in Laws and Regulations

Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Bid submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted,

promulgated, abrogated, or changed in Sudan (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract.

28. Force Majeure

- 28.1. The Contractor shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure
- 28.2. For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Contractor that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Contractor. Such events may include, but not be limited to, acts of the Client in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes
- 28.3. If a Force Majeure situation arises, the Contractor shall promptly notify the Client in writing of such condition and the cause thereof. Unless otherwise directed by the Client in writing, the Contractor shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

29. Change Orders and Contract Amendments

- 29.1. The Client may at any time order the Contractor through notice in accordance GCC Clause 7, to make changes within the general scope of the Contract in any one or more of the following:
- 29.1.1. drawings, designs, or specifications, where goods/equipment to be furnished under the Contract are to be specifically manufactured for the Client.
 - 29.1.2. the method of shipment or packing
 - 29.1.3. the place of delivery
 - 29.1.4. the Related Services to be provided by the Contractor.
- 29.2. If any such change causes an increase or decrease in the cost of, or the time required for, the Contractor's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Contractor for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Contractor's receipt of the Client's change order.
- 29.3. Prices to be charged by the Contractor for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Contractor for similar services.
- 29.4. Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

30. Extensions of Time

- 30.1. If at any time during performance of the Contract, the Contractor or its subcontractors should encounter conditions impeding timely delivery of the goods/equipment or completion of Related Services pursuant to GCC Clause 11, the Contractor shall promptly notify the Client in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Contractor's notice, the Client shall evaluate the situation and may at its discretion extend the Contractor's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

30.2. Except in case of Force Majeure, as provided under GCC Clause 28, a delay by the Contractor in the performance of its Delivery and Completion obligations shall render the Contractor liable to the imposition of liquidated damages pursuant to GCC Clause 24, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 30.1.

31. Termination

31.1. Termination for Default:

31.1.1. The Client, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Contractor, may terminate the Contract in whole or in part:

31.1.1.1. if the Contractor fails to deliver any or all of the goods/equipment within the period specified in the Contract, or within any extension thereof granted by the Client pursuant to GCC Clause 30

31.1.1.2. if the Contractor fails to perform any other obligation under the Contract, or

31.1.1.3. if the Contractor, in the judgment of the Client has engaged in fraud and corruption, as defined in GCC Clause 3, in competing for or in executing the Contract.

31.1.2. In the event the Client terminates the Contract in whole or in part, pursuant to GCC Clause 31.1(a), the Client may procure, upon such terms and in such manner as it deems appropriate, goods/equipment or Related Services similar to those undelivered or not performed, and the Contractor shall be liable to the Client for any additional costs for such similar goods/equipment or Related Services. However, the Contractor shall continue performance of the Contract to the extent not terminated.

31.2. Termination for Insolvency:

The Client may at any time terminate the Contract by giving notice to the Contractor if the Contractor becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Contractor, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Client.

31.3. Termination for Convenience:

31.3.1. The Client, by notice sent to the Contractor, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Client's convenience, the extent to which performance of the Contractor under the Contract is terminated, and the date upon which such termination becomes effective.

31.3.2. The goods/equipment those are complete and ready for shipment within twenty-eight (28) days after the Contractor's receipt of notice of termination shall be accepted by the Client at the Contract terms and prices. For the remaining goods/equipment, the Client may elect:

31.3.2.1. to have any portion completed and delivered at the Contract terms and prices; and/or

31.3.2.2. to cancel the remainder and pay to the Contractor an agreed amount for partially completed goods/equipment and Related Services and for materials and parts previously procured by the Contractor.

32. Assignment

Neither the Client nor the Contractor shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

Section VII. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and/or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC. Reference should also be made to the provided Conceptual Design.

GCC 5.1	The language shall be: English Language
GCC 14.1	<p><i>Payment method</i> GCC 14.1—The method and conditions of payment to be made to the Contractor under this Contract shall be as follows:</p> <ol style="list-style-type: none"> 1. 15% of total amount of contract as advance payment. 2. 20% of total amount of contract after delivery of the Laboratory components to the sites. 3. 50% of total amount of contract after installation, testing & commissioning of Laboratory and conducted training. 4. 15%% of total amount of contract after submission & approval of final report.
GCC 16.1	A Performance Security shall be required. Security shall be: 10% of the contract price
GCC 16.3	Performance Security shall be in the form of :“a Bank Guarantee”
GCC 16.4	Discharge of the Performance Security shall take place.
GCC 24.1	The liquidated damage shall be: 5% per week
GCC 24.1	The maximum amount of liquidated damages shall be: 10%

Section VIII. Contract Forms

Table of Forms

- 1. Contract Agreement**
- 2. Performance Security**

1. Contract Agreement

This Contract Agreement is made the day of / / between

(1)
(Client)

and

(2)
(Contractor)

WHEREAS the Client invited bids for *the procurement, installation and commissioning of a laboratory testing PV-powered pumps in Khartoum* and has accepted a Bid by the Contractor for the supply of those goods/equipment and services in the sum of (hereinafter called "the Contract Price").

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract.
2. The following documents shall constitute the Contract between the Client and the Contractor, and each shall be read and construed as an integral part of the Contract:
 - 2.1. This Contract Agreement
 - 2.2. Special Conditions of Contract
 - 2.3. General Conditions of Contract
 - 2.4. Technical Requirements (including Schedule of Requirements and Technical Specifications)
 - 2.5. The Contractor's Bid and original Price Schedules
 - 2.6. The Client's Notification of Award
 - 2.7.
3. This Agreement shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.
4. In consideration of the payments to be made by the Client to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Client to provide the goods/equipment and services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
5. The Client hereby covenants to pay the Contractor in consideration of the provision of the goods/equipment and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of *Sudan* on the day, month and year indicated above.

For and on behalf of the Client

Signed:

in the capacity of(title)

in the presence of..... (witness)

For and on behalf of the Contractor

Signed:

in the capacity of(title)

in the presence of..... (witness)

2. Performance Security

[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated]

Date:...../...../.....

Tender No. and title:

Bank's Branch or Office:

Beneficiary:

PERFORMANCE GUARANTEE No.:

We have been informed that (hereinafter called "the Contractor") has entered into Contract No. dated/...../....., with you, for the *supply, installation and commissioning of a laboratory for PV pumps testing*.

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Contractor, we hereby irrevocably undertake to pay you any sum(s) not exceeding (*insert amount(s)¹ in figures..... and words*)..... upon receipt by us of your first demand in writing declaring the Contractor to be in default under the Contract, without your needing to prove or to show grounds or reasons for your claim or the sum specified.

This Guarantee shall expire no later than the day of [*insert year*],² and any demand for payment under it must be received by us at this office on or before that date.

..... [*Signatures of authorized representatives of the bank and the Contractor*]

¹ The Bank shall insert the amount(s) specified in the SCC and denominated, as specified in the SCC.

² Dates established in accordance with Clause 16.4 of the General Conditions of Contract ("GCC"), taking into account any warranty obligations of the Contractor intended to be secured by a partial Performance Guarantee.

The Client should note that in the event of an extension of the time to perform the Contract, the Client

would need to request an extension of this Guarantee from the Bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Client might consider adding the following text to the Form, at the end of the penultimate paragraph: " We agree to a one-time extension of this Guarantee for a period not to exceed [six months] [one year], in response to the Client's written request for such extension, such request to be presented to us before the expiry of the Guarantee."