



**GOVERNMENT OF SINDH
SUKKUR MUNICIPAL CORPORATION**



**FEASIBILITY STUDY AND TRANSACTION ADVISORY SERVICES
REHABILITATION AND DEVELOPMENT OF WATER DISTRIBUTION SYSTEM IN SUKKUR
UNDER PUBLIC PRIVATE PARTNERSHIP MODE**

RESPONSE DOCUMENT NO. II

11th January 2024

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IMPORTANT NOTICE

The responses to prospective bidders' queries document dated 11th January 2024 ('**Response Document No. II**') is in furtherance to requests for queries/ clarifications received from the prospective bidders in respect of the Bidding Process relating to the feasibility study and transaction advisory services for rehabilitation and development of water distribution system in Sukkur under public-private partnership mode ('**Assignment**'), being conducted pursuant to the RFP Document, Addendum Document No. I, and Response Document No. I dated 24th November 2023 and 29th December 2023, respectively ('**RFP Documents**') floated by Sukkur Municipal Corporation, Government of Sindh ('**Procuring Agency**') in accordance with the Sindh Public Procurement Rules, 2010 ('**SPP Rules**').

*Unless expressly specified otherwise, all **capitalized terms** used herein shall bear the meaning ascribed thereto under the RFP Document.*

This Response Document No. II is being circulated by the Procuring Agency in pursuance of the Instructions to Consultant (ITC) Clause 10.1 of the RFP Document. Neither any of these entities nor their employees, personnel, or agents make any representation (expressed or implied) or warranties as to the accuracy or completeness of the information contained herein or in any other document made available in connection with the Assignment's Bidding Process, and the same shall have no liability for this RFP Documents or any other written or oral communication transmitted to the recipient in the course of the recipient's evaluation of Proposals. Neither any of these entities nor their employees, personnel, agents, consultants, advisors, contractors, etc., will be liable to reimburse or compensate the recipient any costs, fees, damages, or expenses incurred by the recipient in evaluating or acting upon the RFP Documents or otherwise in connection with the Assignment as contemplated herein.

The Bids submitted in response to the RFP Documents by any of the Bidders shall be upon the full understanding and agreement of all terms of the RFP Documents, including the Response Document No. II, and such submission shall be deemed an acceptance of all the terms and conditions stated in the RFP Documents. Any Bid submitted by a Bidder in response to the RFP Documents shall be construed based on the understanding that the Bidder has done a complete and careful examination of the RFP Documents and has independently verified all the information received (whether written or verbal) from the Procuring Agency (including from its employees, personnel, agents, Consultants, advisors, and contractors, etc.).

This Response Document is not an agreement; its sole purpose is to provide interested bidders with information that may be useful in preparing their Bids or Proposals. The Procuring Agency reserves its right, in its full discretion, to modify the RFP Documents and/ or the Assignment at any time to the fullest extent permitted by law and shall not be liable to reimburse or compensate the recipient for any costs, taxes, expenses or damages incurred by the recipient in such an event.

RESPONSE DOCUMENT NO. II

SR.	RFP REFERENCE	PROSPECTIVE BIDDER'S QUERY/ COMMENT	PROCURING AGENCY'S RESPONSE/ CLARIFICATION
SECTION II – INSTRUCTIONS TO CONSULTANTS (ITC)/ BID DATA SHEET (BDS)			
1.	ITC BDS Clause 16.4	The Bids Submission Deadline may be extended for two (2) weeks considering the nature of the Assignment and the experience required to ensure a comprehensive and competitive bid.	The instant procurement Assignment already covers the response time of <u>more than forty-five (45) Days</u> , sufficient for bidders to prepare and submit the Bids as per the SPP Rules; hence, the prospective Bidders' request for further extension does not warrant further consideration.
2.	ITC BDS Clause 18.1	<p><i>Bidder's (in case of a Consortium, legal member) experience in ascertaining the legal viability of an unsolicited proposal for an infrastructure project under the PPP modality completed during the last fifteen (15) years;</i></p> <p><i>or</i></p> <p><i>Bidder's (in case of a Consortium, financial member) experience in developing financial model and project structuring/ fund arrangement for a water-related utility project with a minimum capacity of 20 MIGD or an estimated cost of PKR 3 billion project, completed during the last fifteen (15) years either from public side/ private side.</i></p> <p>It is very uncommon for more than the vast majority of financial and legal firms to have experience in developing financial modeling or conducting legal viability of USPs, respectively, and currently, very few qualify and score this</p>	The referred criterion is neither part of the eligibility/ qualification criteria nor does it restrict or limit the competitive process. The criterion is relevant to the instant procurement's Assignment scope and requirements that the Procuring Agency aims to outsource; hence, there is no change.

		<p>mark as per this evaluation. As such, including this requirement is discriminatory and gives an unfair edge to only a handful of advisers and firms who have had the opportunity to render requisite services. Additionally, scoring four (4) marks for one project under such a strict experience is unwarranted and arbitrary.</p> <p>Hence, it is requested to remove the amended criteria altogether and evaluation is carried out based on advisory for PPP projects only as per established precedents. This will ensure a level playing for all participants, promote fairness and equal opportunities, and select the best consultants for the Assignment.</p>	
3.	ITC BDS Clause 9.2	<p><i>The original sealed Financial Proposal must contain a bid security equivalent to 2% of the total quoted bid price in the form of a deposit at call or pay order or demand draft or a bank guarantee, valid for twenty-eight (28) days beyond bid validity period, issued by a scheduled bank in Pakistan in favor of 'Sukkur Municipal Corporation'.</i></p> <p>In this context, your kind attention is drawn to PEC Letter No. PEC/REG/2010 dated 13th October 2010, addressed to all concerned authorities, bid security applies only to works contracts. It does not apply to contracts for procuring engineering consultancy services, neither under the provision of PEC by-laws nor</p>	<p>The instant procurement is being undertaken under the SPP Rules, which require the bidders to furnish the bid security as part of the Financial Proposal in terms of ITC Clause 9.2 of the RFP Document read together with Rules 21, 37 & 90 of the SPP Rules. Hence, no further change.</p>

		international engineering practices. Therefore, the bid bond security is requested to be waived for this proposal.	
4.	ITC BDS Clauses 13.1(a), 1.1(n) & 1.1(bb)	<p><i>In the case of a Consortium of firms, the Technical Proposal shall be accompanied by a certified true copy of the Consortium Agreement that shall contain the following requirements:</i></p> <p><i>iii. A clear and definite description of the proposed administrative arrangements for the management and execution of the Assignment (it is expected that the <u>Consortium's Lead Member would be authorized to incur liabilities and to receive instructions and payments for and on behalf of the Consortium</u>);</i></p> <p><i>v. An undertaking that the firms are severally liable to the Procuring Agency for the performance of the services;</i></p> <p>We understand that each Consortium member shall be severally liable, and in such a case, the 'Lead Member' need not to incur liabilities on behalf of the other members. Kindly confirm.</p> <p>If yes, it is requested that the appropriate amendments may be made to sub-clause (iii) of the reproduced extract to add clarity.</p>	The Consortium Lead Member shall inter-alia be authorized to incur liabilities to the extent necessary for performing certain obligations, including receiving the Procuring Agency's instructions and reporting on time, as set out in the RFP Documents. Meanwhile, the Consortium's respective members shall be severally liable to the Procuring Agency for the performance of services rendered on their part.
5.	ITC BDS Clauses 13.1(a), 1.1(n) & 1.1(bb)	<p><i>In the case of a Consortium of firms, the Technical Proposal shall be accompanied by a</i></p>	The Procuring Agency shall release the payments to the successful Bidder (in the case of a Consortium, respective member as communicated

	<p><i>certified true copy of the Consortium Agreement that shall contain the following requirements:</i></p> <p><i>iii. A clear and definite description of the proposed administrative arrangements for the management and execution of the Assignment (it is expected that the <u>Consortium's Lead Member would be authorized to incur liabilities and to receive instructions and payments for and on behalf of the Consortium</u>);</i></p> <p><i>5 – Assignment Deliverables & Payment Schedule: In case the Project is found unviable or unfeasible, considering either USP or standalone basis, during the legal viability assessment stage, as ascertained by the Consultant or decided by the Procuring Agency, then the Procuring Agency in such a case shall release the Consultant 15% of the Contract Price by terminating the Assignment's Contract. The Procuring Agency shall not offer any mobilization advance to the Consultant. <u>The Procuring Agency shall ensure the release of the payments to the Bidder (in case of the Consortium, the Consortium respective member) within thirty (30) Days following the payment schedule mentioned above, subject to the satisfactory completion of the respective milestones</u> for the Project as verified and recommended by the Procuring Agency's authorized representative(s).</i></p>	<p>by the Lead Member) as per the GCC Clause 6.3.1 of the RFP Document.</p>
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6.	ITC BDS Clause 18.1, 13.1, 6.1 & 2.2	<p><i>Eligibility Criteria (Mandatory Documents):</i> <i>Bidder (in the case of a Consortium, <u>each member as applicable</u>) must enclose, along with Technical Proposal, copies of the following documents including but not limited to (refer to the Eligibility and Technical Evaluation Criteria for further details):</i></p> <p><i>vi. Audit reports containing balance sheets, income statements, and cash flow statements of the last three (3) years duly issued and verified by a certified chartered accountant firm¹;</i></p> <p>We understand that there are no draft management accounts that will be verified by the</p>	No change.

¹ Bidder shall require to submit annual statements, duly certified by a chartered accountant, for the most recent three (3) years in accordance with the RFP Document. However, where a Bidder is unable to submit an audited statement for any of these financial years due to the pendency of internal approval or any other legal requirement, then the Bidder, in such a case, may submit draft audit statements duly verified by certified chartered accountant along with valid reasons/ justification for submitting the draft, while submitting Bid to the Procuring Agency.

		certified chartered accountant. Verification of management accounts can be ascertained when the audit is completed. Therefore, it is requested to make appropriate amendments to the clause or clarify that ' <i>bidder may submit duly filed most recent three (3) years' annual income tax returns along with draft financial statements duly signed by the Authorized person of the company accompanying with reasons/ justification for submitting the draft financials.</i> '	
7.	ITC BDS Clause 18.1	<p><i>Financial Capability: Bidder (in the case of Consortium, each member as applicable) to submit audited financial statements of the last three years. However, In case of a Consortium, the financial capability of the Consortium members collectively will be considered.</i></p> <p>We understand that it is not applicable for legal firms to furnish audited financial statements; the income-tax returns of legal firms will suffice the requirement. Please clarify.</p>	The Bidder (in the case of a Consortium, each member – including technical, financial, legal, etc.) must submit audited financial statements as part of the Technical Bid in terms of the RFP Documents.
SECTION V – TERMS OF REFERENCE			
8.	Assignment Scope	<i>The Bidder shall be required to provide the Services to the Procuring Agency for the Project's Proposed Concession. At any stage or during any phase given above, the legal, technical, and financial consultants being members of the Consortium, on request of the Procuring Agency, shall require furnishing legal, technical, and financial opinions or assistance on any matter</i>	The litigations may involve the existing and potential litigations arising during the Contract, where the Procuring Agency may require any support and opinion on any matter relating to the Project from the successful Bidder (in the case of a Consortium, each or any member) as part of the Assignment.

		<p><i>(including litigation)/ document/ agreement with regards to the Project. The internal coordination of the Consortium shall be the sole responsibility of the Lead Member.</i></p> <p>We understand that:</p> <ul style="list-style-type: none"> i. The legal Consultants, upon engagement, shall provide a proforma with respect to ongoing and new litigations, and the Procuring Agency's litigation counsel (handling such litigation matters) shall complete such proforma, which will include the counsel's opinion on the chances of success of the respective litigation matter(s); and ii. Any legal advice from the Consultants with respect to litigation matters shall be based on such proforma. Please confirm. 	
9.	Assignment Deliverables & Payment Schedule	<p><i>5.2.1 – Marketing and Submission of Bidding Packages (Proposed Packages) – T2 + 1 Month – 10%</i></p> <p>We understand that the Consultants are only required to prepare one (1) bidding package for the Project. Kindly confirm.</p> <p>If yes, appropriate amendments may be made to the reproduced extract to omit reference to multiple bidding packages.</p>	<p>The bidding packages inter alia involve preparing and submitting the draft prequalification document (if applicable) and then draft RFP document for the investors solicitation during the Project's entire procurement process in accordance with the applicable laws.</p>