

**Republic of Iraq**  
(Enter the Name of Contracting Party/Employer)

**Bid Documents**  
**For the Private Non - Consultancy Services**

(Enter Project Name)

Tender No.: [     ]

Issued on: [       ]

**Advertisement Form/ Invitation to Submit a Bid**

Enter the Country Name of Contracting Party/Employer

Enter the Name of Contracting Party/Employer

No.:

Date:

To /  
Sub/

- 1- The (Enter the Contracting Party/Employer (Working Owner)) is pleased to invite the qualified and experienced bidders to submit their bid for the private work of (Enter the Project Name)
- 2- The (Enter the Contracting Party/Employer (Working Owner)) has financial allocations within the Federal Budget, and intends to part of it to execute services [Enter the name of project as stated in the special conditions].
- 3- The bidders, who are interested in buying the bid documents in (Enter the language(s) of documents), after submitting a written request to [the name and address of the Employer specified in the Instructions to Bidders] and after the payment of selling value of the unrecoverable documents amounting to [Enter the amount in Dinars] or [Enter the amount in the other exchangeable currency], and the bidder, who want to obtain more information in the above address.
- 4- The bids shall be submitted to the following address [Specify the address mentioned in the Instructions to Bidders] in the specified date [Enter the time and date of submission], and the late bid will be rejected and the bids will be opened in the presence of the bidders or their representatives who are willing to attend to the following address [Enter the address mentioned in the Instructions to Bidders] in the time and date [Enter the time and date]. The bids shall include bid guarantee [Enter Bank Letter of Guarantee or Certified Check] with an amount of [Enter the amount in Dinars] or [in the other exchangeable currency].

**Note:** The contracting party can add additional data that are suitable with the value of the tender provided it does not conflict with the legal legislations that regulate the government contracting in Iraq.

Signature:

Name of the Authorized Representative of the Contracting Party:

Position of the Authorized Representative of the Contracting Party:

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### **Invitation Text to Bid Submission**

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**First Part – Contracting Procedures  
For Non-Consultancy Services Contracts**

**Section First – Instructions to Bidders**  
**For Non-Consultancy Services Contracts**

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# Instructions to Bidders

## A. General

### 1. Scope of Bid

**1-1** The "employer" that shall be identified in section 2 (Bid Data Sheet) has extended an invitation to provide services described in annex (A) and the terms of reference of the contract and name and number of the **Bid** is listed in the **bid data sheet**.

**1-2** The winning bidder is expected to complete the performance of services at the date required and specified in **bid data sheet**.

### 2. Source of Funds

**2-1** The funding **source** shall be specified in **bid data sheet**.

### 3. Eligible Bidders

**3-1** This invitation for bids is open to all bidders from eligible countries as described in section 4. The origins of all services, equipment and materials used for the purposes of implementing the contract shall be from eligible countries.

**3-2** All bidders shall, under bidding forms in section 3, make an undertaking that he (or members of the joint venture and subcontractors) has no connections currently or previously, directly or indirectly, with the consultant or any entity prepared the designs and specifications and any of the project's documents for the contract, or has been proposed as project manager for the contract. And the firm or any of its personnel that has been contracted by the employer to provide the consulting services for the preparation or supervision services shall **be eligible** to participate in the bid.

### 4. Qualifications of the Bidder

**4-1** All bidders shall provide an initial description for the services method proposed to be submitted with schedules, drawings and data as required under bidding forms in section 3.

**4-2** All bidders shall include the following information required in section 3 in their bid unless otherwise provided in the Bid sheet data:

- a) Copies of the original documents of company's incorporation or its legal status, place of registration, its main place of business and authorization letter/**power of attorney** certified by the notary in the name of the person authorized to submit the bids;
- b) The volume of the bidder's financial commitment for each of the last three years;

- c) Bidder's experience for the last three years in the implementation of similar services, with details of such services, current, and previously performed supported by names and addresses of employer for which such services is being performed for the purpose of contacting them and verify his performance;
- d) Qualifications and experience of the leadership staff to manage the site and the proposed technicians to implement the contract;
- e) Reports of the final accounts for the last three years audited by legal auditors where profit and loss are indicated therein;
- f) Evidences on the availability of financial resources (capital necessary) to implement the contract (identifying the balances and other financial sources);
- g) Authorize the employer the preference (entitlement) to inquire on the status of the bidder from the banks he deals with;
- h) Information concerning any unresolved disputes for current contracts or for the last three years which one of its parties is the bidder and other relevant parties and the amount of such disputes; (documented history of lawsuits or calls for arbitration issued against bidder or any of the partners in the joint venture that may cause his non- eligibility);
- i) A list of spare parts (if any) as specified in the bid data sheet;
- j) Works proposed to be awarded as subcontracts which exceed (10%) of contract value;
- k) Proposed plan by the bidder to implement the services specified in the terms of reference referred in paragraph (3-2) of section 3/ eligibility requirements information;
- l) Service provider's plan to manage the services specified in paragraph (3-3) of section 3/ eligibility requirements information;
- m) Bidder's plan for training specified in paragraph (3-4) of section 3/ eligibility requirements information.

**4-3** The bids submitted by the joint venture consisting of two parties or more shall meet the following requirements unless otherwise provided in the **bid data sheet**:

- a) The bid shall include the information mentioned in paragraph (4-2) above for each of the parties consist the joint venture.
- b) The bid shall be signed by all parties consist the joint venture.
- c) The bid shall include a copy of the joint venture Agreement that set out the commitments of both parties' participants. And an undertaking of their commitment jointly to the implementation of the contract under the contract conditions. This can be replaced by providing an intent letter on enter into a joint venture agreement signed by all parties participating in the joint venture in case of their bid is nominated to win with a draft of the agreement.
  - d) One of the participants in the joint venture shall be chosen to lead the joint venture and shall be authorized the powers to receive guidance on behalf of the rest of the parties involved.
  - e) The implementation of the contract and the receipt of payments shall be carried out by the partner who is the leader of the joint venture.

**4-4** Bidders shall achieve the minimum qualification requirements for the purpose of nomination to win the contract:

- a) The annual volume of services delivered by him that are similar to those referred to in the **bid data sheet**;
- b) Past experience including the minimum of the services projects previously executed by the services provider of similar nature and size as specified in the **bid data sheet**;
- c) The minimum equipment to be secured by the service providers to implement the services as shown in the **bid data sheet**;
- d) The project manager and the leading staff of the service provider for this project shall be experienced personnel as specified in **bid data sheet**; and
- e) The availability of cash and / or banking facilities that is not indebted to any other previous obligations and not include the advance payments expected that may entitled to the bidder at the conclusion of the contract to be entered and the amounts specified in the **contract data sheet**.

**4-5** In the case of joint venture, the conformity of bidder to the minimum standards of qualifications in the Instructions to Bidders, sub-paragraph (4-4) (a), (b) and (c) shall be determined by collecting indicators of all participants in the joint venture. Except that for the purpose of determining the power of shareholder in charge of the joint venture, he shall corresponds to at least 40% of the lowest standards approved of the single bidder, while other partners shall correspond to 25% of the standards. Not being able to meet this demand shall result in rejection of the bid of shareholders of the joint venture. And the resources and expertise of subcontractors will not be taking into account when determining bidder's conformity with qualification criteria, unless otherwise provided in the **bid data sheet**.

## **5. Bidder's right to submit one bid**

**5-1** Bidder shall submit one bid, either individually or as a shareholder (participant) in the joint venture. In case of submitting or participating in more than one bid (except in case of his participation as a subcontractor for one of the bidders or submitted an alternative bid based on employer's request or approval) , that will lead to non-eligibility of any of the bids submitted by him.

## **6. Cost of Bid**

**6-1** Bidder shall bear all costs resulting from preparing and submitting his bid, and employer shall not in any way be responsible for such costs.

## **7. Site visit**

**7-1** It is preferred that bidder, with the assumption of full responsibility, visit and examine the site of the services required specified in bid data sheet before submitting his bid. In addition to examining areas adjacent to the site and obtain complete information in addition to the information specified in bidding documents, that may be necessary and might affect in one way or the other on achieving his obligations in the implementation of the contract, or affecting the financial balance of the contract in a prelude for the preparation of the bid to enter a contract for the implementation of such services. Any negligence or delay or failure of the bidder to obtain the necessary information referred to above will not relieve the contractor who will be awarded the contract from bearing risk, obligations and responsibilities in the delivery of services within the time and cost specified in the bid. Bidder shall bear the costs arising from the site visit.

**7-2** It is preferred that the bidder shall, and on his own responsibility, attend pre-bidding meeting specified in bid data sheet, and shall bear all costs resulting for attending the meeting.

## **B) Tender Documents**

### **8. Contents of Tender Documents**

**8-1** Bidding documents set contain the documents listed in the table below and the additions that are issued under article (10) of the Instructions to bidders:

<b>Section one</b>	Instructions to Bidders
<b>Section two</b>	Bid Data Sheet
<b>Section three</b>	Bidding Forms
<b>Section four</b>	Eligible Countries
<b>Section five</b>	Schedule of activities
<b>Section six</b>	General conditions of the contract
<b>Section seven</b>	Special conditions of the contract
<b>Section eight</b>	Technical Specifications of Works & Drawings (if any)
<b>Section nine</b>	Contract Documents
<b>All Annexes (if any)</b>	

**8-2** The form of bid invitation issued by employer shall not be deemed of bidding documents.

**8-3** **It is assumed** that the bidder examines all instructions, forms, items and specifications in bidding documents and to consider providing the required information thereto, where failure in performing this or submit an implied bid unresponsive in all aspects to such documents shall be on the bidder and shall subject his bid to rejection or exclusion. Sections (three and five) shall be completed and submitted with the bid with the number and copies fixed in **bid data sheet**.

### **9. Special inquiries to clarify tender documents**

**9-1** When bidder wishes to obtain clarifications on bidding documents, he shall give a written or telegraphic (fax or email) notice to employer at his address fixed in bidding invitation. Employer shall respond to any request for clarification given over a period of no less than 14 days from the deadline for submission of bidding, and to give a copy of the request for clarification and his respond to all bidders without mentioning names.

### **10. Amendment of Tender Documents**

**10-1** Employer shall have the right to make change on bidding documents by issuing an attachment of the amendments in a date not exceeding the deadline for submission of bids.

**10-2** The bid attachment issued shall be part of the bidding documents and shall be delivered in writing or telegraphically (by fax or emails) to all bidders participating in the bid.

It is required of bidders to confirm their receipt of the bid attachment telegraphically (by fax or emails).

**10-3** Employer shall determine the deadline for the submission of bids and to give the bidders a proper time to take into account the amendments mentioned in the

attachment when preparing their bids, pursuant to the provisions of paragraph (2-2) of the Instructions to bidders.

## **C) Preparation of Bids**

### **11. Bid Language**

11-1 The bid and all the correspondence and the documents exchanged between the bidder and the contracting party must be prepared in the language referred to in the paper of bid data. The bidder submit and of the literature related thereto which constitute part of his bid in another language, provided that it must be accompanied with an accurate translation for its texts to the language of the bid. Hence the translation will be accepted for the purpose of interpreting the bid.

### **12. Documents Comprising the Bid**

12-1 The bid submitted by the bidder shall include the following:

- a) Bid Forms (in the form specified in section 3)
- b) Bid bonds
- c) A priced schedule of activities
- d) Qualification Information form and documents
- e) Annexes containing the information required to be completed by the bidder, (if any);

In addition to any other items to be provided and completed by the bidder in accordance to what is mentioned in the **bid data sheet**.

12-2 Bidders who wish to obtain a contract of several contracts referred to in the bidding invitation may submit their proposal on the discount percent proposed towards the group of contracts. (This paragraph shall only apply on bids that result in several contracts).

### **13. Bid Pricing**

13-1 This contract is for the services described in annex (A) of the contract that contain the terms of reference and the specifications referred to in section 8 (if any) and according to the priced schedule of activities referred to in section 5 and priced by the bidder.

13-2 Bidder shall write the percentages and prices corresponding to all items of the services described in annex (A) (Terms of Reference), which are listed in the schedule of activities of section 5. And items that are not priced, its amounts shall not be paid upon implementation where its implementation cost shall be included within the remaining items of the priced schedule of activities. In order for the bidder to implement any of the activities described in the schedule of activities, he shall fix this in his bid.

13-3 Bid prices shall be inclusive for all taxes, customs, fees and any other charges related to the contract applicable in the period precede the deadline for the submission of bids in 28 day. **Other than exempts applicable (if any) and specified in the bid data sheet.**

- 13-4** Prices and chargers provided by the bidder are subject to amendment during the implementation of the contract under the provisions of paragraph (6-6) of the General and special conditions of the contract.
- 13-5** For the purpose of determining the necessary compensation for the implementation of additional services, bidder shall provide a detailed analysis table of overall prices and under the form of annex (D) of the contract.

## **14. Currencies of Bid Pricing and Discounts**

- 14-1** The overall price of the bidder shall be included separately and with the following currencies:
- a) Input prices of services of local bidder shall be listed in the currency of the employer's country (Republic of Iraq) Iraqi dinar unless provided otherwise in the **bid data sheet**; and
  - b) Input prices of services of foreign bidder shall be listed, by adopting any of the foreign currencies approved widely in the international trade or as specified in the bid data sheet;
  - c) The contract amount and payments shall be in Iraqi dinar. The amounts of schedule of activities provided in foreign currency of the foreign bidder shall be adjusted to Iraqi dinar under the exchange rate referred to in paragraph (28) of the Instructions to bidders.
- 14-2** Bidder shall submit detailed requirements of his expected need of foreign currency in his bid.
- 14-3** Employer may ask bidders to justify their requirements related to foreign currency and prove that the amounts in foreign currency implicitly contained in the overall price is reasonable and in accordance with the provisions of paragraph (14-1) of the Instructions to bidders.

## **15. Bid Validity Period**

- 15-1** Period of validity of bid shall be as specified in **bid data sheet**.
- 15-2** In exceptional circumstances, employer shall have the right to request the bidders to extend the period of validity of bid for an additional period specified under a written notice or through an email to all bidders thereon. And the bidder shall have the right to reject the request to extend the period of validity of his bid without confiscating the bid guarantee provided by him. The bidders responding to the extension request shall not be requested or allowed to make amendment on their submitted bids but they have to extend the period of validity of bid for the period specified in paragraph (16) of the Instructions to bidders.

## **16. Bid Guarantee**

- 16-1** The bidder shall, as part of his obligations in the bid, provide a bid guarantee attached to his bid in the form and amount specified in the bid data sheet.
- 16-2** The bid guarantee amount shall be as specified in the bid data sheet and in the currency of the employer's country or by adopting a convertible currency, as shown below:
- a) To be issued in the form of a bank guarantee or a certified check.
  - b) To be issued from an accredited bank in Iraq and accepted by the employer.
  - c) That the bank guarantee shall be in accordance with the form specified in Section 9 (contract forms) or any acceptable from by the employer.
  - d) That it shall be payable at request according to a written notice by the employer and for the reasons mentioned in paragraph (16-5) of the Instructions to bidders.

- e) The original copy shall be provided and reproduced copy shall not be accepted.
  - f) That it shall be valid for (28) day after the expiry of the period of validity of bids and any extension thereafter, pursuant to paragraph (15-2) of the Instructions to bidders.
- 16-3** The bid shall be considered unresponsive in case of not attaching the bid guarantee, when bids state on the inclusion of bid guarantee pursuant to the provisions of paragraph (16-1) of the Instructions to bidders.
- 16-4** Insurances shall be returned to un-nominated bidders as soon as the winning bidder provides the performance guarantee pursuant to the provisions of paragraph (34) of the Instructions to bidders.
- 16-5** The Bid guarantee shall be confiscated if the winning bidder fail in:
- 1) Signing the contract under paragraph (33) of the Instructions to bidders;  
or
  - 2) Providing performance guarantee under paragraph (34) of the Instructions to bidders.
- 16-6** The bid guarantee of the joint venture shall be issued in the name of the joint venture submitting the bid. But if the joint venture has not been formed legally at the time of bid submission, then the bid guarantee shall be issued in the name of all the participants (shareholder) in the joint venture in which their participation is expected in the future as shown in the letter of introduction of the joint venture proposed to be established.

## 17. Alternative Bids

- 17-1** Alternative bids shall not be accepted, unless provided otherwise in the **bid data sheet**.
- 17-2** When the implementation period is competitive, reference is made in the bid data sheet to the bids evaluation manner in light of this.
- 17-3** For bidders who wish to submit technical alternatives for the requirements mentioned in the documents constituting the bid, they shall first provide an integrated bid conform with the aforementioned requirements that includes the scope of work, key technical indicators, data documents, drawings and specifications, only in case of relying on what is mentioned in paragraph (17-4) of the Instructions to bidders. In addition to the submission of the main bid, bidders shall provide all the necessary information that includes accounts, technical specifications, and detailed tables of prices, proposals for the pattern of work approved, in addition to any other relevant details and to enable the employer of evaluating the bid and the alternatives comprehensively. Employer shall adopt technical alternatives (if any) for the underbid bidder according to the evaluation whose bid shall conform to the basic technical requirements. Alternatives regarding performance levels conformed shall not be accepted.
- 17-4** When **bid data sheet** states on allowing bidders to submit alternative technical solutions for parts of the services, then such parts shall be described in the specifications or (terms of reference) and drawings referred to in section 8. In such case, reference shall be made to the manner of evaluating such alternatives in the **bid data sheet**.

## 18. Bid Wording and Signing

- 18-1** Bidder shall prepare an original copy of the documents constituting the bid as shown in paragraph (12) of the Instructions to bidders including the part regarding bid form that contains the bid submission form and the envelop that contains it shall be marked by the work (original copy) clearly. Bidder shall provide additional copies of the bid according to what is mentioned in **bid data sheet** and marking the envelope

with the words (additional copy). In case of a difference between the original and additional copy, the original copy shall be relied on.

**18-2** All original copies and reproduced copies shall be printed or written in an ink and shall be signed by the person or persons authorized by the bidder pursuant to the provisions of paragraph (4-2-a) or (4-3-b) as required. Bid pages that amendments or addition are made thereon shall be signed by the authorized persons to sign the bid.

**18-3** Bid shall not contain any alterations or additions except those consistent with employer's instructions, or as necessary for the purpose of correcting bidder's errors, and in this case, amendments shall be signed on by such persons authorized to sign by the bidder.

## **D) Submission of Bids**

### **19. Sealing and Marking of Bids**

**19-1** Bidder shall place the original and the reproduced copies of his bid in separate envelopes marked by the words (original copy) or (additional copy) and then the envelopes that contain the original and the reproduced copies shall be placed in one envelop and inner and outer envelopes shall be closed and sealed well.

**19-2** The inner and outer envelopes shall be marked as shown below:

- a) Addressed to the employer according to the address referred in the **bid data sheet**;
- b) Marked by the contract name and number as specified in the **bid data sheet** and the special conditions of the contract;
- c) With a note not to be opened before date and time specified for the opening of bids as specified in the bid data sheet.

**19-3** In addition to the information required under sub-paragraph (2-19) of the Instructions to bidders, the name and address of the bidder shall be shown on the two inner envelopes to be able to return the bid closed in case of declaring it being a late bid according to the Instructions to bidders article (12).

**19-4** Employer shall bear no responsibility in relation to misuse or pre-opening of the bid if the outer envelope was not marked and sealed (closed) according to what is mentioned above.

### **20. Deadline for Submission of Bids**

**20-1** Bids shall be delivered to employer at the address mentioned above and at the final time and date specified in the **bid data sheet**.

**20-2** The employer has the right to extend the deadline for submission of bids by issuing an amendment under article (10) of the Instructions to bidders, and in this case the rights and obligations of each of the employer and bidders that have been specified according to the initial deadline, shall be subject to the new deadline for submission of bids.

### **21. Late Bids**

**21-1** Any bid been received by the employer after the deadline specified in article (20) of the Instructions to bidders shall not be opened and shall be returned to the bidder closed.

## 22. Withdrawal and Amendment of Bids

- 22-1** Bidders shall have the right to modify or withdraw their bids by giving a written notification prior to the deadline specified in article (20) of the Instructions to bidders.
- 22-2** Bidder shall prepare, close, mark and deliver the notice of modification or withdrawal of his bid under articles (18) and (19) of the Instructions to bidders and to mark the outer and inner envelopes with the word "Modification" or "Withdrawal" according to the nature of the notification.
- 22-3** No modification on the bid after the deadline for submission of bids is allowed.
- 22-4** Giving **written** notice by the bidder to withdraw his bid in the period between the deadline for submission of bids and the expiry date of the bid fixed in the bid data sheet or the date of the extension of the bid into force under paragraph (15-2) of the Instructions to bidders, **not acceptable according to the prevailing legislations.**
- 22-5** Bidders may propose to modify their prices or propose a discount for the prices of their bids by submitting a modified bid under this paragraph or include it within the original bid that shall be submitted.

## E) Opening and Evaluating of Bids

### 23. Opening of Bid

- 23-1** Employer (**committee for opening bids**) shall open the bids including the modified bids under paragraph (22) of the Instructions to bidders, in the presence of bidders **or their authorized representatives**, who wish to attend at the time and date specified in the **bid data sheet**.
- 23-2** Envelopes that are marked "Withdrawal" shall be opened and read first and that bids in which the employer accepted the request to be withdrawn pursuant to the provisions of article (22) of the Instructions to bidders shall not be opened and shall be returned closed.
- 23-3** The employer shall, during the opening of the bids, announced what he thinks is necessary with regard to the names of the bidders or bid prices or the total amount per bid and any alternative bid (as requested or allow the submission of alternatives), or any discounts or modifications or withdrawal of the bid or the availability of Insurances or lack thereof, in addition to any other details related to the bid. No bid shall be excluded in the bid opening session, except late bids pursuant to the provisions of article (21) of the Instructions to bidders, and that the bids and the modifications presented under article (22) of the Instructions to bidders shall not be subject to analysis process later on if they are not opened and read publically for any reason whatsoever. Late and withdrawn bids shall not be opened and they shall be returned to their owners closed.
- 23-4** Employer shall prepare bid opening meeting minutes which includes the information that has been announced to the attendees under paragraph (23-3) of the Instructions to bidders.

### 24. Confidentiality of Procedure

- 24-1** The information concerning examining, clarifying, evaluating and comparing bids and the recommendations to award the contract to bidders or to other persons who do not have a formal relationship with these procedures until the notification of award to the winning bidder shall not be disclosed and shall remain confidential. And that any action taken by a bidder to influence the employer during the stages of studying and opening of bids and decision-making of awarding may result in exclusion of the bid and reject it.
- 24-2** After notification of award is issued, bidder who wishes to inquire the reasons upon which his bid has not been selected may give notification in this regard to the employer who in return shall provide a written clarification thereof. **The bidder is entitled to inquire about his own bid, while he has no right to inquire about the other bids, it is not allowed to obtain information concerning the bids of competitors.**

## **25. Clarification of Bids**

- 25-1** The employer shall have the right (if required) and for the purpose of facilitating the procedures of the examination, evaluation and Comparison of bids, to inquire from any bidder to clarify his bid and the details of the prices provided in the schedule of activities and any other information that may be required by the employer. The notice of a request for clarification and its answer shall be in writing, or by facsimile or emails but it is not allowed to make or suggest or allow the change of prices or bid component except with regard to what is requested to be confirmed, clarified or corrected of calculation errors discovered by the employer during the stage of evaluation of bids pursuant to the provisions of article (27) of the Instructions to bidders.
- 25-2** To complete paragraph (25-1), bidder shall not be allowed to contact the employer in terms of any matter related to his bid from the time of bid opening and up to award the contract. In case of the bidder wishes to provide additional information he shall notify the employer in writing.
- 25-3** Any act carried out by the bidder aiming to influence the employer in each stage of the bid evaluation or award of contract could result in the rejection of his bid.

## **26. Examination of Bids and Determination of Bid Responsiveness**

- 26-1** Before commencing with detailed evaluation of the bid, employer shall determine whether each bid:
- a) Is in conformity with the qualification criteria specified in paragraph (3) of the Instructions to Bidders,
  - b) Signed properly
  - c) That the insurances required is attached to the bid
  - d) That the bid is fully responsive to the requirements of the bidding documents.
- 26-2** The responsive bid is that corresponds to the terms and conditions and specifications of all bidding documents and shall be free of any significant deviations or reservations. The fundamental reservations or deviations are those which:
- a) Materially affect the scope and quality and / or the performance of services;
  - b) Limit substantially and are not compatible with the rights of the employer or the bidder's obligations under the contract that are specified in the bidding documents; or
  - c) Their correction unfairly affects competition with other bidders that their bids are responsive substantially.
- 26-3** If the bid is substantially unresponsive, it shall be excluded by the employer and it may not render it responsive later on to requirements through correction of errors or withdrawal of deviations or reservations that are incompatible with the bidding documents.

## **27. Correction of Errors (Arithmetical Errors)**

- 27-1** The employer shall substantially check the responsive bids mathematically. Arithmetical errors shall be corrected according to the following bases:
- a) When there is a discrepancy between the unit price and the item's total amount, which is obtained by multiplying the per unit price by the quantity, in this case the unit price is relied on and the total amount shall be adjusted in the light of this;

- b) When an arithmetic error in grand total is found through conducting the process of adding and subtracting numbers of items' amounts, items' amounts are adopted to correct the grand total amount of the bid; and
  - c) When a discrepancy occurs between the amounts in figures and written, the amounts that are presented in written shall be relied on.
- 27-2** Employer shall modify the amounts mentioned in the bid according to the error correction procedures referred to above and to obtain the bidder's approval and the results of the correction shall be compulsory on the bidder. In case of non-acceptance by the bidder to the corrected amounts, the bid shall be excluded and rejected and bid guarantee can be confiscated pursuant to the provisions of paragraph (16-5-b) of the Instructions to bidders.

## **28. Bid pricing currency for evaluation purposes**

- 28-1** Employer shall convert, the amounts in various currencies for bid's items payable (not including the reserved amounts but the amounts of daily wage labor only those that have been priced competitively) that are corrected according to article (27) of the Instructions to bidders, to the currency of the employer's country (the Republic of Iraq) the Iraqi Dinar according to the selling price adopted by the Central Bank of Iraq for similar transactions in the **deadline for submission of bids specified in paragraph (20.1) of the bid data sheet.**

## **29. Evaluation and Comparison of Bids**

- 29-1** Contracting party (committee of evaluating and analyzing the bids) shall evaluate and compare bids that are deemed substantially responsive for the requirements pursuant to the provisions of article (26) of the Instructions to bidders.
- 29-2** Contracting party (committee of evaluating and analyzing the bids) shall, when evaluating the bid, determine the bid price by adopting what is mentioned below:
- a) Carry out any errors correction pursuant to the provisions of article (27) of the Instructions to bidders;
  - b) Exception of reserved amounts and the amount of the general reserve in the schedule of activities – section (five), but by adding the daily paid work when required in the specifications (or terms of reference) section (eight);
  - c) Carry out an appropriate modification on bid amount as a result of any acceptable changes or deviations or alternative bids that have been submitted under article (17) of the Instructions to bidders; and
  - d) Carry out an appropriate modification on bid amount that reflects the reductions or price modifications provided by the bidder under paragraph (22-5) of the Instructions to bidders.
- 29-3** The Contracting party (committee of evaluating and analyzing the bids) shall reserve the right to accept or reject any change and deviation or an alternative proposal. The changes or deviations or the alternative proposals or any other elements mentioned in the bids that exceed the requirements specified in the bidding documents which may result in intangible benefits to the employer shall not be adopted (approved).

## **30. Margin of Preference of the local bidders**

- 30-1** Any margin of preference to local bidders during the evaluation of bid stage shall not be given.

## **F) Award of Contract**

### **31. Adopted Criteria of Award**

**31-1** Pursuant to the provisions of paragraph (32) of the Instructions to bidders, the employer shall award the contract to the bidder whose bid was substantially responsive to bidding documents and whose bid price was the lowest after completing bids analysis, with the availability of the following in the bidder:

- a) That he shall be eligible (qualified) under the terms of article (3) of the Instructions to bidders; and
- b) That he has been evaluated based on the terms of article (4) of the Instructions to bidders.

**31-2** If bidding documents contain the adoption of segmentation or a group of contracts in the award pursuant to the provisions of paragraph (12-2) of the Instructions to bidders, and this will lead to the adoption of lower prices of the bids as specified element when the evaluating the bid compared with other contracts that are awarded at the same time, taking into account any discounts proposed by the bidder in his bid for the purpose of award more than one contract to him.

### **32. Employer's right to accept or reject any bid or all Bids**

**32-1** Regardless of paragraph (31) of the Instructions to bidders, the **contracting party** shall have the right to reject or accept any bid, or cancel contracting procedures and to reject all bids at any time before the award of contract, and this is without causing any liability on the bidder or bidders affected by that step taken by the employer.

### **33. Notification of Award and signing of agreement**

**33-1** The employer shall, before the expiry of the validity of the bid, notify the winning bidder in writing of accepting his bid. The notice of acceptance of bid identified hereinafter as (Award Letter) in each of the form of contract and the general conditions of the contracts shall include the amount payable by the employer to the contractor for the implementation and completion of services and their maintenance (identified hereinafter in the form of contract and the general conditions of the contract as the "contract amount").

**33-2** The notification of award shall contain the conclusion of contract requirement.

- The form of contract specified in bidding documents includes, all agreements concluded between the employer and the winning bidder. And shall be signed by the employer and sent to the winning bidder with the award letter. The winning bidder shall, within (14) day from the date of receiving the award letter, **or (29) days including the warning period and after the end of appeal period, sign the contract, set its date and return it to the employer with the good performance guarantee required pursuant to the provisions of article (34), or in a period not exceeding (29) days including the warning period; otherwise the legal actions shall be taken concerning the forfeiture. The contract shall be approved in accordance with what is stipulated in the bid data sheet.**

**33-4** The employer shall, when completing the procedures under paragraph (33-3), immediately notify unsuccessful bidders of the name of the winning bidder and that the bid guarantee provided by them shall be returned as soon as possible.

**33-5** If any of the bidders, after the issuance of the award letter, want to inquire about the reasons on which their bid was rejected, he can submit a request in this regard to the employer. Then the employer shall answer the bidder in writing as soon as possible.

### **34. Good Performance Guarantee**

**34-1** The winning bidder shall deliver to the employer a **good** performance guarantee **within (14) days or (29) days including the warning period** from the date of receiving the award letter in the amount and form described in the bid data sheet, specifying the form and percentage of the currencies mentioned in the award letter and the general conditions of the contract.

**34-2** If the winning bidder submitted the **good** performance guarantee in the form of a bank guarantee, this shall be done by an accredited bank in the employer's country (the Republic of Iraq).

**34-3** When the winning bidder is unable to perform the requirements in paragraph (34-1) of the Instructions to bidders, then in this case the contractor shall be considered in breach and the **good** performance guarantee shall be confiscated and the work shall be implemented on his account.

### **35. Advance payment and guarantee**

**35-1** Employer shall disburse an advance payment on the contracting amount as mentioned in the conditions of the contract and in the value specified in the **bid data sheet**.

### **36. Fraud and corruption practices**

**36-1** Employer shall require from bidders, contractors and their subcontractors, suppliers and consultants contracted to adhere to the highest standards of ethics during the contracting process and contract implementation. And to achieve this policy:

a) The employer shall adopt the following definitions for the purpose of these texts:

- 1) "Corrupt practices" shall mean provide or give or receive or solicitation of, directly or indirectly, anything of value to influence the work of an official in a position of public responsibility during the supply process or contract implementation.
- 2) "Fraudulent practices" shall mean any misrepresentation or deletion of any facts in order to influence the supply process or contract implementation.
- 3) "Collusion practices" shall mean any planning or coordination between two or more bidders, with or without the knowledge of the employer in order to set fake and uncompetitive prices.
- 4) "Coercive practices" shall mean harm or threat to harm, directly or indirectly, the persons or their properties to influence their participation on the supply process or to influence the contract implementation.

5) "Hindrance practices" and shall mean the following:

**First** - The deliberate destruction or forgery or change in documents or withholding evidence necessary for investigation or give false testimony to investigators to hinder the investigation by the employer concerning administrative corruption practices or fraud or collusion or coercive practices or threat or harassment or

obstruction of any party and prevent him from providing any information relating to the investigation or to prevent him from pursuing the investigation.

**Second** – Practices that hinder the employer from pursuing the audit and review procedures pursuant to clause (36-1-d) of Instructions to bidders.

- b) Award of contract proposal shall be rejected if it found out that the bidder who submitted it who has been selected to be awarded the contract has involved, directly or through an agent, in corrupt or fraudulent or collusion or coercive practices or hindrance during his competing for the contract in question.
- c) Penalties shall be imposed on any institution or individual that has been chosen to be awarded the bid, including the announcement of ineligibility, for limited or unlimited period, if it is found at any time that the institution has been involved, either directly or through an agent, in corrupt, fraudulent, collusive or coercive practices or hindrance during the competition for the contract and / or during the implementation of that contract.
- d) Adding a condition in the contract documents, and the contract funded by the employer states that the bidders or suppliers or contractors or consultants shall allow the employer to carry checks on their accounts, records and documents related to contracting procedures and the to implement the contract and to allow to be audited by auditors appointed by the employer.

**36-2** In addition to the foregoing, the bidder shall become familiar with the conditions mentioned in paragraphs (1-7) and (2-6-2) of the general conditions of the contract

**Section Two: Bid Data Sheet**  
**For non-consulting services contracts**

a) General	
1-1	Name of employer Name and No. of direct invitation
1-2	Contract completion date on
2-1	Funding resources : The federal budget of the Republic of Iraq
4-2	Documents and information to be provided by the bidder referred to in the bid form shall include the following: <ul style="list-style-type: none"> <li>a. Original copies of the documents concerning the incorporation of the company and its legal status. Place of registration and its principal place of business and an authorization letter of the person authorized to sign certified by the notary.</li> <li>b. The total cost for the services performed during the previous three years by the bidder</li> <li>c. Previous services contracts similar in terms of quality and volume performed by the bidder during the previous three years with details of such performed services, with names and addresses of the beneficiary that the employer might resort to ask for more information about such contracts.</li> <li>d. Qualifications and experience of the leadership staff and technical staff proposed for this contract.</li> <li>e. The reports of final accounts for the three previous years certified by legal auditors explaining the profit and loss realized.</li> <li>f. Evidence of the availability of operational capital adequate to perform the contract (with investigation methods to verify balances and other funding sources);</li> <li>g. Information of any legal conflicts current or during the previous three years related to the bidder and other related parties and the extent of such conflicts. (A documented history of lawsuits or arbitration proceedings issued against the bidder or any of the partners in the joint venture, which may cause his non-qualification).</li> <li>h. Works proposed to be awarded as sub-contracts that are more than 10% of the contract value with mentioning the names, qualifications, expertise and the legal status of each of the subcontractors.</li> </ul>
4-3	Documents and information to be provided by the bidder (joint venture) under section 2/qualification requirements shall include the following: <ul style="list-style-type: none"> <li>a. Documents and information required above referred to in paragraph (4-2) of the Instructions to bidders and from each participant in the joint venture.</li> <li>b. The bid shall be signed by all members of the joint venture to become binding on all participants.</li> <li>c. The bid shall include a copy of the joint venture agreement set out the obligations of all participating parties and a pledge of their joint obligation to perform the contract under the terms of the contract; and it can be replaced by submitting a letter of intent concerning the Conclusion of the joint venture agreement signed by the parties participating in the joint venture in case of their bid be nominated to win with the draft agreement.</li> <li>d. One of the participants in the joint venture shall be chosen to lead the joint venture and authorize him the powers to receive guidance on behalf of the rest of the parties involved.</li> <li>e. The contract shall be implemented and payments shall be received from the leader partner of the joint venture.</li> </ul>
13-3	The prices of bids shall include all taxes, custom duties, fees and others (insert and exception if any)
4-4-a	The rate volume of the services performed during the previous years (insert the number of years) should not be less than
4-4-b	The minimum of the previous experience of the service provider during the previous years (insert the number of years) shall not be less than:
4-4-c	Necessary equipment to be secured by the service provider to implement the services in minimum:
4-4-d	The project manager and the leadership staff of the project shall be as shown below.

4-4-e	Insert the volume of cash that should be available for the project:
7-1	Time and date of the visit: Name of the person authorized to be the point of contact about the visit: Phone number of the authorized person: Email address of the authorized person:
7-2	Address of the site of the conference: Time and date of the conference:
b) Bidding documents	
8-1 & 8-2	Copies to be completed and submitted by the bidder: original copy of the bid and two reproduced copies.
c) Preparation of Bids	
1-11	Bid language: (Insert the language or languages) and in the event of a disagreement in the interpretation (insert the language of the text) is adopted:
12-1	Additional data to be provided by the bidder:
13-4	The prices and fees submitted by the bidder to the adjustment during the implementation of contract shall be (fixed, adjustable)
14-1 (a)	Bidders shall submit their bids in Iraqi dinar.
15-1	Period of Validity of Bids (insert number of days) day from the deadline for Submission of Bids.
16-1	Bidders shall attach the bid guarantee with their bid in the form of a certified check or a bank guarantee issued by an accredited bank in the Republic of Iraq, certified by the central bank and acceptable to the employer.
16-2	The bid guarantee shall be ( %) of the bid amount.
17-1	It is (permitted, not permitted) to submit the alternative bids
17-3	It is (permitted, not permitted) to submit the technical alternatives of the requirements mentioned in the documents consisting the bid.
d) Submission of Bids	
19-2	Bids shall be submitted to the following employer's address: The following information shall be affixed on the bid's envelope: Contract name: Number of bid of direct invitation:
20-1	Deadline for Submission of Bid: hour {insert the time} on {insert the date}
e) Opening and Evaluation of Bids	
23-1	Bids shall be opened at {insert the time} hour on {insert the date} at the following address:
f) Contract award	
34-1	Performance guarantee shall be in a form accepted by the employer and in the form of a letter of guarantee issued by an accredited bank in Iraq, with a percentage ( %) of the contract value in the contract's currency.
35-1	The advance payment: {insert allowed or not allowed} in this contract

## **Section Three – Bid Forms for The contracts of Non-Consultancy Services**

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## Form of Bid Submission

No.:

Date:

To: [insert the name and address of employer]

We submit our bid after we have studied the bid documents and annexes ( ) to implement the special contract [insert the name and number of project] according to the contract conditions, terms of reference, specifications, drawings, and the priced schedule of activities attached to the contract, with a cost of [insert the amount in figures] and [insert the amount in writing] [insert the currency]

Currency	Amounts Payable in this currency	Entries for each currency

Our bid is attached to the priced schedule of activities, which explains the total price against the operation and maintenance, against each activity.

This bid or letter of award are considered as the contract, we understand that you are not obliged to accept the lowest bids or any other bid submitted to you

We undertake that our bid is fulfilled as far as the matter concerns the bid validity and the amount of bid guarantee specified within the bid documents/bid data sheet.

We approve that the preliminary deposit paid by us according to Para (16) of the Instruction to Bidders shall be in your possession as a guarantee of our good intention, and in case we have not attended to sign the contracting form within the period specified in Para (33) of the Instructions to Bidders, you shall have the right to confiscate the said bid bonds **and award the work to another candidate in accordance with the provisions prescribed in the tender documents, or take any other legal procedure according to the prevailing legislations.**

We also confirm that we (and any partners of our joint venture and our subcontractors) have not or had not participated, directly or indirectly, with the contractor or any other party that carried out the designs of the project or laid out the specifications or any other documents for the service proposed to be executed according to the contract.

The commissions and rewards, if any, that have been or will be granted by us to the departments related to bid and contract implementation, in case of awarding the contract, are as follows:

Name and Address of Department	Paid amounts and Currency	Reasons for paying commissions and rewards

If no commissions and rewards are paid, to mentioned (None)

Signature of the Authorized Person:

Full Name of Authorized Person:

Bidder's Name:

Bidder's Address:

### Form of Eligibility Requirements Information

1. The bidders of single companies and any company within the joint venture shall submit the following:

1.1. Documents of Incorporation and legal status of the bidder and shall include the following:  
[Attached the document]

- State of Incorporation
- Its basic activity head office
- Authorized signatory: [attach the legal authorization]

1.2. The volume of annual financial liabilities for the previous three years of implemented services by the bidder in the internationally accredited currency stated in the data sheet of the Instructions to Bidders.

1.3. List of the similar services implemented by the bidder during the previous three years with same nature and cost similar to the service mentioned in this tender documents. The value of contracts of these services motioned in (2.1) above, and also the description of service details and the expected date of completion.

Ser	Project Name and State of Project	Employer Name And Specialized Employee	Type of Service and expected date of completion	Contract Value

1.4. List of the main equipment and devices that the service provider intends to use to carry out the task.

Insert the required information in the following schedule

Ser	Type of equipment or device	Its Description, Country of Origin and Operational life	Its condition (new, used, weak) and the available number	Ownership of equipment or device (owned by bidder, rented (mention the name of lessor), or will be bought (mention purchasing source))

1.5. Qualifications and experience of the senior staff working in the management and implementation of the contract. Attach their CV's by referring to Para (1.9) of the General conditions of Contract.

Ser	Position	Full name of Senior Employee	Years of experience in general	Years of experience in his current

1.6. The subcontractors and other parties, who are proposed to participate in the implementation contract pursuant to article (5.3) of the General Conditions of Contract.

Ser	Part of service	Subcontract value	Name and address of subcontractor	Previous experience in implementing similar service

- 1.7. The Financial Report of the previous three years: including the final accounts, Statement of Profits and Loss, the Report of Auditors, etc. include the documents later and attach a copy there of .
- 1.8. The information about any lawsuits related to the service provider, if they are ongoing or settled, within the previous three years

Ser	Other Party or Parties) (Adversary)	Reasons of Dispute	Details of the issued lawsuit Verdict	Amount of Dispute

- 1.9. The proposed program (mechanism of service and schedule) drawings and descriptive schedules necessary and appropriate for the tender documents.

## 2. Joint Venture:

- 2.1. Each partner in the joint venture shall submit the required information in Paragraphs (1.1-1.8) stated above.
- 2.2. The joint venture shall submit the required information in Para (1.9) above
- 2.3. Attach the authorization letter certified by the Notary Public of the authorized signatory of the contract agreement, on behalf of the participants of the joint venture.
- 2.4. Attach the agreement of joint venture (the legal agreement that involves all the participants of the joint venture), including the following:
  - (A) The commitment of all participants collectively to assume the joint responsibility in implementing the contract according to the contract conditions.
  - (B) The designation of a participant to undertake the joint venture management, assume the responsibility and receive the instructions issued by the employer on behalf of any or all the participants of the joint venture, and
  - (C) The contract implementation shall include the receipt of payments without exception from the leading partner of the joint venture.

## 3. Additional Requirements

- 3.1. The bidders shall submit any additional information in bid data sheet and meet the requirements specified in Article (4) of the Instructions to Bidders.
- 3.2. The bidder shall submit a technical proposal attached to his bid. The proposal will be adopted in evaluating the capability of bidder to implement the services stated in the terms of reference, thus your bid shall contain adequate information to reflect the comprehensive understanding of work requirements and shall also include a detailed plan of how realizing the implementation of the services described in terms of reference. It is required that the technical proposal shall contain the presentation of techniques and procedures that will be adopted by the bidder, in order to realize the required services, which are specified in the terms of reference.

And in order to realize a comprehensive and active evaluation, the bid requires being clear and integrated as much as possible, to enable the employer (work owner) to reasonably determine the capability of each bid to fulfill the requirements specified in the terms of reference. The proposal that presents a program that reflects the minimum capabilities needed to fulfill the requirements of terms of reference shall not be qualified to win the contract. The bidder must submit a presentation of the techniques that he will adopt in line with the requirements of terms of reference. The bidder dependence on expressions that are characterized with generality, for example, the reference to the commitment of the bidder to work according to the terms of reference, such as using the expressions (using the standard procedures)

or (internationally known techniques will be used), and those expressions characterized with generality that are used in the books of theories and techniques will not constitute to

reflect the required convenience of the technical proposal. It is essential that the bidder shall submit detailed information, in order that the employer (work owner) will later perform any calculations regarding the bidder

- 3.3. The bidder shall submit a proposal of services management with his bid. The proposal shall include the information about the organizational structure and the required staff for the services management. The information shall present the understanding of the bidder to the requirements of the terms of reference.
- 3.4. The bidder shall submit the training plan with his bid. The training plan shall include the information about how the bidder, according to which, will train the employees of the employer on the items of the main services specified in the Section Five/Schedule of Activities, if it is stipulated in the terms of reference in Annex (1) that the service provider shall train the employees of the employer on the implementation of services.

## **Form of Letter of Award**

No.:  
Date:

To/  
Sub. /

We are pleased to inform you that it has been approved to award the services [insert the title and number of tender as stated in the contract conditions in the bid documents], according to the price of your bid dated [insert the date of bid], amounting to [insert the price and bid currencies in figure and writing] as corrected and adjusted according to the Instructions to Bidders.

Requesting you to acquaint yourself with the contract form, whose copy is attached and contact to us not later than [insert the specified date in the bid data sheet] and to bring with you the good performance guarantee, in order to sign the contract within fifteen days and commence providing services pursuant to the contract documents.

With appreciation,

Enclosures: Contract Form

Name of the Authorized Signatory  
Position of the Authorized Signatory  
Name of Contracting Party

## Contract Form

### Payment Contracts with Total Amount

This contract was concluded on [Insert the date of signing the contract by the last party], between the first party [Insert the name of Employer], referred to as ("The Employer"), where his main workplace [insert the address of the Employer) and [insert the name of Service Provider], referred to as ("Service Provider"), where his main address is [insert the address of Service Provider].

**Whereas:**

- (A) The Employer requested the Service Provider to provided the services specified in the special conditions contract attached to this contract (named hereinafter as "Services")
- (B) The Service Provider agreed on providing the services according to the conditions specified hereunder in the contract, after the Employer was acquainted that they have the required professional competence.

**Accordingly**, both parties have agreed as follows:

1. The following documents are considered as integral part of this contract.
  - (A) Contract Form
  - (B) Special Conditions of Contract
  - (C) General Conditions of Contract
  - (D) Terms of Reference
  - (E) Priced Schedule of Activities
  - (F) Letter of Award
  - (G) Bid of Service Provider
  - (H) Annexes
    - Annex B: Schedule of Reports Requirements
    - Annex C: Leading Staff and Subcontractors
    - Annex D: Details of bid Price in the foreign currency
    - Annex E: Services and Support provided by the Employer
2. To state the rights and duties for each of the Employer and the Service Provider according to the provisions of contract, especially the following:
  - (A) The Service Provider shall provide the services, in accordance with the provisions of contract, or
  - (B) The Employer shall settle the payments to the consultants, in accordance with the provisions of contract.

**Accordingly**, both parties, as their stated names, have signed this contract in the aforementioned date and year.

**For and on behalf of the Employer**

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[Authorized Representative]

**For and on behalf of the Service Provider**

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[Authorized Representative]

#### **Section Four: Eligible Countries For the Contracts of Non-Consultancy Services**

The qualification for providing commodities, work execution or services in the contracts financed by the Employer:

- 1- The Employer has the right to allow the organizations and persons of all countries to supply commodities, execute works or provide services, for the projects financed by the Government of Iraq, and as an exception, the organizations in the countries or the commodities manufactured therein shall be prohibited from the participation in tenders in the following cases:
  - A- If the legislations or official instructions applicable in the Republic of Iraq prohibit establishing commercial relations with that country, provided the Employer shall be convinced that such prohibition will not prevent the achievement of fruitful competition for supplying goods or works execution.
  - B- In response to the resolution issued by the United Nations/Security Council under the Chapter Seven on the United Nations' Charter, by which the country of the Employer shall be prohibited from contracting to import any commodities, execute works or provide services, with that country or pay any amounts to persons or entities in that country.
- 2- And in order to have the bidder acquainted therewith, the commodities and services in the hereunder countries are prohibited from participation in this tender, according to the above instructions.

1) Regarding Para (1-A)

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2) Regarding Para (1-B)

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**Part Two – Schedule of Activities**  
**For the Contract of Non- Consultancy Services**

**Section Five - Schedule of Activities**  
**For the Contract of Non- Consultancy Services**

**Section Three – Contract Conditions and Contract Forms**  
**For the Contract of Non- Consultancy Services**

**Section Six: General Condition of Contract**  
**For the Contract of Non- Consultancy Services**

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# 1. General Provisions

Unless the context otherwise requires, the following terms shall have the meaning as assigned to them hereunder.

## 1-1 Definitions

- a) Schedule of Activities: Shall mean the priced lists of items constituting the services to be implemented by the service provider and which form part of the bid.
- b) Laws in force: Shall mean the Iraqi legislation, regulations, instructions and orders issued by any legally authorized public authority.
- c) Completion Date: Shall mean the completion date for services by the service provider confirmed by the employer.
- d) Confidential information: Shall mean all information of commercial, private security or technical nature that has been disclosed either in writing or verbally or in any other way directly or indirectly by one of the parties to the other whether this was made before or after the signing of the contract agreement including in particular any information about any of the parties such as know-how, projects, secrets and work affairs.
- e) Contract: Shall mean the contract agreement and the award letter and the general and special conditions of the contracts with all documents listed in article (1) of the contract agreement.
- f) Contract amount: Shall mean the amount payable for the performance of the service under the provisions of article (6) of the general conditions of the contracts.
- g) The employer: Shall mean the party who will contract with the service provider for the implementation of services.
- h) Foreign currency: Shall mean any other currency other than the current currency of the employer's country.
- i) The government: Shall mean the government of the Republic of Iraq.
- j) Insurer party: Shall mean the party responsible for conducting and sustaining each type of insurance specified in the relevant paragraph.
- k) Local currency: Shall mean the currency of the Republic of Iraq (Iraqi dinar).
- l) The member: Shall mean one of the entities that constitute the joint venture when the service provider is a joint venture, members shall mean all entities participating in the joint venture and the member in charge Shall mean the party specified in the special conditions that represent the joint venture the provider of the service in the rights and obligations toward the employer under the contract.
- m) The party: Shall mean either the employer or the service provider as mentioned in the text and parties shall mean both.
- n) The workers: Shall mean the persons who are used by the service provider or subcontractor as employees for the implementation of the Service or any part thereof.
- o) The service provider: Shall mean the person or the institution that its bid to provide the service has been accepted by the employer.

- p) Service provider's bid: Shall mean the complete bidding documents submitted by the service provider to the employer.
- q) The specifications: Shall mean the specifications of the services that are included in the bidding documents submitted by the service provider to the employer.
- r) The service: Shall mean the works required to be implemented by the service provider under the contract as shown in annex (a) and the specifications and the schedule of activities that are included in the service provider's bid.
- s) The sub-contractor: Shall mean any party who's the contractor shall assign part of the service pursuant of the provisions of paragraph (3-5) and article (4).
- t) The terms of reference: Shall mean the document in annex (a) that presents the goals, scope of services, activities and tasks that shall be implemented by the services provider and the expected results and outputs.
- u) Illegal works: Shall mean all acts that are defined as being illegal under the Iraqi laws, which will be dealt with under the laws of Iraq.
- v) The day: Shall mean any calendar day, and the year shall mean (365) day.

## **1-2 the governing law:**

This contract shall be subject in its meanings and interpretation and the relationship between the parties to the Iraqi law and regulations in force.

## **1-3 the language:**

The language of the contract and correspondence shall be as mentioned in the special conditions of contract, and in the case of conclusion of the contract in more than one language, reference shall be made in special conditions to the language adopted when there is a difference in the interpretation.

## **1-3 Correspondences:**

All notifications, requests and approvals shall be in writing and shall be sent to the authorized persons of each party by registered mail or email with confirmation of receipt at the addresses specified in the special conditions of the contract.

## **1-5 Authorized Representatives:**

Requests or approvals to implement any procedure or the request for any document whether issued by the employer or by the service provider through the authorized representatives referred to in the special conditions of the contract.

## **1-6 The location:**

Implementation of services shall be done in the locations specified in annex (a) of the specifications or any other location being selected by the employer in case of no reference is made to the location of the implementation of one of the service's activities in the aforementioned annex if it was within the employer's country.

## **1-7 Inspecting and auditing by the employer:**

The service provider shall allow the employer to inspect his accounts and records related to the implementation of the service and audit them by auditors appointed by the employer if this was made upon employer's request.

## **1-8 Taxes and Fees:**

Service provider and his subcontractors and employees shall be subject to the taxes and duties applicable under the applicable law in the Republic of Iraq which is assumed that they have been considered in the contract amount unless otherwise provided in the special conditions of the contract.

## **1-9 Good Performance Guarantee:**

Service provider shall provide performance guarantee approved by the employer in a period not exceeds the time specified in the award letter, in the form of a bank guarantee in the amount and currencies specified in the special conditions of the contract, issued by a bank or a financial institution accepted by the employer. The performance guarantee shall be sustained and effective for a period of 28 days after the date of completion of the contract.

## **1-10 Advance payment guarantee:**

The service provider shall not receive the advance payment only after submitting the advance payment guarantee in the form of a bank guarantee issued by a bank of a financial institution accepted by the employer in the specified amount and currencies equal to the amount and currencies of the advance payment.

The advance payment guarantee shall be maintained until the completion of the recovery of the entire advance payment from the service provider and advance payment Guarantee shall be reduced by refunds of them

## **2-Commencement, Completion, Amendments and Termination of Contract**

### **2-1 Contract Validity:**

The contract shall be effective as of the date of signature by both parties or any other date specified in the special conditions of the contract.

### **2-2 Commencement of services:**

#### **2-2-1 the program:**

The service provider shall, prior to the commencement with the services, provide a program that demonstrates the general methods, preparations, stages and the time of implementation of activities for approval.

#### **2-2-2 Date of commencement:**

Service provider shall commence with the implementation of services within 30 day from the date of contract effectiveness or any date specified in the special conditions of the contract.

## **2-3 The deadline for completion:**

Unless the contract is terminated earlier pursuant to the provisions of paragraph (2-6), the service provider shall complete all activities at the deadline for completion as specified in the special conditions of the contract, And if the service provider did not complete the activities on the deadline for completion he shall pay a delay penalty under paragraph (3-8), in which case the completion date shall be the date for actual completion of activities.

## **2-4 Amendments:**

No amendments shall be made on contract paragraphs and conditions and any amendment on the scope of service and the contract amount only with the written agreement of both parties.

## **2-5 Force Majeure:**

### **2-5-1 Definition of force majeure:**

For the purpose of implementation of this contract, "force majeure" shall mean any accidents beyond the control or responsibility of any of the contract parties, that could not be expected, and cannot be remedied and avoid their occurrence which render the possibility of such party's implementation of his obligations under the contract impossible under such circumstance. The incidents of force majeure are those specified in the special conditions of contract.

### **2-5-2 Notice of the occurrence of force majeure:**

If the force majeure was a cause that prevents party's performance of his main obligations under the contract, he shall then notify the other party of the event or circumstance which constitutes a force majeure specifying the obligations and performance which are and will not be completing. Notice shall be given as soon possible after the party has become uncertain of such event or circumstance which constitutes a force majeure.

Thus, the party after issuance the notice shall be excused from completing his obligations as long as the force majeure event prevents this.

Notwithstanding any provision in this clause, the force majeure event shall not apply on any of the parties' obligations to pay the installments to the other party under the contract.

### **2-5-3 Tasks that is required to reduce delay due to force majeure**

Each party shall, and at all times, use all reasonable efforts to reduce any delay in the performance under the contract as a result of force majeure events. The party shall notify the other party upon the end of force majeure event.

### **2-5-4 the consequences of force majeure**

If it is became impossible for the service provider to perform his main obligations under the contract due to force majeure event upon which a notice was given under paragraph (2-5-2) {notice of force majeure}, and incurred a delay and / or a cost due to force majeure event, then the service provider can request the following:

- a) Extend the contract duration for this delay , or
- b) Compensation for costs incurred for delays or what will be delayed of completion of the contract. And

The employer shall, after receiving this notice, to proceed with the agreement or prepare his estimates of the cost mentioned within (10) days from the date of receipt of the notice of claim.

### **2-5-2 Force majeure affecting the subcontractor:**

If any subcontractor entitled under any services contract or agreement to an exemption as a result of force majeure under additional conditions or broader conditions than those specified in this article, such events or additional conditions or broader conditions of force majeure shall not relieve the service provider in the case of non-performance and shall not conferred any exempt under the provisions of this article.

### **2-5-6 Termination of Contract optionally, Payment and Discharge of Responsibility**

If performance of services become substantially impossible by the service provider **for a continuous period not less than** (30) days continuously due to force majeure in which a notice has been sent in respect thereto under paragraph (2-5-2) or for consecutive periods exceeds in total more than (60) days due to the same force majeure in which the notice has been sent, then any party may send a notice of termination of contract to the other party. In this case, the termination of the contract becomes effective after (7) days from the date of sending the notice, and the service provider shall start taking action to stop the performance and remove his equipment.

Upon termination of the contract in this manner, the employer shall estimates the services that were completed by the service provider and issue certificate of payment that shall include the following:

- a) Amounts payable for any part of the services that has been completed by the service provider and has a specific price in the contract.
- b) Costs and other financial encumbrances reasonably and necessary incurred by the service provider under such circumstances and as a result of his estimations to complete the services.
- c) The cost of removal of service provider's equipment from the site, and returned them to his stores in his country (or to any other place provided that it shall not exceed the cost of returning them to his country). And
- d) Repatriation cost of service provider's personnel who has been used to perform the services on full time basis, upon the expiration of this contract.

The service provider has the right to object on the estimations provided by the employer pursuant to the provisions of article (8) (Dispute Settlement).

### **2-5-7 Discharge (release) of performance responsibility under the law:**

Notwithstanding any other provision in this article, if any event or circumstance arise beyond the control of the two **parties** (including but not limited to force majeure), and render the fulfillment of one or both parties of the contractual obligations impossible or contrary to law, or cause, under the law that governs the contract, to exempt the parties from continuing to perform the contract. Then after notice from either party to the other party on that circumstance or event:

- a) Both parties shall be exempted from continuing the performance, but without prejudice to the rights of any of them in respect of any previous breach of contract.
- b) The amount to be paid by the employer to the service provider shall be the same of what to be paid under the provision of paragraph (2-5-6) above, as if the contract has been terminated under the paragraph mentioned.

## **2-6 Contract Termination by the Employer:**

### **2-6-1 Notice of correction**

If the service provider fails in performing any of his obligations under the contract, the employer shall give notice requesting him to correct this failure and remedy it within **(15)** days.

### **2-6-2 Withdrawal of Work by the Employer:**

The employer shall have the right to withdrawal the contract in the following cases:

- a) If the service provider fails to provide the performance guarantee under article (1-9), or to respond to the notice of correction as mentioned in paragraph (2-6-1).
- b) If the service provider abandons the performance of services, or if it clearly found out through his practices that he does not intend to continue to implement his obligations under the contract.
- c) That the service provider has transferred the entire services to a sub-service provider or waive the contract without obtaining the required approval.
- d) That the service provider has become bankrupt or insolvent, or been subjected to the liquidation of his assets.
- e) If the employer found out that the service provider carried out any of the practices of administrative corruption, fraud or collusion or coercion, or hindrance during the competition for the contract or its implementation.

The employer shall adopt the following definitions for this purpose:

1) "Corrupt practices" shall mean provide or give or receive or solicitation of, directly or indirectly, anything of value to influence the work of an official in a position of public responsibility during the supply process or contract implementation.

2) "Fraudulent practices" shall mean any misrepresentation or deletion of any facts in order to influence the supply process or contract implementation.

3) "Collusion practices" shall mean any planning or coordination between two or more bidders, with or without the knowledge of the employer in order to set fake and uncompetitive prices.

4) "Coercive practices" shall mean harm or threat to harm, directly or indirectly, the persons or their properties to influence their participation on the supply process or to influence the contract implementation.

5) "Hindrance practices" and shall mean the following:

**First** - The deliberate destruction or forgery or change in documents or withholding evidence necessary for investigation or give false testimony to investigators to hinder the investigation by the employer concerning administrative corruption practices or fraud or collusion or coercive practices or threat or harassment or obstruction of any party and prevent him from providing any information relating to the investigation or to prevent him from pursuing the investigation.

**Second** – Practices that hinder the employer from pursuing the audit and review procedures pursuant to clause (1-7) of the general conditions of the contract.

**2-6-2-1** In any of these events or circumstances, the employer may, after (15) days notice to the service provider in writing, withdraw the contract and the exclusion of the service provider from the site.

**2-6-2-2** The choice of the employer to **withdraw** the contract shall not affect any other rights to the employer realized to him under the contract, or otherwise.

**2-6-2-3** The service provider shall, in such a situation, leave the site and delivers the employer all "service provider's documents." In addition, the service provider shall make all efforts to take reasonable immediate action towards any instructions contained in the notice in respect of any of his sub-contractors for this service.

**2-6-2-4** After **work withdrawal**, employer shall have the right to complete the services of the service provider and / or to use any other institutes to complete it. And then the employer as well as such institutes may use any of the service provider's documents, and any other documents prepared by or for the account of the service provider and have been paid for under paragraph (2-6-4) (payment after work withdrawal), **where the work withdrawal from the service provider done by the employer is not considered a contract termination or relief of any of his obligations or responsibilities according to the contract, or an interference in the rights or authorities of the employer according to the contract, and the service provider shall bear any increase in the cost of providing this service, along with the confiscation or retention of the good performance guarantee in accordance with the prevailing legislations.**

### **2-6-3 Evaluation on the Work Withdrawal Date:**

Employer shall – as soon as practical – after the notice of **work withdrawal** has become effective under paragraph (2.6.2), to agree on the value of the service provider's documents and any other amounts owed to the service provider for the performed services under the contract.

### **2-6-4 Payment after Work Withdrawal:**

The employer, after the notice of **work withdrawal** has become effective under paragraph (2.6.2), may carry out the following:

- a) To begin taking measures related to his claims.
- b) Stop payment of any amounts to the bidder until the verification the costs of the performance of services implemented by the service providers, and the determination of fines realized on the service provider (if any), and any other costs incurred by the employer.
- c) To deduct from the services provider's account against any losses and damages incurred by the employer and any other additional costs that has been disbursed for the purpose of completing any of the services provider's services, after calculating any amounts due to the services provider against the termination of the contract under paragraph (2-6-3), and after the recovery of such losses, damages and additional costs, the employer shall pay any remaining balance to the service provider **according to the prevailing legislations.**

### **2-6-5 Employer's right to terminate the contract for Public Interest:**

The employer shall be entitled to terminate the contract at any time for public interest **pursuant to the order of the provisional coalition authority (disbanded) No. 87 for the year 2004 or any law that replaces it**, where he shall give notice thereof to the service provider, and termination shall be effective after (28) day following the date of receipt of notification by the service provider, or from the date of returning the performance guarantee to him by the employer, whichever comes later, but the employer shall not have the right to terminated the contract under "this paragraph" so he would complete the services himself or arrange to be completed by another service provider, or to avoid the termination of the contracting by the service provider under paragraph (2-7-1).

In the case of termination of the contract by the employer under this paragraph, the employer shall pay the service provider for the services performed under the contract, for the period up to the date of service provider receipt of contract termination notice.

Following this termination, the service provider shall stop work and remove his equipment in accordance with the provisions of paragraph (2.6.6).

## **2-7 Suspension of work and termination of contract by Service**

### **Provider:**

2-7-1 The service provider shall have the right, after giving a written notice in a period of no less than (30) day to the employer, terminate the contract in the event of any of the cases referred to in the sub-paragraphs (a- d) below, as follows:

- a) If the service provider did not receive any amount payable to him under an interim payment certificate within (42) days from the expiry of the deadline in which the employer shall pay under the provisions of paragraph (6.5) of the special conditions.
- b) If the employer breached substantially in the performance of his obligations under the contract in a manner that might cause material and adverse impact on the economic balance of the contract and / or the ability of the service provider to perform his obligations to implement the contract.
- c) If a prolonged suspension of the work occurred, that will affect the performance of the entire services.

In any of these events or circumstances, the service provider, after giving a 15- day notice to the employer in writing, may terminate the contract; however, the service provider can give a notice of immediate termination in accordance with the sub-paragraph (c). The choice of the service provider to terminate the contract shall not prejudice any other rights realized to him under the contract or for other reasons.

### **2-7-2 Work Suspension and Contract Termination by the Service Provider:**

After any of the notices relating to the termination of the contract by the employer to serve his interests under the provisions of paragraph (2.6.5), or the optional terminations due to force majeure under the provisions of paragraph (2.5.6), shall take effect, the service provider shall proceed immediately with the following:

- a) Cease the performance of any services, only if the performance of such services has been instructed in respect thereof from the employer for the purpose of protecting persons or property or for the safety of services.
- b) To deliver service provider's documents (and documents pertaining to the contract) and automated supplies and other materials that payment was made to him for it.
- c) To remove all equipment and other supplies from the site, except what is required for safety purposes, and to leave the site.

### **2-7-3 Payment on the termination of the contract:**

The employer shall, after the notice of termination of the contract under paragraph (2.7.1) has become effective, to carry out the following:

- a) Return the **good** performance guarantee to the service provider.
- b) He shall pay the service provider's dues under the provisions of paragraph (2-5-6)
- c) He shall pay the service provider the amounts resulting from any damage or other loss incurred by the service provider as a result of such termination.

## **3- Obligations of Service Provider**

### **3-1 General Provisions:**

The service provider shall perform the services and fulfill his obligations attentively, efficiency and frugality and under the professional techniques and practices generally accepted, in addition to monitoring and implementing prudent management practices, and the use of advanced technology and safe methods. The service provider shall act in relation to any matter in this contract or services, as a faithful counselor to the employer and to work at all times to save and support his legitimate interests in any dealings with subcontractors or third parties.

The service provider's personnel shall be of satisfactory specification, well qualified and experienced in their work and specializations. The employer shall have the right to request the removal (or work on removing) any employed person for the task, including sub-contractors, when it's possible to apply it, who:

- a) Insists on practicing misconduct or lack of interest.
- b) Carries out duties in incompetent or negligent manner.
- c) Fails in his performance in conformity with any of the provisions of the contract.
- d) Insists on pursuing any conduct harmful to safety, health and environmental conservation.

### **3-2 Conflict of Interests:**

#### **3-2-1 The service provider shall not benefit from the commissions and discounts**

The service provider's entitlements referred to in Article (6) consist of entitlements specified in the contract and services exclusively and the service provider shall not accept for personal benefit any trade commissions or discounts or similar payments owed for performance of services under the contract or for termination of his obligations under the contract, and the service provider shall make his best efforts to ensure that any of his workers, subcontractor or agent shall not receive any similar additional dues.

#### **3-2-2 The service provider and his personnel shall not benefit from the project**

The service provider shall realize that he or any of his subcontractors or their personnel will be deemed ineligible (unqualified) to participate in any bidding for the supply of materials or works or provide the service (except for those services which are within his obligations or extension thereof) arising out of or relating to the service provided for the duration of its implementation, or after its completion.

#### **3-2-3 The activities of conflicts of interest:**

The service provider or any of his subcontractors or their personnel, directly or non-directly, shall not carry out any of the following activities:

- a) Business or specialized services in the employer's country that may conflict with the services assigned to him under this contract during his implementation period of this contract.
- b) Use of government officials during their official working period or during their vacation to perform any tasks under this contract.
- c) Any other activities referred in the special conditions of the contract after completion the contract.
- d)

## **3-3 Confidentiality**

### **3-1-1 Obtain information (in the form of prints or electronic copies):**

During the implementation of the services under the contract, any party is allowed to obtain (in the form of prints and / or electronic copies), current and future information related to researches, development and activities of the work and the products, services and know-how of other party that have been classified by such party upon disclosure as being confidential.

### **3-3-2 Treating employer's assets confidentially:**

Maps, diagrams, photographs, plans, reports, software, recommendations, estimates, documents and any data compiled or received by the service provider from the employer during the implementation of services will become ownership of the employer and shall be treated as confidential documents and are delivered only to authorized persons by the employer upon completion of works under the contract or when being terminated.

### **3-3-3 Caring for confidential documents:**

Each party shall agree on protecting the confidentiality of the confidential documents of the other party in the same manner that he maintains the confidentiality of his assets and confidential information of this nature.

### **3-3-4 Obtain prior approval to produce and reproduce confidential information:**

No photocopying or reproduction of confidential information is allowed without obtaining the written approval of the disclosing party.

### **3-3-5 Disclosure of confidential information to the employer:**

The service provider and his subcontractors and any of the workers of any of them shall not disclose during the contract duration or after its termination any of the assets and confidential information related to the project and services and the contract or acts of the employer or his operations without the prior written approval of the employer.

### **3-3-6 The employer's assets:**

All maps, diagrams, specifications, designs, reports, other documents and software provided by the service provider described in Annex (B) shall become and remain the ownership of the employer and the service provider shall, before the date of contract termination or completion, deliver all such documents and software to the employer, with a detailed inventory thereto.

## **3-4 Insurances by the service provider:**

### **3-4-1 General requirements for insurance:**

The service provider shall carry out the following:

- a) Procure insurance and maintain it by him and his subcontractors on his expense (or sub-contractors' expense as required) against accidents and to compensate for risks specified in the special conditions according to terms and limitations approved by the employer.
- b) Provide the employer, at his request, what prove his holding and maintaining insurance and paying the premiums.
- c) The party insurer shall, during the period specified in the special conditions of the contract (calculated from the commencement date), provide second party:

**First:** evidence that the insurance described in this article has become effective; and

**Second:** copies of the insurance policy described in paragraph (3-4-2) (insurance by the service provider for services equipment and his equipment) and paragraph (3-4-3) (insurance against personal injury and damage to property).

- d) If the "insurer party" failed to obtain and maintain any of the insurance required of it under the terms of the contract, or failed to provide proof acceptable and copies of documents in accordance with the requirements of this "paragraph" then the other party is entitled to (by his choice and without prejudice to any of his rights or procedures) to obtain an insurance documents with the required coverage, and pay the premiums thereof, and the insured part shall repay the value of these premiums to the other party, and the contract amount shall be amended by the amounts paid.

#### **3-4-2 Insurance of employer's assets and contractor's equipment:**

The "insurer party" shall insurance the employer's assets from risks and damages related to the implementation of services, and service provider's equipment and materials in an amount no less than its full replacement value adding to it the cost of demolition transfer of debris, administrative fees and profit as specified in the special conditions of contract, this insurance shall apply effective from the date required to provide evidence under sub-paragraph (first) of paragraph (3.4.1) (general requirements for conducting insurance up to contract completion date.

#### **3-4-3 Insurance against personal injuries and damage to property:**

The "insurer party" shall insurance against the liability of each of the parties for any death or bodily injury or any loss or damage on any tangible property, for what can be resulted from the implementation of the services performed by the service provider before the contract expiry date ((except services equipment and service provider's equipment insured under the provisions of paragraph (3-4-2) or for any persons insured under the provisions of paragraph (3-4-3))). The value of this insurance for each accident shall not be less than the amount specified in the special conditions of the contract.

#### **3-4-4 Insurance on service provider's personnel:**

The service provider shall hold and maintain the validity of the insurance liability for claims, damages, losses, expenses (including litigation's fees and expenses) that may result from injury due to illness, or ailment or death of any person is used by the contractor or any of his employees.

### **3-5 Service provider procedures when requesting employer's approval:**

The service provider shall request employer's prior approval in writing before proceeding with any of the following matters:

- a) Contract with a subcontractor to perform any part of the services.
- b) Appoint any individual of the persons not specified in attachment (c) (leadership staff and subcontractors) in a leadership position.
- c) Change the program of the Implementation of events.
- d) Any other procedure that may be provided in the special conditions of contract.

## **3-6 Reports and outputs that are the responsibility of service provider:**

### **3-6-1 Reports and outputs:**

The service provider shall provide the reports and documents specified in Annex (B) to the employer in the form, number and timings specified in that Annex.

### **3-6-2 Meeting minutes of the project's committee:**

The service provider shall prepare and submit meeting minutes to the employer as a draft for review and approval. The employer shall within (14) days from the date of receipt of the draft minutes approve it or inform the service provider of any amendments thereto. If the employer could not approve or inform the service provider of any amendments at the end of the (14) days period above, the employer's approval shall be considered given. The minutes shall not amend the contract, unless prepared in a form of attachment to the contract.

### **3-6-3 Deliverables:**

Outputs to be provided under the contract are those listed in Annex (a) and (b), both parties shall name the persons who will manage, participate approve, accept services by signing the acceptance certificate. The persons employed by the employer shall be named in the special conditions.

### **3-6-4 Receiving Deliverables:**

The service provider shall deliver outputs to the employer in one of the following methods:

- a) By e-mail containing the confirmation of receipt service.
- b) By registered e-mail

The employer shall send the confirmation of receipt to the service provider within (3) business days from the date of receipt of outputs. If the employer did not confirm his receipt of outputs within (7) days, the service provider shall have the right to consider that the outputs have been received by the employer. The employer shall, within (14) days from the date of receipt of the output, express his reservations thereto in writing. If the employer did not express reservations on the outputs during the approval period, the service provider shall be entitled to consider that the employer's approval on the outputs is obtained. If the employer expressed reservation and then retreated and withdraw it, then the date that the employer withdraws the reservation shall be the date of approving the reservation. If the employer has a reservation on the output through the approval period, and the service provider amended the output whereby to become consistent with the reservations, the output shall be considered as approved from the date the employer received the notice that the service provider has performed the amendments on the outputs. The parties agree that the use of any of the outputs or any of the stages of the project shall mean an acknowledgment of the final approval on that stage or the output in question. The service provider shall be entitled to rely on all approvals and consents.

### **3-6-5 Approvals (Ratifications):**

The basic principles are:

- a) Approvals (Ratification) shall mean the implicit or explicit confirmation that the outputs are compatible with the agreement and / or management and the delivery plan agreed between the parties.

- b) Outputs are considered approved (ratified), unless the employer offers his supported observations of incompatibility regarding the outputs during the specified time period for approving (ratifying) the outputs.
- c) If the employer presented his supported observations of incompatibility during the specified time period for approving (ratifying) the outputs, then the approval (ratification) shall be considered obtained once the employer withdraws his observations.
- d) The agreement reached, that the use of outputs or any stage of services includes the approval (ratification) of the outputs and the stage of the services.
- e) The approval (ratification) shall be final and shall not be challenged for whatever reason.

### **3-7 Delay penalties:**

the service provider shall pay delay penalties as fines to the employer on the basis of the ratio calculated per day and as defined in the special conditions of the contract for each day of delay in case not (achieving the timing of the response to the requirements of activities of various services) specified in table 2 of annex A (terms of reference).

## **4-Scope of Services & Service Provider's Personnel**

### **4-1 Scope of Services:**

The service provider shall implement the services specified in the terms of reference in annex (a), and all other requirements listed in the contract.

### **4-2 Service Provider's Personnel:**

#### **4-2-1 Description of the service provider's personnel:**

The service provider shall prepare a report on job titles, job descriptions, minimum experience and term of office for leaders in the form specified in Annex (c). And the list of leaders classified according to the job title and name as well as the names of subcontract shall be subject to employer's approval.

#### **4-2-2 Termination or / and Replacement of staff of service provider:**

- a) Unless the employer agrees otherwise, any amendment on any of the personnel in leadership positions shall not be allowed unless if it becomes clear there is a necessary need to replace any of the leading personnel of the service provider by him for reasons beyond his control, he then shall replace him with a person who has the same qualifications and competence or better.
- b) If the employer finds that any of the employees of the service provider was:
  - First:** acting inappropriately repeatedly or criminal ruling issued against him.
  - Second:** in breach of his performance significantly, and then service provider shall, once he receives a written request from the employer explaining the reasons to replace him, suggest a replacement with qualifications and experience accepted by employer.

- c) The service provider shall not be entitled to submit any claim of additional amounts arising out of or due to exclude and / or replace any of his personnel, for reasons set forth in sub-paragraphs (b-First and Second).

## **5-Employer's Obligations**

### **5-1 Assistance and exemptions:**

The employer shall make every effort to ensure the granting of a service provider the necessary assistance to facilitate the delivery of services under the contract

### **5-2 Make the change and the applicable law:**

If any change in the applicable law occurred after the conclusion of the contract with respect to fees and taxes, which has affected the increase or decrease of cost of service carried out by the service provider. By then payments and compensation shall be increased or decreased in accordance with the agreement of the parties, and amendment shall be made in the amounts referred to in paragraph (6.2) (contract value) **according to the prevailing legislations.**

### **5-3 Provide Services and Facilitations:**

#### **5-3-1 Complete and Correct Information**

The employer shall provide the service provider with the necessary complete and correct information related to the performance of services under the contract.

#### **5-3-2 Special Practices**

Employer shall inform the service provider of the special practices and the requirements of activities.

#### **5-3-3 Cooperation of employer with service provider**

Employer shall cooperate with service provider and ensure the cooperation of all his personnel, sub-contractors or third party under his responsibility, to facilitate the implementation of services.

#### **5-3-4 Services and facilitations provided by the employer**

The employer shall secure the facilitations specified in annex (e) to the service provider.

## **6- Payment to Service Provider**

### **6-1 Lump-sum payments:**

Payments paid to service provider shall not to exceed the contract amount and lump-sum payments shall include subcontractors' amounts and all amounts incurred by the service provider to carry out the services described in annex (a). Contrary to the provisions of paragraph (5-2), contract amount may be amended more than the amounts referred to in paragraph (6-2) only in case of parties' agreement on additional payments under paragraphs (2-4) and (6-4).

### **6-2 Contract Amount:**

The contract value shall be as specified in the special conditions of the contract.

## 6-3 Payment with Lump sums:

### 6-3-1 Payment to service provider

The advance payments to services provided shall be paid according to the payment of advances schedule specified in special conditions of the contract.

### 6-3-2 Deadline for the payment of advance

The advances shall be paid within (30) business day from the date of receipt of the advance application form with the relevant documents or the completion of the activities specified in the payment of advances schedule specified in special conditions of the contract, and within (42) business day for the final advance.

### 6-3-3 Advance payment

If the special conditions of the contract stated the right of the service provider to receive advance payment, then the advance shall be paid after the service provider delivers the employer the advance payment guarantee in the amount and currencies equal to the advance payment. The advance payment shall be recovered in equal installments starting from the second monthly advance provided that the recovery of the advance shall be in full in the sixth monthly advance.

## 6-4 Payment for additional services:

For the purpose of determining the dues payable for additional services whenever agreed on pursuant to the provisions of paragraph (2-4), the labor wages table and the expenses listed in annex (d).

## 6-5 Interest resulting from delay in payment of advances:

**In the case of reference in respect thereof in the special conditions of the contract,** if the payment of the advance by the employer is delayed for a period of (15) day from its payment date specified for in the special conditions of the contract, an interest shall be realized to the service provider on the amount of the advance as a compensation for each delay as its percentage specified in special conditions of the contract.

## 6-6 Price adjustment:

**6-6-1 In the case of reference in respect thereof in the special conditions of the contract,** by then it is possible to review the contract prices and adjust them in accordance with the changes occurring on the cost of service components, and in such cases and after ratifying the amount payable in each advance and after subtracting deductions for advance, the amount payable shall be adjusted according to the price adjustment index for each currency payment and the following equation shall be adopted:

$$P_c = A_c + B_c L_{mc} + C_c I_{mc}$$

$L_{oc}$        $I_{oc}$

$P_c$ : price adjustment index for part of the contract amount payable in a specific currency "c".

$A_c$ ,  $B_c$ ,  $C_c$ : are coefficient specified in the special conditions represent the following:

$A_c$ : represent the coefficient of one of cost components that is non-adjustable (fixed).

$B_c$ : represents the coefficient of cost component of labor wages that is adjustable.

$C_c$ : represents the coefficient of other components that are adjustable of the contract amount payable in that currency "C".

Lmc: represents index of prevailing wage labor on the first day of the month which the amount of the advance represents.

Loc: represents the prevailing labor wage index on the date preceding the opening of bids in 28 days for both for amounts in currency "C".

Imc: represents the wage index for the remaining cost components on the first day of the month which the amount of the advance represents.

Loc: represents the prevailing wage index for those components at a date preceding the date of bid opening in 28 days for both for amounts payable in the currency "C".

If the price adjustment was adopted by adopting different currencies for one of cost components, then the price adjustment index for those components shall be adjusted with a correction coefficient  $Z_o / Z_n$  where:

$Z_o$ : represents the value of the new currency to what corresponds to one part of the currency of the price adjustment index in the basic date (28 day from the date of bid opening).

$Z_n$ : represents the value of the new currency to what corresponds to one part of the currency of the price adjustment index in the approved price adjustment time.

- 6-6-2** if the price adjustment index changed after being used in calculating the price adjustment, the value of the price adjustment index shall be adjusted in the coming advance. And it is assumed that on calculating the price adjustment, all variables resulting from changes in the costs of work component shall be taken into account.

## **6-7 Work day:**

### **6-7-1 Wages of Day – laborer**

If applicable, rates of daily work specified in the service provider's bid shall be used for the calculation of the cost of small additional services only when the employer has issued a prior written request to implement these additional services payable in this manner.

### **6-7-2 Day – laborer Forms**

All works which value have been paid by adopting the day – laborer rates shall be documented by the service provider in forms approved by the employer, and each completed form shall be reviewed and signed by employer representative as specified in the sub-paragraph (1-5) within two days from the implementation of such service.

### **6-7-3 Employer's signature on day – laborer forms**

The payment of the service provider's dues for the work performed shall be done by adopting daily rates after signing the day – laborer forms for such works by the employer.

## **7-Quality Control**

### **7-1 Identifying defects:**

The principles of quality control and detection of services by the employer as are listed in the special conditions of the contract. The employer shall check the performance of the service provider and shall notify him of any defects observed; such check shall not relieve the service provider from his obligations. The employer shall have the right to instruct the service provider to disclose the defects and to conduct examination on the service that he thinks it is defective.

## 7-2 Repairing defects and poor performance:

- a) The employer shall refuse the services that are non-conforming with the requirements of the Contract. And in cases where deviation from this context is for the benefit of the employer, such service shall be accepted according to the powers given under the provisions of this paragraph.
- b) Generally, the employer shall give the service provider the opportunity to correct or replace the non-conforming services when this can be achieved within the table of performance of the services timing.
- c) In cases not included within the sub-paragraph (b) of this paragraph, the employer shall, in general, refuse the services when deviation in the services is significant and the service provider has failed to correct the deviation and the employer shall take all the necessary actions to correct any deviation or to deduct the cost of correcting such deviation after adding administration fees specified in the special conditions, from the monthly advance payment due to the service provider.
- d) If the deviations in the services are simple, the employer shall have the right to decide either to accept or refuse services. But if the treatment to remove the simple deviation in the service failed, the employer is entitled to accept services with deductions in the price.
- e) Employer shall not encourage cases of repeated deviation in the implementation of services, including those simple deviations by conducting an appropriate action such as rejecting the services and documenting these deviations in the reports of the service provider's performance.
- f) Notices of rejection shall include reasons for rejection and shall be delivered as soon as possible to the service provider. Expediting the delivery of notices of rejection is necessary because non-commitment to the timing of delivery of notices of rejection may sometimes result in accepting the services by law. Notices shall be in writing in the following cases:
  - First** – when the services are under implementation and which have been rejected in another site other than the site of the main service provider.
  - Second** – in case of service provider determination on requesting approving the nonconforming services.
  - Third** – when the delivery or performance of the services is delayed without an acceptable excuse.

## 8- Conflict Resolution

### 8-1 Amicable Solution:

The parties shall make best effort to resolve any dispute arising amicably before resorting to arbitration. However, unless the Parties agree otherwise, they shall recourse to arbitration on or after the forty second day following the notice of dissatisfaction and the desire to resort to arbitration, even though the dispute is not settled amicably.

### 8-2 Arbitration:

Unless otherwise provided in the special conditions of contract, any dispute that is not finally settled amicably shall be subject to settlement through arbitration, as follows:

- a) In contracts with foreign contractors, it may resort to arbitration under the international arbitration rules and procedures adopted by the international

arbitral tribunal such as those issued by the International Chamber of Commerce or UNCITRAL or Arab Arbitration Chamber for contractors provided that it shall be stipulated in the contract documents.

- b) Unless otherwise stated in the contract data, the arbitration shall be conducted in Iraq.
- c) The arbitration award approved is subject to Iraqi laws.
- d) The language of communication specified under paragraph (3.1) (language) shall be used in the arbitration proceedings applied.
- e) In contracts with local contractors, the arbitration rules under the Iraqi laws shall be adopted.

Arbitral tribunal shall have full authority to detect and review and revise any certificate or estimates or instructions or opinions or evaluation of the employer, there is no reason not to call any of the representatives of the parties and witnesses to present evidence before the arbitral tribunal regarding any matter related to the dispute.

Arbitration may begin before or after the completion of services, the obligations of any of the parties shall not be affected if the arbitration proceedings have been initiated during the implementation of services

## **9- Variation Order**

### **9-1 General**

Based on the conditions set forth in this paragraph, the employer shall have the right to request at any time from the service provider in writing to make a change on the services. That change is that which results in additional services:

**First** – That are not mentioned within the services in the contract.

**Second** – That entail additional expenses or extra time on service providers

### **9-2 Notification of Variations**

In light of the request of such variations, the service provider shall specify in writing the impact of this change on his ability to achieve his obligations under the contract. And any other amendments (if any) required to be made on the project or its schedule or the contract amount payable for the services. And that any amendment to the contract shall be agreed bilaterally between the parties. The service provider shall notify the employer of this with presenting the details within (10) business days from the date of receiving the request to make change by the service provider or within any other period agreed upon by both parties.

### **9-3 Employer's notice to the service provider to begin with the change:**

Employer shall notify the service provider of the extent of his desire to implement change under the proposal of the service provider. The service provider shall not begin with any change on services only after obtaining the employer's approval thereto.

## Section Seven: Special Conditions of Contract

### For Non-consultancy Services Contracts

No. of items in the general conditions	Amendments and additions on the special conditions' items
1-1(b)	Name of project's country:
1-1(e)	Name of employer:
1-1(m)	name of the authorized member to represent the joint venture:
1-1(q)	Name of service provider:
1-2	Governing law: the Iraqi law
1-3	Contract and correspondence language: The language of the contract and correspondence shall be (insert the language or languages) and in case of a disagreement in the interpretation, the text in (insert language) shall be relied on.
1-4	Addresses: correspondences between the employer and the service provider shall be sent to the following addresses: Name of employer: Name of the person in charge: Fax No.: Email address: Address of employer's place of business: Name of service provider: Name of person in charge: Fax No.: Email address: Address of service provider's place of business:
1-5	Names of authorized persons: Name of the person authorized by the employer: Name of the person authorized by the service provider:
1-8	The service provider, subcontractors and their employers are (subject to, not subject to) the applicable taxes and duties according to the enforceable law in the Republic of Iraq.
1-9	Amount of the Good Performance Guarantee:  Currency of the Good Performance guarantee:
1-10	Amount of the advance guarantee (if allowed):  Currency of the advance guarantee:

2-1	Date of entry into force of the contract:
2-2	Starting date of the service:
2-3	Expected date for the completion of the service:
2-5-1	For this contract, force majeure shall be identified as follows:
2-7	The work suspension or contract termination by the service provider Insert (applicable, <u>not applicable</u> )
3-4-1 (c)	Date of submitting the insurance policy by the service provider shall not be more than (    ) day from the date of contract signature
3-4-2	Minimum insurance for employer's assets related to services:
3-4-3	Minimum insurance for personal injuries and damage to property shall be at least (        ) Dinars.
3-5- (d)	Other procedures to be followed by the service provider when requesting the employer's approval:
3-6-3	Names of authorized representatives (official authorization or power of attorney certified by the competent authorities) For the employer: For the services provider:
3-6-5	Limitations on the use of documents prepared by the service provider: None
3-7-1-(a)	Daily delay penalties as shown in below: (Insert the equation of calculating delay penalty)
3-7-1-(b)	Maximum limit of delay penalties is (    %) of the final contract value.
3-8	Administration fees:
2-6	Contract amount payable and the currency:
6-3-2	Repayments timings schedule
6-3-3	Permissibility of disbursement of advance payment: (To abide by the instructions of federal budget implementation, in terms of determining the amount and currency of the advance payment and the installments of recovering it)
6-5	The interest resulted from the delay in paying the advance payments Insert (applicable, not applicable)
6-6	It is (permitted, not permitted) to review and adjust the contract prices in accordance with the changes in the cost of service components.
7-1	Detection and quality control procedures shall be carried out as shown below:
8-2	Insert (arbitration place, arbitration rules, arbitration law)

## **Section Eight: Performance Specifications and Drawings For Non-consultancy Services Contracts**

**Section Nine: Contract Documents  
For Non-consultancy Services Contracts**

**Bank Good Performance Guarantee  
(Unconditional)**

[to be completed by **the bank/ winning bidder**, who shall provide the guarantee, sample of this good performance guarantee according to the instructions referred to in parentheses, if the employer needs such kind of guarantee] .

[Insert name of the bank and address of the branch or issuing office]

**Beneficiary:** [Insert name and address of the employer]

**Date:** [Insert the date]

**Performance Guarantee No.:** [Insert the number]

**We have been informed that** [Insert the name of contractor] **(hereinafter called as the "contractor") has contracted in contract number** [Insert bid number] **dated with you, to implement** [Insert contract title and brief description of the work imposed on him] **(hereinafter called as the "contract")**

Accordingly, we are aware, according to the terms of the contract, that the performance guarantee is required.

At the request of Contractor, we [insert name of the bank] commit ourselves irrevocably to pay any amount or amounts that do not exceed in total the amount [insert amount in figures] ([insert amount in words]) <sup>1</sup> Iraqi dinars, as soon as we receive your first written request accompanied by a written affidavit stating that the bidder has violated his (obligations) in the contract without the need for you to prove or explain the basis for your request.

This guarantee expires after 28 days from the date of issuance of the Acceptance Certificate specified in the copy of the certificate to be presented to us, or on the date of [insert date in day, month and year, whichever is earlier] <sup>2</sup>. Consequently, any demand for payment under this guarantee shall be received by us in this bank at or before that date.

This guarantee is subject to the prevailing Iraqi laws.

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[Signature (signatures) of authorized representative (s) from the bank]

<sup>1</sup> the grantor (the bank) shall place an amount that represents a percentage of the contract value specified in the contract

<sup>2</sup> Insert the date for the twenty-eight days after the expected completion date. The employer shall be aware that in case of extension of the expiry of the contract duration, the employer will need to request an extension to this guarantee from the guarantor. This request shall be in writing and prior to the completion date stipulated in the guarantee. In the preparation of this guarantee, the employer may consider adding the following text to the form, at the end of the paragraph before the last: "the guarantor agrees to extend this guarantee for one time and for a period not to exceed [six months] [one year], in response to the written request of the employer for such extension, provided that he submits such a request to the guarantor before the end of this guarantee."

## **Advance Payment Guarantee**

[to be completed by **the bank/ winning bidder**, who shall provide the guarantee, sample of this bank guarantee according to the instructions referred to in parentheses, if the employer requires such kind of guarantee] .

[Insert name of the bank and address of the branch or issuing office]

**Beneficiary:** [Insert name and address of the employer]

**Date:** [Insert the date]

**Advance Payment Guarantee:** [ insert the number]

We have been informed that [Insert the name of contractor] (hereinafter called as the "contractor") has entered in bid number [Insert bid number] dated with you, to implement [Insert contract title and brief description of the work] (hereinafter called as the "contract")

We are aware; according to the terms of the contract that an advance payment should be provided against the advance payment guarantee in the amount mentioned later.

At the request of Contractor, we [insert name of the bank] commit ourselves irrevocably to pay any amount or amounts that do not exceed in total the amount [insert amount in figures] ([insert amount in words])<sup>3</sup> Iraqi dinars, as soon as we receive your first written request accompanied by a written affidavit stating that the contractor is in violation of his (obligations) to the contract because the contract has used the advance payment for purposes other than the costs for the preparation of Works.

This guarantee impose as a condition for the payment for any claim or payment under this guarantee, the necessity that the contractor has received previously mentioned advance payment on his account number [insert number] at [insert name and address of the bank].

The maximum amount of this guarantee will be reduced consistently by the amount recovered from the advance payment that are returned by the contractor as indicated by the copies of progress data or payment certificates provided to us. The validity of this guarantee will expire, at the latest, as soon as we receive a copy of the progress payment certificate which indicates that 80% of the value of the contract has been approved for payment, or on [insert the date in day, month and year ] ,<sup>4</sup> whichever is earlier. Consequently, any demand for payment under this guarantee shall be received by us in this office at or before that date.

**This guarantee is subject to the prevailing Iraqi laws**

[Insert signature (signatures) of authorized representative (s) of the bank]

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<sup>3</sup> the guarantor shall place an amount that represents the advance payment

<sup>4</sup> insert the expected date for the expiry of completion dates. The employer shall be aware that in case of extension of the expiry of the contract duration, the employer will need to request an extension to this guarantee from the guarantor. This request shall be in writing and prior to the completion date stipulated in the guarantee. In the preparation of this guarantee, the employer may consider adding the following text to the form, at the end of the paragraph before the last: "the guarantor agrees to extend this guarantee for one time and for a period not to exceed [six months] [one year], in response to the written request of the employer for such extension, provided that he submits such a request to the guarantor before the end of this guarantee.

**Bid Annexes**  
**For Non- Consultancy Services Contracts**

## **Annex (A)**

**The terms of reference attached and prepared by the Employer**

## **Annex (B)**

### **Reports required to be submitted by the Service Provider**

## **Annex (C)**

### **Leading Employees and Subcontractors** (This information has to be submitted by bidder)

Include the following:

**C-1** the Position [and Name if available], the details of his duties and the minimum experience for the foreign employees working in the country of project and their months of working.

**C-2** the same is required as in the above, except for the employees working outside the country of project and their months of working

**C-3** the list of the subcontractors (if available previously) along with the same information of the leading employees aforementioned in Paragraphs (C-1, C-2).

**C- 4** the same is required as in the above Para C-1 for the Iraqi Leading employees

## **Annex (D)**

### **Details of Contract Value in the Local Currency of Contract**

**[If it is stipulated in the Bid Data Sheet, include the cost items adopted to reach the detailed of the total amount for a part of the contract amount in the contract currency].**

- 1- Amounts of the rented or leased equipment used
- 2- The wages of the leading and non-leading employees of the service provider.
- 3- The estimative costs for the reimbursed expenses.

## **Annex (E)**

### **Details of Contract Value in the Foreign Currency of Contract**

**[If it is stipulated in the Bid Data Sheet, include the cost items adopted to reach the detailed of the total amount for a part of the contract amount in the contract currency].**

- 4- Amounts of the rented or leased equipment used.
- 5- The wages of the leading and non-leading employees of the service provider
- 6- The estimative costs for the reimbursed expenses.

## **Annex (F)**

### **Services and Facilitations required to be provided by the Employer**