

Section 9: Contract Forms

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A. framework Agreement

For the Procurement of _____

Procurement Reference No: AAPPDA/FA2010-2012/ICB/PG/12/1/2010

This Strategic Agreement is made on the _____ day of the month of _____ between: Addis Ababa City Government Public Procurement and Property Disposal Agency

of the Federal Democratic Republic of Ethiopia, Address, Mexico Senga tera, Behind St. Mary university college, at Yobek Commercial center (hereinafter called the “Contracting Authority”)

And

-----, whose registered office is at -----
----- (hereinafter called the “Supplier”)

WHEREAS

- (a) The Contracting Authority has requested the Supplier (and may have appointed other suppliers) to provide certain Goods and Related Services (hereinafter called the “Goods”) as defined herein and attached to this Contract to Procuring Entities (including itself) in the manner and on the terms described herein;
- (b) The Supplier having represented to the Contracting Authority that it has the required skills, personnel and technical resources, has agreed to provide the Goods on the terms and conditions set forth in this Contract;

NOW THEREFORE the parties hereto hereby agree as follows:

1. Background

- 1.1 The Contracting Authority created the Framework Agreement on behalf of the Public Bodies so that Public Bodies could access the framework for the purchase of certain Goods as defined in the Framework Agreement.
- 1.2 Public Bodies, which are partly or wholly financed by the Addis Ababa City Government Budget, Technical and Vocational colleges and public institutions of like

nature who may make call-offs from this Framework Agreement pursuant to Clause 8 of this Framework Agreement are listed on Bureau of Finance and Economic Development and Public Procurement and Property Administration Website <http://www.ppa.gov.et>. In this Framework Agreement, such Public Bodies, which are partly of wholly financed by the Addis Ababa City Government Budget and public institutions of like nature are referred to as Procuring Entities.

- 1.3 The Contracting Authority may from time to time amend the list of Public Bodies, which are partly of wholly financed by the Addis Ababa City Government Budget, Technical and Vocational colleges and public institutions of like nature constituting the Procuring Entities by giving one month's notice of any such amendment to the Supplier.
- 1.4 The Procuring Entity placing Purchase Order for Goods is one of the Public Bodies and it is placing such order on the basis that the Contract Terms shall apply to the resulting contract and the Supplier has agreed (in the Framework Agreement) that these terms will apply to the purchase of such Goods.

The Framework Agreement

- 1.5 This Framework Agreement incorporates the following documents:

1. Agreement;
2. The Special Conditions of Contract;
3. The General Conditions of Contract;
4. The Bid Submission Sheet with Annexes;
5. Price Schedule;
6. List of accepted items including their unit price;
7. Bidder Certification of Compliance with Annexes;
8. Technical Specification + Technical Offer + Compliance Sheet with Annexes;

- 1.6 The Purpose of this Framework Agreement is to establish the terms under which the Supplier will supply to the Procuring Entities specific items within an agreed range of

Goods at agreed prices.

- 1.7 The subject of the Framework Agreement is the provision of the Goods and Related Services as described in Section 6, Statement of Requirements.
- 1.8 The Framework Agreement Documents are complementary and are intended to include and imply all items required for the proper execution of Purchase Orders (PO's) under this Framework Agreement. However, in the event of any conflict between or among the Framework Agreement Documents, the documents shall control in the order listed above.
- 1.9 Unless specifically included as a part of the Framework Agreement Documents, any and all prior negotiations and writings of every kind concerning this Framework Agreement or the Goods described herein are superseded and supplanted by this Framework Agreement. Any changes to the provisions of this Framework Agreement, including changes to the Framework Agreement Documents and exercise of optional periods, made following the execution of this Framework Agreement shall be made only by written Amendment to the Framework Agreement.

Term of Framework Agreement

- 1.10 The Framework Agreement shall enter into force on the date on which it is signed by the last contracting party.
- 1.11 Under no circumstances may implementation commence before the date on which the Framework Agreement enters into force. Delivery of the Goods may under no circumstances begin before the date on which the specific Call-off contract or Purchase Order enters into force.
- 1.12 The Framework Agreement is concluded for a period specified in the SCC Clause 7.6 with effect from the date on which it enters into force. This contractual period and all other periods specified in the Framework Agreement are calculated in calendar days unless otherwise indicated.
- 1.13 The specific Call-off contracts or Purchase Order forms shall be returned signed before the Framework Agreement to which they refer expires. The Framework Agreement

shall continue to apply to such specific Call-off contracts or Purchase Order forms after its expiry, but no later than six months.

Scope of Framework Agreement

- 1.14 This Framework Agreement governs the relationship between Contracting Authority, Procuring Entities and the Supplier in respect of the provision of the Goods by the Supplier to Procuring Entities or Contracting Authority.
- 1.15 The Supplier acknowledges that there is no obligation for Contracting Authority and Procuring Entities to purchase any Goods from the Supplier during the Term.
- 1.16 Estimated annual requirements under this Framework Agreement as advised in the Invitation to Bid are estimates only and Contracting Authority accepts no responsibility for their accuracy.
- 1.17 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by Contracting Authority or any Procuring Entity in respect of the total quantities or values of the Goods to be Contracted by them pursuant to this Framework Agreement and the Supplier acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.
- 1.18 Contracting Authority and the Supplier agree that the terms of this Framework Agreement shall apply to all Call-off contracts for Goods as defined in Terms of Reference.
- 1.19 The Supplier expressly agrees that the terms of this Framework Agreement shall take precedence and shall prevail over all other terms and conditions including but not limited to those of the Supplier.

Supplier's Appointment

- 1.20 Contracting Authority appoints the Supplier as a potential provider of the Goods referred to in the Contract and the Supplier shall be eligible to be considered for the Award of Call-off contracts for such Goods by Contracting Authority or any Procuring Entity.

Non-exclusivity

- 1.21 Signature of the Framework Agreement imposes no obligation on the Contracting Authority or any Procuring Entity to place any, or any particular level or volume of Purchase Order with the Supplier under or pursuant to this Framework Agreement. The Supplier shall have no claim against any Procuring Entity (including Contracting Authority) if no Call-off Contracts (or any particular number of Call-off Contracts) are entered into pursuant to this Framework Agreement. Only implementation of the Contract through specific Call-off contracts and Purchase Order forms is binding on the Contracting Authority or any Procuring Entity.
- 1.22 The Supplier is not appointed as regards any Procuring Entity as its exclusive supplier in relation to the subject matter of this Framework Agreement. The Supplier shall have no claim against any Procuring Entity (including Contracting Authority) if any Procuring Entity (including Contracting Authority) makes a purchase from any vendor other than the Supplier.
- 1.23 Once implementation of the Call-off contract has been asked or has commenced by placement of Purchase Order, the Supplier shall reply and provide the Goods in accordance with all terms and conditions of the Framework Agreement.
- 1.24 Other Suppliers, in addition to the Supplier, may have been awarded the right to participate in Framework Agreement as a result of the procurement process the subject of the Invitation to Bid. Further suppliers may be appointed in the future to supply Goods of the same type as those that are the subject of this Framework Agreement in the future.

Position of Contracting Authority

- 1.25 The Contracting Authority has established this Framework Agreement as authorized institution for and on behalf of such Procuring Entities as may from time to time be Procuring Entity. The supply Call-off contract resulting from such Purchase Orders will be between the Supplier and the Procuring Entities concerned and the Contracting Authority shall not be a party thereto nor shall the Contracting Authority have any liability arising out of the acts or omissions of Procuring Entities in connection with

such Call-off contracts.

Framework Agreement Operations - Call-off Contracts

- 1.26 Goods under this Framework Agreement may be ordered by Procuring Entities from time to time during the term of the Framework Agreement via the issuance of written Purchase Orders (PO).
- 1.27 Purchase Orders are individual contractual instruments that will be issued by Procuring Entity and will be binding on the Supplier either upon signed acceptance of the order or upon commencement of delivery of Goods by the Supplier, whichever occurs first.
- 1.28 If a valid Purchase Order is submitted by Procuring Entity pursuant to this Framework Agreement:
- (a) The Supplier will provide Goods to the Procuring Entity in accordance with that Purchase Order; and
 - (b) The receipt of that Purchase Order by the Supplier will constitute a separate and distinct Call-off contract between the Procuring Entity and the Supplier for purposes of contract administration, cost estimating, cost accumulation, invoicing and payment on the terms set out in Clauses 8.4 and 8.5 of this Framework Agreement and the Supplier and the Procuring Entity will be deemed to have entered into the Call-off contract.
- 1.29 All Goods to be delivered by the Supplier will be ordered only through the issuance of written Purchase Orders. Written Purchase Orders will be sequentially numbered, will incorporate the terms and conditions of this Framework Agreement by reference and shall exclude any other terms and conditions of the Procuring Entity or the Supplier, and will contain, at a minimum, the following:
- (a) Identification of the Framework Agreement and a description of the Goods to be delivered;
 - (b) Required Delivery Date for the Goods;
 - (c) Fixed or NTE Price agreed to by the Parties.
- 1.30 Each Purchase Order referencing this Framework Agreement shall be subject to the

provisions of this Framework Agreement and shall be construed as automatically incorporating the terms and conditions of this Framework Agreement. Although Purchase Order may include modifications to terms and conditions applicable only to that particular Purchase Order, Purchase Orders are not to be considered as modifications or amendments to this Framework Agreement. Separate Framework Agreement Amendments will be issued to modify the terms and conditions set forth herein when necessary. A Purchase Order may be modified by mutual agreement of the Parties. Any change to a Purchase Order shall be in the form of a written Amendment.

- 1.31 The Supplier should not deliver any Goods prior to receipt of a written Purchase Order from Procuring Entity. Upon issuance of a Purchase Order, the Procuring Entity's Technical Representative designated for the order will coordinate, schedule, facilitate, and oversee any Goods to be delivered onsite at Procuring Entity. This does not preclude advance consultation between the Procuring Entity Technical Representative and the Supplier for purposes of defining a scope of work for a particular service or obtaining cost estimates.

Relationship

- 1.32 The acts or omissions of any Procuring Entity pursuant to a Call-off contract shall not affect the validity or operation of this Framework Agreement.
- 1.33 The acts or omissions of any Procuring Entity (other than Contracting Authority) pursuant to a Call-off contract or otherwise shall not give rise to any claim by the Supplier against Contracting Authority.
- 1.34 A variation or amendment to this Framework Agreement will not:
- (a) Affect the continuance or validity of any Call-off contract; or
 - (b) Vary or amend any Call-off contract.
- 1.35 If the Supplier and any Procuring Entity (other than Contracting Authority) have a Dispute in connection with a Call-off contract (as Dispute is defined in that Call-off contract) the Supplier will notify Contracting Authority without delay, summarizing in that notice the nature of the Dispute.

Changes to the Procuring Entities

- 1.36 The removal of any Procuring Entity from the list of Procuring Entities pursuant to Clause 1 shall not affect the terms or the continuance or validity of any Call-off contract between the Supplier and that Procuring Entity.
- 1.37 In the event that Contracting Authority adds Procuring Entity to the list of Procuring Entities, Contracting Authority will advise the Supplier of the contact and liaison point and invoicing and payment arrangements in respect of that new Procuring Entity.

Invoicing of Call-off Contracts

- 1.38 The Supplier may be required by Contracting Authority to provide consolidated invoices of the Call-off contracts carried out pursuant to this Framework Agreement for all (or some) of the Procuring Entities.

Miscellaneous

- 1.39 **Execution** - The Framework Agreement may be signed in more than one identical counterpart, each of which shall be deemed to be an original hereof.
- 1.40 **Limitation of Actions** - The parties agree that any action by Supplier against Contracting Authority or any Procuring Entity arising out of or relating to this Framework Agreement shall be commenced within one (1) year after delivery of the Goods and Related Services, any otherwise applicable statutory limitations period notwithstanding, except for actions for indemnity or contribution arising out of actions brought against Supplier by third parties. The parties further agree that any period of limitations on any claim of Contracting Authority against the Supplier shall in no event begin to run until the date of delivery of the Goods and Related Services or until the date on which Contracting Authority knew, or reasonable should have known, the basis for the claim against the Supplier, whichever occurs later.
- 1.41 **Advertisement** - Supplier shall not issue or permit to be issued any advertisement, press release, or literature of any kind which refers to Contracting Authority or any Procuring Entity in the Goods and Related Services supplied in connection with the Framework Agreement, unless it first obtains the written approval of Contracting Authority.

1.42 **Entire Agreement** - This Framework Agreement constitutes the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral preceding the Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

SIGNED for and on behalf of Contracting authority **WITNESS** to signature on behalf of Supplier

Signature: _____

Signature: _____

Name: _____

Name: _____

Position: _____

Position: _____

Date: _____

Date: _____

SIGNED for and on behalf of _____

WITNESS to signature on behalf of _____

Signature: _____

Signature: _____

Name: _____

Name: _____

Position: _____

Position: _____

Date: _____

Date: _____

Performance Security (Bank Guarantee)**Date:** _____**Procurement Reference No:** _____**To:** _____

WHEREAS _____ (hereinafter “the Supplier”) has undertaken, pursuant to Contract No. _____ dated _____, to supply _____ (hereinafter “the Contract”).

AND WHERE AS, it has been stipulated by you in the aforementioned Contract that the Supplier shall furnish you with a security _____ issued by a reputable guarantor for the sum specified therein as security for compliance with the Supplier’s performance obligations in accordance with the Contract.

AND WHEREAS the undersigned _____, legally domiciled in _____ [insert complete address of Guarantor], (hereinafter the” Guarantor”), have agreed to give the Supplier a security:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the Supplier, up to a total of _____ and we undertake to pay you, upon your first written demand declaring the Supplier to be in default under the Contract, without cavil or argument, any sum or sums within the limits of _____ as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This security is valid until the _____ day of _____

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No 458.

Name: _____

In the capacity of _____

Signed: _____

Duly authorized to sign the Security for and on behalf of: _____

Dated on _____ [insert day] day of _____, 20 _____

Advance Payment Security (Bank Guarantee)**Date:** _____**Procurement Reference No:** _____**To:** _____

In accordance with the payment provision included in the Contract, in relation to advance payments, _____ (hereinafter called “the Supplier”) shall deposit with the Contracting Authority a security consisting of _____, to guarantee its proper and faithful performance of the obligations imposed by said Clause of the Contract, in the amount of _____.

We, the undersigned _____, legally domiciled in _____ (hereinafter “the Guarantor”), as instructed by the Supplier, agree unconditionally and irrevocably to guarantee as primary obligor and not as surety merely, the payment to the Contracting Authority on its first demand without whatsoever right of objection on our part and without its first claim to the Supplier, in the amount not exceeding _____.

This security shall remain valid and in full effect from the date of the advance payment received by the Supplier under the Contract until _____, _____.

Name: _____**In the capacity of** _____**Signed** _____**Duly authorized to sign the Security for and on behalf of:** _____**Dated on** _____ **day of** _____, 20 _____

Anti-Bribery Pledge Forms

**Addis Ababa City Government Public Procurement and Property Disposal Agency
(AAPPPDA)
Addis Ababa**

Dear, -----

Having examined the under mentioned “corrupt and Fraudulent Practice” We have agreed to sign this anti-Bribery pledge form and confirm and assure to purchaser that will not at any time engage ourselves into these evil practices.

In pursuance of this policy the purchaser defines:-

- a) I. “Corrupt Practice” means one offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
- II. “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the purchaser and includes collusive practice among bidders (Prior to or after bid submission designed to establish bid prices at artificial non-competitive levels and to deprive the purchaser of the benefits of free and open competition.
- b) Will reject a proposal for award if it determines that the Bidders recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
- c) Will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing a contract.

In addition to this, we understand that the purchaser has the right to reject firms which are found to be corrupted and fraudulent.

Date: _____

Name

Signature and seal

(In capacity of)

Bidders' complaint lodging procedure

The Addis Ababa City Government procurement and property Administration proclamation NO.17/2009 Article 62(1) stated that the Complaint Review Committee decide on complaints lodged regarding on public procurement and property disposal proceedings. Besides, the Committee shall be accountable to the Bureau of finance and Economic development /BOFED/. Accordingly, any bidder when he/she wants to lodge complaint regarding on any bidding proceeding follows the following steps.

First step: The aggrieved supplier/bidder can lodge his/her complaint to the Head of the procuring entity.

Second step: if He/she is not satisfied by the head of the procuring entity's respond can lodge his/her complaint to the complaint Review Committee established at BOFED.

Bureau of Finance and Economic Development head or Representative takes the chairmanship Role of the committee and BOFED procuring core process representative serve as a secretariat for the complaint Review committee. If Bidders do not satisfied by the decision of the complaint Review committee, they can take the case to the domestic court.

Finally, bidders must be informed that there is no any protest mechanism out of this procedure.