

## **TERMS AND CONDITIONS:**

### **1) Conflict of Interest:**

- i. The Recovery Vendor(s) shall not have a conflict of interest as per the requirements of the TORs. Any of the Recovery Vendors who are found to have a conflict of interest, it shall immediately notify KE. KE shall take appropriate actions to manage such conflicts of interest as per its discretion.
- ii. The Recovery Vendor may be considered to be in a conflict of interest with one or more Recovery Vendors, if such Recovery Vendor, including its subsidiaries, participates in more than one Project. This will result in the disqualification of all Bids in which the Recovery Vendor is involved.
- iii. The circumstances provided above which may constitute a conflict of interest are not exhaustive, and KE shall be the sole determinant of when a conflict of interest shall arise.
- iv. The Recovery Vendor, which has been declared ineligible or blacklisted by any of its employers, shall not be considered.
- v. Each Recovery Vendor shall indemnify KE, fully in respect of any damage, cost, penalty or expense of any kind incurred by such person arising from Recovery Vendor or its Personnels breach of its obligations under this TORs.
- vi. The Recovery Vendor which has been declared ineligible or blacklisted by any of its employers, any Federal or Provincial governmental or non-governmental department/agency in Pakistan then their Proposal shall not be considered.
- vii. Recovery Vendor(s) Personnel performing the services under this TORs shall in all respects be employees of Recovery Vendor and they shall not be assigned to render services to any other party while they are providing services under this TORs at KE. All Recovery Vendor(s) Personnel shall remain under the exclusive control and supervision of Recovery Vendor. In this regard, Recovery Vendor confirms that all such Recovery Vendor(s) Personnel will only be employed by them after completion of due diligence, character checking, police clearance and necessary medical tests. No person being an ex-employee of KE, or its outsourced Recovery Vendor(s), shall be employed by the Recovery Vendor without prior express intimation and consent of KE in writing. Recovery Vendor(s) shall provide Recovery Vendor(s) Personnel details prior to appointment.

### **2) Completeness of RFP:**

The Recovery Vendor(s) are expected to carefully examine all instructions, forms and terms in the TORs and furnish all information or documentation required pursuant to the requirements under these TORs. Failure to comply with the requirements of documents submission set out in the TORs will be at the Recovery Vendors own risk and may result in the withdrawing of the TORs.

### **3) Amendment of TOR:**

- i) At any time prior to the Proposal ("**Proposal**") Submission Deadline, KE may amend the TORs by issuing an addendum.
- ii) Any addendum issued shall be considered a part of the TORs. Such addendum shall be communicated to the Potential Recovery Vendor(s) ("**Potential Recovery Vendor(s)**"). KE may, at its discretion, extend the Proposal Submission Deadline by giving instructions to the Recovery Vendor(s), if it considers that as a result of issuance of an addendum, additional time will be required by the Interested Parties for preparation of their Proposal.
- iii) KE may, even after receiving the Portfolio, amend these TORs and request a resubmission of the Proposal(s) in terms of the amended TORs.
- iv) KE may, at any time prior to the execution of the TORs, undertake any changes to the TORs without assigning reason whatsoever to the Recovery Vendors.
- v) KE reserves the right to cancel the Proposal submission for the Proposal contemplated under this TORs at any time without assigning any reason thereof.

### **4) Company Incorporation:**

- i) The Recovery Vendor shall submit the following company's incorporation documents in their Proposal:
  - a) NTN Registration Documents;
  - b) VAT/GST Registration Certificate;
  - c) Company Certificate with codes of specialization (for self or its Subcontractors);
  - d) Incorporation certificate of Securities and Exchange Commission of Pakistan (SECP) Certificate;
  - e) Memorandum of Association of the company (MOA) (If applicable);
  - f) Articles of Association of the company (AOA) (If applicable); and
  - g) Any other document requested by the KE.
- ii) The Recovery Vendor shall propose Recovery Vendor(s) Personnel having registered companies including but not limited to the applicable documents listed above and are eligible to carry out the relevant subcontracted works.
- iii) The Potential Recovery Vendor(s) will provide a written commitment before the award of the Project to comply with all applicable regulations and affiliate HSEQ rules e.g., a management statement of policy

### **5) Proposal Security:**

- i) The Proposal Security shall be an irrevocable, unconditional and on-demand bank guarantee as per the KE's approved format.

- ii) The Proposal Security shall be issued and maintained in PKR by an acceptable bank.
- iii) The Proposal Security shall be valid until Two Hundred and Ten (210) days from the date of opening of Portfolio. If the Performance Security has not been issued by the Recovery Vendor thirty (30) days prior to the expiry of the Proposal Security, then the Recovery Vendor shall extend the Proposal Security until such date as notified by KE.
- iv) Any Proposal not accompanied by a compliant Proposal Security (as exclusively determined by KE), shall be rejected as non-responsive and the Potential Recovery Vendor shall not be allowed to submit Proposal Security at a later stage.
- v) The Proposal Security shall be forfeited if the Recovery Vendor:
  - (a) withdraws its Proposal during the Proposal submission period
  - (b) is found to be engaged in any corrupt, fraudulent, collusive, coercive, or obstructive practices;
  - (c) does not respond to a Proposal clarification/ confirmation required by the KE within the period of seven (7) business days.
  - (d) fails to fulfil its obligations under the TORs in terms thereof.
- vi) This Proposal Security is required to protect KE against the risk of Potential Recovery Vendor(s) conduct which would warrant the Proposal Security's forfeiture.

#### **6. Basis for Disqualification:**

The following may be the basis for disqualification of Potential Recovery Vendor(s) Personnel at any stage:

- a) If the Recovery Vendor fails to comply with any of the Proposal submission requirements, in the time, form and manner prescribed therein
- b) Misrepresentation, forgery, withholding or concealment of information by the Recovery Vendor.
- c) If the Recovery Vendor fails to comply with any of the requirements listed in this document/eligibility criteria. Notes for Execution of Affidavit
- d) The mode of execution of the Affidavit should be in accordance with the procedure, if any, laid down under applicable laws and the same should be under common seal affixed in accordance with the required procedure.
- e) The Affidavit is to be executed on a stamp paper of PKR 200/-.
- f) Also, the Recovery Vendor should submit for verification a resolution/power of attorney in favor of the person executing this Affidavit for and on behalf of the Recovery Vendor.
- g) The Affidavit shall be notarized by the notary public and certified by the Oath Commissioner.
- h) If the Recovery Vendor is blacklisted by any company and/or authority.
- i) If the Recovery Vendor is currently in default of its obligations to any bank or financial institution within or outside Pakistan.
- j) If the Recovery Vendor has been declared bankrupt or insolvent in the last five (5) years.
- k) If the Recovery Vendor and or its Personnels have a history of not complying with applicable legal, social, environmental and regulatory frameworks.
- l) Recovery Vendor appearing in more than one application shall be disqualified.
- m) History of excessive contract arbitration and litigation resulting in decision of two cases against the Recovery Vendor.

- n) If the Recovery Vendor has a conflict of interest as detailed in the KE's Suppliers Code of Conduct (SCOC).

**7. KE's RIGHT TO ACCEPT/REJECT PROPOSAL:**

- i) No Proposal shall be considered to have been accepted, unless such acceptance is confirmed in writing and through SAP ARIBA and notified to the Successful Recovery Vendor by KE.
- ii) KE shall not be responsible for, or pay for, any expenses or losses which may be incurred by any Potential Recovery Vendor in the preparation of, or in connection with, its Proposal.
- iii) Each Potential Recovery Vendor fully waives any and all rights to claim in respect of such expenses or losses and agrees to indemnify KE, its Affiliates and their advisors fully in respect of any direct or indirect losses, damages, costs or expenses of any kind incurred by any of them.

**8. SIGNING OF THE PROJECT AGREEMENT:**

- i) The Services Agreement shall be executed between, KE and the Recovery Vendor, within a reasonable period of time from the date of issuance of the Notification of Portfolio or within such extended timeline as determined by KE in its sole discretion, failing which the Proposal Security or the Performance Security or the Advance Payment Security (as applicable) shall be forfeited and the award shall be cancelled, if such failure is due to reasons attributable to the Successful Bidder, in the sole determination of KE.
- ii) The Potential Recovery Vendor after award of the Portfolio shall start liaison with KE for the execution of the services as reflected in the TOR.

**9. CONFIDENTIALITY:**

- i) Any attempt by a Potential Recovery Vendor to influence KE in relation to the Proposal submission process may result in the rejection of its Proposal and encashment of the Performance Security and Advance Payment Security.
- ii) Information relating to the examination, clarification, evaluation and recommendation for the Potential Recovery Vendor shall not be disclosed to any person who is not officially concerned with the Proposal submission or is not a retained professional advisor advising KE in relation to, or matters arising out of, or concerning the Project submission. KE shall endeavor to treat all information submitted as part of the Project, in confidence and will require all those who have access to such material to treat the same in confidence. KE may not divulge any such information, unless it is directed to do so by any statutory entity that has the power under law to require its disclosure, is required under the applicable Laws in Pakistan, or it is to enforce or assert any right or privilege of KE, a statutory entity and/or the Government of Sindh.
- iii) All information supplied by KE in connection with this TORs, shall be treated as confidential and the Potential Recovery Vendor(s) shall not, without the prior written consent of KE, at any time make use of such information for their own purposes or disclose such information to any person (except as may be required by applicable Law). Subject to the provisions of this TORs, the TORs shall remain the property of KE and is

issued solely for the purpose of preparation and submission of the Bid in accordance herewith.

- iv) The TORs and every part of it and all other information provided by or on behalf of KE must be treated as private and confidential. Potential Recovery Vendor(s) shall not disclose the fact that they have been invited to submit a Proposal or release details of the TORs other than on a strictly confidential basis to those parties whom they need to consult for the purpose of preparing their Proposal.
- v) Potential Recovery Vendor(s) shall not at any time release any information concerning the TORs and/or their Proposal and/or any related documents and/or any discussion with KE in this connection for publication in the press or on radio, television, screen or any other medium without the prior written approval of KE.
- vi) Each Potential Recovery Vendor undertakes to indemnify KE and to keep KE indemnified against all actions, claims, demands, liability, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any breach of the provisions of this Section 10.
- vii) Any Proposal submitted in response to the TORs is submitted upon a full understanding and TORs of terms of this Section 10 (Confidentiality) and therefore the submission of the Proposal in response to the TORs would be deemed as an acceptance to the said terms.

**10. FEES, DUTIES AND TAXES:**

The Successful Recovery Vendor shall be responsible for payment of any stamp duty and other fees, duties and/or taxes that may be applicable with respect to the execution of the relevant documents including the TORs.

**11. LIEN:**

The Potential Recovery Vendor shall not claim any lien or attachment or make any similar claim in connection with any of the KE's property and shall indemnify KE against all losses, liabilities, claims, costs and expenses resulting from any liens, attachments or the like claimed by any other person.

**12. GOVERNING LAW:**

The construction and performance of the Proposal and the TORs shall be governed by the laws of Islamic Republic of Pakistan and the Courts of Karachi shall have exclusive jurisdiction in case a dispute arises. All provisions of the Bid and the TORs are without prejudice to the KE's rights and remedies pursuant to the applicable law of contract, common law statute or otherwise.

**13. AFFIDAVIT:**

- i. Affidavit is required to be submitted with the Proposal as applicable. (attached herein as Annexure A).
- ii. The mode of execution of the Affidavit should be in accordance with the procedure, if any, laid down under applicable laws and the same should be under common seal affixed in accordance with the required procedure.

- iii. The Affidavit is to be executed on a stamp paper of PKR 200/-
- iv. Also, the Potential Recovery Vendor should submit for verification a resolution/power of attorney in favor of the person executing this Affidavit for and on behalf of the Potential Recovery Vendor.
- v. The Affidavit shall be notarized by the notary public and certified by the Oath Commissioner.
- vi. To be submitted by each Potential Recovery Agent.