

RESPONSE DOCUMENT No. I



**Karachi Water and Sewerage Corporation
Local Government & Housing Town Planning Department
Government of Sindh**

West Karachi Recycled Water Project 1

**Dated
May 10, 2024**

IMPORTANT NOTICE/DISCLAIMER

*This Response to Queries Document No. 1 (the **Response Document**) is issued further to various queries received from the Prequalified Bidder(s) in respect of the Request for Proposal (including the Concession Agreement (the **CA**) attached therewith) (the **RFP**) dated March 15, 2024 issued by the Karachi Water and Sewerage Corporation (the **Agency**) for the Bidding Process of the West Karachi Recycled Water Project 1 (the **Project**).*

This Response Document is being circulated by the Agency, solely for use by the Prequalified Bidders in preparing and submitting their Bids in response to the RFP.

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

This Response Document is not an agreement; its sole purpose is to provide interested parties with information that may be useful to them in preparing their Bids in respect to the RFP. The RFP and this Response Document include statements which reflect various assumptions and assessments arrived at by the Agency in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Prequalified Bidder may require. This Response Document may not be appropriate for all persons, and it is not possible for the Agency (including its employees, personnel, agents, consultants, advisors and/ or contractors etc.) to consider the investment objectives, financial situation and particular needs of each party, that relies on, reads or uses this Response Document.

Neither the Agency nor its employees, personnel, agents, consultants, advisors and contractors etc., make any representation (express or implied) as to the accuracy or completeness of the information contained herein, or in any other document made available to any person in connection with the Bidding Process for the Project and the same shall have no liability for this Response Document or for any other written or oral communication transmitted to the recipient in the course of the recipient's evaluation of the Project. Neither the Agency, nor their employees, personnel, agents, consultants, advisors and contractors etc., will be liable in any manner whatsoever to reimburse or compensate the recipient for any costs, fees, damages or expenses incurred by the recipient in evaluating or acting upon this Response Document or otherwise in connection with the Project.

The Agency or any of its advisors has no liability for any statements, opinions or information provided in the RFP. Each Prequalified Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in the RFP. The Prequalified Bidders are required to undertake their independent assessment and to seek independent professional advice on any or all aspects of the RFP. No decision should be based solely on the basis of the information provided in the RFP and this Response Document.

The Agency expressly disavows any obligation or duty (whether in contract, tort or otherwise) to any Prequalified Bidder. No Prequalified Bidder is entitled to rely on the Agency's involvement in the preparation of this Response Document or in the Bidding Process as a basis for preparing the Bid.

RESPONSES TO PREQUALIFIED BIDDERS' QUERIES

SR.	SECTION	PROSPECTIVE BIDDER'S QUERY	AGENCY'S RESPONSE
1.	Section 20.4 of the CA	Keeping in view the engagement of International EPC companies as well as the Multilateral Banks/Lenders, the place of arbitration must be a neutral ground for all parties. As such, under Article 20.4 of the Concession Agreement, we reiterate the requirement of an amendment in the clause and request for an International Arbitration.	The seat of arbitration will remain unchanged.
2.	Section 1.3, read with 5.1 and 5.2 of the Instructions to Bidders	Submission deadline is requested to be extended by minimum 60 days due to Eid holidays and as indicated at prequalification stage.	The Bid Submission Date is hereby extended by thirty (30) days and fixed for June 14 th , 2024. The Indicative Schedule provided under sub-section 1.3 of the Instructions to Bidders shall stand amended accordingly.
3.	Section 1.1 of the Instructions to Bidders	According to the definition of the EPC Contractor, Pre-qualified bidder may be considered if it intends on undertaking the construction works for the Project. It is highlighted again that the prequalified bidder may intend on participating in the remaining works such as Procurement, for a cost-effective solution and the same should be considered.	As per the definition of " <i>Proposed EPC Contractors</i> " provided under sub-section 1.1 of the Instructions to Bidders, the Prequalified Bidder may undertake the construction works of the Project. However, please note that in such a scenario, the Prequalified Bidder shall be required to fulfil the evaluation criteria specified in sub-section 6.5 of the Instructions to Bidders and Bidding Form T8.
4.	Section 2.1.12 of the Instructions to Bidders	As per 2.1.12 of the Instruction to Bidders, the Pre-qualified bidder is allowed to list 1 O&M Contractor. For the sake of clarity, is the O&M Contractor allowed to form a Consortium as well?	As expressly provided under the terms of sub-section 2.1.12 of the Instructions to Bidders, only a single entity is envisaged to undertake the entirety of the O&M Obligations of the Project. Therefore, the formation of a consortium is not presently permitted.

5.	Recitals (F) of the CA	Recital F states that the Shareholders were selected to undertake the Project. This should be changed to Sponsors.	Noted. The requisite changes to this Recital will be made.
6.	Proviso (a) of the definition of 'Change in Law' in the CA	The definition of Change in Law excludes laws actively under consideration by a Governmental Authority on or prior to the Bid Submission Date. This is vague and should be removed. Any law which becomes effective after the bid submission date must constitute a change in law.	Noted. The requisite changes will be made to the CA.
7.	Proviso (b) of the definition of 'Change in Law' in the CA	The definition of Change in Law excludes any change in any withholding tax, or other similar Taxes on income or dividends. Such changes must constitute a change in law as they could drastically and arbitrarily impact the company's earnings.	<p>Please note that Change in Law will cover any increase in costs/ reduction in revenues (subject to the thresholds in section 23) that results from an imposition of, or change in Taxes, duties or levies payable by the Company in relation to the Project.</p> <p>However, the Change in Law coverage shall not extend to any change in any withholding tax, or other similar Taxes, on income or dividends or other distributions distributed by the Company, the EPC Contractor or the O&M Contractor.</p>
8.	-	The term "Key Parties" in relation to the Lock-in period is not defined.	We cannot find reference to the term "Key Parties". Therefore, no change will be made.
9.	Section 2.3.1 of the CA	Under clause 2.3.1., the final selection of the Independent Engineer and Independent Auditor rests with the Agency. This should mutually agreed or decided by an impartial third party	This section will remain unchanged.
10.	Section 5.5.4 read with Section	As per clause 5.5.4 All Losses incurred by the project company for maintaining and protecting the Project Works during the period of Suspension shall be borne by the	<p>Noted. The provision shall be amended as follows:</p> <p><i>"5.5.4 Subject to the rights of the Company in accordance with</i></p>

	5.5.1 of the CA	Company with no Extension of Time. This must be revisited as under section 5.5.1 the Agency is empowered to have the Company suspend the project works for various reasons at the Agency's discretion.	<p><i>Section 10.1.1(d), all Losses incurred by the Company for maintaining and protecting the Project Works (or part thereof) during the period of Suspension shall be borne by the Company and there shall be no Extension of Time granted to the Company in respect of the period of Suspension."</i></p> <p>It is clarified that in the event of Suspension caused by a GoS Parties Overriding Power Step-in Event, the Company shall be entitled to claim a Relief Event and the corresponding remedies available under the CA.</p>
11.	Section 14.3 of the CA	The Covenants against corruption specified in 14.3 should be applicable on both parties to the CA and not just the project company	The Company is the party with core obligations in the CA to build, operate, finance and transfer the Project. On the other hand, the Agency obligations are to grant the concession and to pay certain amounts. As a result, the corruption obligations should be focused on the Company as the entity with the core obligations under the CA.
12.	Section 15.5(a)(iii) of the CA	The right to terminate the CA in the event of a non-political force majeure event under 15.5(iii) should be available to all parties under the CA.	The Company's right to terminate would be at the end of the twelve (12) months (after the end of the Company's business interruption insurance). However, in the event a Force Majeure (Non-Political) continues for more than twelve (12) months and the Company elects to terminate, the compensation elements will be "a + b – e – f".
13.	Section 22.1.3 of the CA	Under clause 22.1.3, completion of the Handover Transition Plan and implementation of work required or contemplated by the Handover Transition Plan shall be paid for by the project Company. The company should not have to bare	The Company has an obligation to build the asset and return the asset in the condition set out in 4.1.3 in Schedule 1, in all circumstances and the Company will need to price that obligation into its bid on that basis. If the Project is terminated, then the compensation for the Company is

		such costs if termination is attributable to the GoS parties.	adjusted based upon who is at fault and Company received ample additional compensation under schedule 9 part 1 (1) in the event Agency is in default. The Company's basic obligation to deliver the Project does not change (to achieve COD if prior to COD and to meet 4.1.3 after COD).
14.	Section 6.5 of the Instructions to Bidders	Under evaluation criteria specified in section 6.5 of the instructions and Annexure B of Part 4 of Volume I, can bidders rely on the financial and technical resources of their Affiliates/Parent Companies?	<p>The evaluation criteria specified in sub-section 6.5 of the Instructions to Bidders and Bidding Form T8 are applicable only to the extent of the Proposed Contractors engaged by the Prequalified Bidder for the submission of the Bid.</p> <p>For abundant clarity, it is reiterated, as provided in sub-section 2.1.14 and 2.1.15 of the Instructions to Bidders, that the Proposed Contractors shall not be permitted to rely on the technical experience / credentials and/or financial strength of their parent companies for the purposes of meeting the evaluation criteria in the RFP.</p> <p>Therefore, the evaluation criteria specified in sub-section 6.5 of the Instructions to Bidders and Bidding Form T8 are to be satisfied against the technical credentials of the Contractors (even if the Prequalified Bidder intends to undertake the role of the Proposed Contractor(s) itself).</p>
15.	Definition under Section 1.1 of the CA	GoS Parties Overriding Power Step-in Event includes a national emergency as determined by the Agency. There should be a clear definition of national emergency	<p>Noted, see proposed changes for a definition of National Emergency below:</p> <p><i>“National Emergency means a national security event, riot, civil commotion, war, threat of war, terrorism or threat of terrorism, strike, sabotage, disturbance, disruption to utilities or act of god that in each case is widespread,</i></p>

			<i>regional and not local in its impact and effect.”</i>
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