

1. INSTRUCTIONS TO BIDDERS

Instructions to Bidders

This section specifies the procedures to be followed by Bidders in the preparation and submission of their Bids. Information is also provided on the submission, opening, and evaluation of bids and on the award of contract.

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Section 1 - Instructions to Bidders

A. General

- 1. Scope of Bid**
 - 1.1 In connection with the Invitation for Bids indicated in the Bid Data Sheet (BDS), the Employer, as indicated in the BDS, issues these Bidding Document for the procurement of Works as specified in Section 6 (Employer's Requirements). The name, identification, and number of contract of the International Competitive Bidding (ICB) are provided in the BDS.
 - 1.2 Throughout these Bidding Document:
 - (a) the term "in writing" means communicated in written form and delivered against receipt;
 - (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
 - (c) "day" means calendar day.
- 2. Source of Funds**
 - 2.1 The Borrower or Recipient (hereinafter called "Borrower") indicated in the BDS has applied for or received financing (hereinafter called "funds") from Donor staed in Bid Data Agency toward the cost of the project named in the BDS. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which this Bidding Document is issued.
 - 2.2 Payments by the Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of the financing agreement between the Borrower and the Donor (hereinafter called the Loan Agreement), and will be subject in all respects to the terms and conditions of that Loan Agreement. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the funds.
- 3. Corrupt Practices**
 - 3.1 Donor's Anticorruption Policy requires borrowers (including beneficiaries of Donor-financed activity), as well as bidders, suppliers, and contractors under Donor financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Donor:
 - (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice" means the offering, giving receiving, or soliciting, directly or indirectly, of any thing of value to influence the action of any party in the procurement process or the execution of a contract;
 - (ii) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
 - (iii) "collusive practices" means a scheme or arrangement between two or more bidders, with or without the knowledge of the Borrower, designed to influence the action of any party in a procurement process or the execution of a contract;
 - (iv) "coercive practices" means harming or threatening to harm, directly or indirectly, persons, or their property to influence

their participation in a procurement process, or affect the execution of a contract;

- (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract; and
- (c) will sanction a party or its successor, including declaring ineligible, either indefinitely or for a stated period of time, to participate in Doner financed activities if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, an Donor financed contract.

3.2 Furthermore, Bidders shall be aware of the provision stated in Sub-Clause 1.15 and Sub-Clause 15.6 of the General Conditions of Contract.

4. Eligible Bidders

- 4.1 A Bidder may be a natural person, private entity, government-owned entity - subject to ITB Clause 4.5 - or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture (JV). In the case of a JV:
- (a) A formal Joint Venture agreement shall be in place at the time of awarding of the contract.
 - (b) representatives of each Partner company in the Joint Venture should give the power of attorney for their nominated partner for the Joint Venture. This shall be in the form of Power of Attorney by each Partner Company of JV.
 - (c) one of the partners shall be authorized to be in charge as the lead partner; and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the JV partners;
 - (d) the partner in charge (the lead Partner) shall be authorized to receive payments and receive instructions for and on behalf of all partners of the joint venture and the entire execution of the Contract. This authorization shall be evidential by a Power of Attorney signed by legally authorized signatures of all JV Partners.
 - (e) all partners of the Joint Venture shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms and Conditions relevant statement to this effect shall be included in the Power of Attorney mentioned under (c) above and as well as in the Bid Form and the Form of Contract Agreement (in case of a successful Bid); and
 - (f) A Bidder, and all parties constituting the Bidder, shall have the nationality of an eligible country, in accordance with Section 5 (Eligible Countries). A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.

- 4.3 Donor considers a conflict of interest to be a situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations, and that such conflict of interest may contribute to or constitute a prohibited practice under Donor Anticorruption Policy. In pursuance of Donor Anticorruption Policy's requirement that Borrowers (including beneficiaries of Bank-financed activity), as well as bidders, suppliers, and contractors under Bank-financed contracts, observe the highest standard of ethics. Donor will take appropriate actions, which include not financing of the contract, if it determines that a conflict of interest has flawed the integrity of any procurement process. Consequently all Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to be in a conflict of interest with one or more parties in this bidding process if, including but not limited to:
- (a) they have controlling shareholders in common; or
 - (b) they receive or have received any direct or indirect subsidy from any of them; or
 - (c) they have the same legal representative for purposes of this bid; or
 - (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or
 - (e) a Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the party is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
 - (f) a Bidder participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid; or
 - (g) a Bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Employer or Borrower as Engineer for the contract.
- 4.4 A firm that is under a declaration of ineligibility by the Donor in accordance with ITB Clause 3, at the date of the deadline for Bid submission or thereafter, shall be disqualified.
- 4.5 Government-owned enterprises in the Employer's country shall be eligible only if they can establish that they are legally and financially autonomous and operate under commercial law, and that they are not a dependent agency of the Employer.
- 4.6 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.

5. Eligible Materials, Equipment and Services

- 5.1 The materials, equipment and services to be supplied under the Contract shall have their source origin in (eligible source countries) including Sri Lanka and eligible countries defined in the Donor guidelines for procurement and all expenditures made under the Contract will be limited to such materials, equipment, and services. At the Employer's request, Bidders may be required to provide evidence of the origin of materials, equipment and services.

All goods and services shall have their origins from eligible source countries. The eligible source country with respect to the foreign currency portion will be as per the Donor guidelines and the eligible source country with respect to the local currency portion will be as per the Donor guidelines and the Democratic Socialist Republic of Sri Lanka. The foreign currency portion should not exceed the amount specified in the Bidding Data.

Notwithstanding the above mentioned eligible source countries provisions, the materials, equipment and services, which are impossible or uneconomical to purchase from the eligible source countries, may be procured from countries other than the eligible source countries (the "third countries") with the prior consent of the Employer and the Funding Agency (Donor), up to the amount specified in the Bidding Data.

- 5.2 For purposes of Sub-Clause 5.1 above, "services" means the works and all project-related services including investigations and design services.
- 5.3 For purposes of Sub-Clause 5.1 above, "origin" means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing or substantial or major assembling of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components;

B. Contents of Bidding Document

6. Sections of Bidding Document

- 6.2 The Employer is not responsible for the completeness of the Bidding Document and their Addenda, if they were not obtained directly from the source stated by the Employer in the Invitation for Bids.
- 6.3 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document may result in the rejection of the Bid.

7. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting

- 7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Employer in writing at the Employer's address indicated in the BDS or raise his inquiries during the pre-bid meeting if provided for in accordance with ITB Clause 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received no later than twenty-one (21) days prior to the deadline for submission of bids. The Employer shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB Clause 6.2, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under ITB Clause 8 and ITB Clause 22.2.
- 7.2 The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.
- 7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 7.4 The Bidder's designated representative is invited to attend a pre-bid meeting, if provided for in the BDS. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.5 The Bidder is requested, as far as possible, to submit any questions in writing, to reach the Employer not later than one week before the meeting.
- 7.6 Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Document in accordance with ITB Clause 6.2. Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an addendum pursuant to ITB Clause 8 and not through the minutes of the pre-bid meeting.
- 7.7 Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

8. Amendment of Bidding Document

- 8.1 At any time prior to the deadline for submission of bids, the Employer may amend the Bidding Document by issuing addenda.
- 8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Employer in accordance with ITB Clause 6.2.

- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB Clause 22.2

Preparation of Bids

- 9. Cost of Bidding** 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 10. Language of Bid** 10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer, shall be written in the language specified in the BDS. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the BDS, in which case, for purposes of interpretation of the Bid, such translation shall govern.
- 11. Documents Comprising the Bid** 11.1 The Bid shall comprise the following:
- a. Letter of Bid;
 - b. Completed schedules as required, including priced Bill of Quantities, in accordance with ITB Clause 12 and 14;
 - c. Bid Security, in accordance with ITB Clause 19;
 - d. Alternative bids, if permissible, in accordance with ITB Clause 13;
 - e. Written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB Clause 20.2;
 - f. Documentary evidence in accordance with ITB Clause 17 establishing the Bidder's qualifications to perform the contract;
 - g. Technical Proposal in accordance with ITB Clause 16;
 - h. In the case of a bid submitted by a Joint Venture (JV), a copy of the JV agreement entered into by all partners, or Letter of Intent to enter into a JV including a draft agreement, indicating at least the parts of the Works to be executed by the respective partners. Non submission of the JV agreement on awarding shall disqualify the bidder.
 - i. Product conformity certificates of all materials, pipes, fittings, specials and valves, etc. and ISO 9001:2015 Quality Management System Certificates for manufacturing factories. For PE pipes and fittings the bidder shall provide a certificate for the conformation from WRAS (UK) or NSF International Laboratories for the suitability for the drinking water purposes.
 - j. Any other document required in the BDS.

12. Letter of Bid, and Schedules

12.1 The Letter of Bid and Schedules, including the Bill of Quantities, shall be prepared using the relevant forms furnished in Section 4 (Bidding Forms). The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

13. Alternative Bids

13.1 Unless otherwise indicated in the BDS, alternative bids shall not be considered.

14. Bid Prices and Discounts

14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Bill of Quantities shall conform to the requirements specified below. Discounts shall be applicable excluding provisional sums.

14.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.

14.3 The price to be quoted in the Letter of Bid, in accordance with ITB Clause 12.1, shall be the total price of the Bid, excluding any discounts offered.

14.4 The Bidder shall quote any discounts and the methodology for their application in the Letter of Bid, in accordance with ITB Clause 12.1.

14.5 Unless otherwise provided in the BDS and the Contract, the rates and prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract.

14.6 If so indicated in ITB Clause 1.1, bids are being invited for individual contracts or for any combination of contracts (packages). Bidders wishing to offer any price reduction for the award of more than one Contract shall specify in their Bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Price reductions or discounts shall be submitted in accordance with ITB Clause 14.4, provided the bids for all contracts are submitted and opened at the same time.

14.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total Bid Price submitted by the Bidder.

14.8 If a Bidder has given a discount of his bid price, the discount shall be distributed to each and every item excluding provisional sums in the Bills of Quantities by adjusting the rates in the Bills of Quantities by the percentage of discount offered. This rate is applicable for all extra works to complete the works in the Contract.

15. Currencies of Bid and Payment

15.1 The unit rates and the prices shall be quoted by the bidder entirely in the currency specified in the BDS.

- 15.2 A bidder expecting to incur expenditures in other currencies for inputs to the Works supplied from outside the Employer's country (referred to as "the foreign currency requirements") and wishing to be paid accordingly, shall indicate the respective currency portions in the Schedule of Payment Currencies included in Section 4 (Bidding Forms).
- 15.3 Foreign currency requirements indicated by the bidders in the Schedule of Payment Currencies shall include but not limited to the specific requirements for
- (a) expatriate staff and labour employed directly on the Works;
 - (b) charges relating to such expatriate staff and labour, and foreign travel expenses;
 - (c) imported materials, both temporary and permanent, including fuels, oil and lubricants required for the Works;
 - (d) depreciation and usage of imported Plant and Contractor's Equipment, including spare parts, required for the Works;
 - (e) foreign insurance and freight charges for imported materials, Plant and Contractor's Equipment, including spare parts; and
 - (f) Overhead expenses, fees, profit, and financial charges arising outside the Employer's country in connection with the Works.
 - (g) Inspection and testing on imported materials, plants, etc. at the manufacturer's factory by the Independent Inspection Agency and NWSDB Engineers.
 - (h) All other cost to be incurred in foreign currencies.
- 15.4 Bidders may be required by the Employer to clarify their foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of Payment Currencies are reasonable and responsive to ITB Clause 15.2 above, in which case a detailed breakdown of its foreign currency requirements shall be provided by the Bidder.
- 15.5 Bidders should note that during the progress of the Works, the foreign currency requirements of the outstanding balance of the Contract Price shall not be adjusted by agreement between the Employer and the Contractor in order to reflect any changes foreign currency requirements for the Contract, in accordance with Sub-Clause 14.15 of the Conditions of Contract. Any such adjustment shall be effected by comparing the percentages quoted in the bid with the amounts already used in the Works and the Contractor's future needs for imported items.

16. Documents Comprising the Technical Proposal

- 16.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section 4 (Bidding Forms), in sufficient detail to demonstrate the adequacy of the Bidders' proposal to meet the work requirements and the completion time.

**17. Documents
Establishing the
Qualifications of the
Bidder**

17.1 To establish its qualifications to perform the Contract in accordance with Section 3 (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding information sheets included in Section 4 (Bidding Forms).

**18. Period of Validity
of Bids**

18.1 Bids shall remain valid for the period specified in the BDS after the Bid submission deadline date prescribed by the Employer. A bid valid for a shorter period shall be rejected by the Employer as non-responsive.

18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Employer may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB Clause 19, it shall also be extended twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid.

19. Bid Security

19.1 Unless otherwise specified in the BDS, the Bidder shall furnish as part of its bid, a bid security in original form which is encashable on demand and in the amount and currency specified in the BDS.

19.2 The Bid Security shall be, at the Bidder's option, in any of the following forms:

(a) Bank Guarantee issued by a reputed bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka.

(b) A Bank guarantee issued by a Bank based in another country but the security or guarantee "confirmed" by a Bank operating in Sri Lanka approved by the Central Bank of Sri Lanka.

The term "confirmed" in relation to bank guarantee issued by a bank based in another country means that the "confirmed" bank held liable for paying the respective guaranteed amount at the request of first demand by the beneficiary.

19.3 Bid Security shall be valid up to the date specified in the Bidding Data Sheet.

19.4 Any bid not accompanied by an enforceable and compliant Bid Security, if one is required in accordance with ITB Clause 19.1, shall be rejected by the Employer as non-responsive.

19.5 The bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the performance security pursuant to ITB Clause 41.

19.6 The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security.

19.7 The bid security may be forfeited:

- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bids, except as provided in ITB Clause 18.2 or
- (b) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB Clause 40;
 - (ii) furnish a performance security in accordance with ITB Clause 41;
 - (iii) accept the correction of its Bid Price pursuant to ITB Clause 31.2; or

19.8 The Bid Security of a JV shall be in the name of the JV that submits the Bid. If the JV has not been legally constituted at the time of bidding, the Bid Security shall be in the names of all future partners as named in the letter of intent mentioned in ITB Clause 4.1.

20. Format and Signing of Bid

- 20.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11 and clearly mark it "ORIGINAL". Alternative bids, if permitted in accordance with ITB Clause 13, shall be clearly marked "ALTERNATIVE". In addition, the Bidder shall submit copies of the Bid, in the number specified in the BDS and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 20.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Bid, except for un-amended printed literature, shall be signed or initialed by the person signing the Bid.
- 20.3 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.
- 20.4 If a Bidder has given a discount of his bid price, the discount shall be distributed to each and every item excluding provisional sums in the Bills of Quantities by adjusting the rates in the Bills of Quantities by the percentage of discount offered. Contractor shall adjust all BOQ Rates deducting the discounted amount and shall endorse with the Contractor's Signature. This rate is applicable for all extra works to complete the works in the Contract.

Submission and Opening of Bids

21. Sealing and Marking of Bids

- 21.1 The Bidder shall enclose the original and all copies of the Bid, including alternative bids, if permitted in accordance with ITB Clause 13, in separate sealed envelopes, duly marking the envelopes as “ORIGINAL”, and “COPY.” These envelopes containing the original and the copies shall then be enclosed in one single envelope.
- 21.2 The inner and outer envelopes shall:
- (a) bear the name and address of the Bidder;
 - (b) be addressed to the Employer in accordance with BDS 22.1;
 - (c) bear the specific identification of this bidding process indicated in the BDS 1.1; and
 - (d) bear a warning not to open before the time and date for bid opening.
- 21.3 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the Bid.

22. Deadline for Submission of Bids

- 22.1 Bids must be received by the Employer at the address and no later than the date and time indicated in the BDS. When so specified in the BDS, Bidders shall have the option of submitting their bids electronically. Bidders submitting bids electronically shall follow the electronic bid submission procedures specified in the BDS.
- 22.2 The Employer may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Document in accordance with ITB Clause 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

23. Late Bids

- 23.1 The Employer shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB Clause 22. Any bid received by the Employer after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

24. Withdrawal, Substitution, and Modification of Bids

- 24.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB Clause 20.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be:
- (a) prepared and submitted in accordance with ITB Clause 20 and ITB Clause 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” “MODIFICATION;” and
 - (b) received by the Employer prior to the deadline prescribed for submission of bids, in accordance with ITB Clause 22.

- 24.2 Bids requested to be withdrawn in accordance with ITB Clause 24.1 shall be returned unopened to the Bidders.
- 24.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof.

25. Bid Opening

- 25.1 The Bid opening committee on behalf of the Procurement Committee shall open the Bids in public at the address, date and time specified in the BDS in the presence of Bidders` designated representatives and anyone who choose to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB Clause 22.1, shall be as specified in the BDS.
- 25.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked "MODIFICATION" shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at bid opening. Only envelopes that are opened and read out at bid opening shall be considered further.
- 25.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the Bid Price(s), including any discounts and alternative offers; the presence of a bid security, if required; and any other details as the Employer may consider appropriate. Only discounts and alternative offers read out at bid opening shall be considered for evaluation. Unless otherwise specified in the BDS, all pages of the Letter of Bid and Bill of Quantities are to be initialed by at least two members of Bid opening committee. No bid shall be rejected at bid opening except for late bids, in accordance with ITB Clause 23.1.
- 25.4 The Bid opening committee shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, including any discounts and alternative offers; and the presence or absence of a bid security, if one was required. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record.

Evaluation and Comparison of Bids

26. Confidentiality

- 26.1 Information relating to the examination, evaluation, comparison, and post-qualification of bids and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders.
- 26.2 Any attempt by a Bidder to influence the Employer in the evaluation of the bids or Contract award decisions may result in the rejection of its bid.
- 26.3 Notwithstanding ITB Clause 26.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it may do so in writing.

27. Clarification of Bids

- 27.1 To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its bid. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids, in accordance with ITB Clause 31.
- 27.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Employer's request for clarification, its bid may be rejected.

28. Deviations, Reservations, and Omissions

- 28.1 During the evaluation of bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Bidding Document;
 - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and
 - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.

29. Determination of Responsiveness

- 29.1 The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB Clause 11.
- 29.2 A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,
- (a) if accepted, would:
 - (i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
 - (ii) limit in any substantial way, inconsistent with the Bidding Document, the Employer's rights or the Bidder's obligations

under the proposed Contract; or

- (iii) Which affects in an adverse manner the scope, quality, delivery period or performance of the materials/works and the firmness of the quoted price Bidder requires price fluctuation whereas bidding document specifies otherwise,.
 - (iv) Which limits in any substantial way, inconsistent with the Bidding document, the Board's right or the Bidder's obligations under the contract; or Deviation from bid documents which affects the bid price but cannot be given monetary value;
 - (v) Whose rectification would affect unfairly the competitive position of other Bidders presenting substantially responsive Bids. Departure from technical specifications of critical nature which affects quality, function & durability;
 - (vi) Absence of documents intended to substantiate the legitimacy of the bid (i.e that the Bid is not a 'speculative', 'exploratory' or 'wait and see' Bid) or proof of reliability of the equipment offered;
 - (vii) Which limits in any substantial way the scope, quality or performance of the Goods;
 - (viii) Bidder proposes to subcontract of the work against the conditions provided;
 - (ix) Conditional bids, that is, subject to prior sale, availability of components in the market;
 - (x) Un acceptable technical features
 - (xi) Bids which are not responsive to critical, technical or commercial requirements in the bidding document.
- (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.

29.3 The Employer shall examine the technical aspects of the bid submitted in accordance with ITB Clause 16, Technical Proposal, in particular, to confirm that all requirements of Section 6 (Employer's Requirements) have been met without any material deviation or reservation.

29.4 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

30. Nonconformities, Errors, and Omissions

30.1 Provided that a bid is substantially responsive, the Employer may waive any non-conformities in the bid that do not constitute a material deviation, reservation or omission.

30.2 Provided that a bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or

documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the bid. Failure of the Bidder to comply with the request may result in the rejection of its bid.

30.3 Provided that a bid is substantially responsive, the Employer shall rectify nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the method indicated in Section 3 (Evaluation and Qualification Criteria).

31. Correction of Arithmetical Errors

31.1 Provided that the bid is substantially responsive, the Employer shall correct arithmetical errors on the following basis:

- (a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
- (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

31.2 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be disqualified and its bid security may be forfeited.

32. Conversion to Single Currency

32.1 For evaluation and comparison purposes, the currency(ies) of the bid shall be converted into a single currency as specified in the BDS.

33. Margin of Preference

This Clause is not applicable.

34. Evaluation of Bids

34.1 The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.

34.2 To evaluate a bid, the Employer shall consider the following in the order as given below:

- (a) application of all the evaluation factors indicated in Section 3 (Evaluation and Qualification Criteria);
- (b) the bid price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities, but including Day-work items, where priced competitively;
- (c) price adjustment for correction of arithmetic errors in accordance with ITB Clause 31.1;

- (d) price adjustment due to discounts offered in accordance with ITB Clause 14.4;
- (e) converting the amount resulting from applying (b) to (d) above, if relevant, to a single currency in accordance with ITB Clause 32;
- (f) adjustment for nonconformities in accordance with ITB Clause 30.3;

34.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.

34.4 If this Bidding Document allows Bidders to quote separate prices for different contracts, and the award to a single Bidder of multiple contracts, the methodology to determine the lowest evaluated price of the contract combinations, including any discounts offered in the Bid Submission Sheet, is specified in Section 3 (Evaluation and Qualification Criteria).

34.5 If the bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.

35. Comparison of Bids

35.1 The Employer shall compare all substantially responsive bids to determine the lowest evaluated bid, in accordance with ITB Clause 34.2.

36. Qualification of the Bidder

36.1 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid meets the qualifying criteria specified in Section 3 (Evaluation and Qualification Criteria).

36.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB Clause 17.1.

36.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Employer shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.

37. Employer's Right to Accept Any Bid, and to Reject Any or All Bids

37.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

Award of Contract

38. Award Criteria

38.1 The Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

39. Notification of Award

39.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, that its bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the "Letter of Acceptance") shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Works (hereinafter and in the Conditions of Contract and Contract Forms called "the Contract Price") and the requirement for the Contractor to remedy any defects therein as prescribed by the Contract.

39.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.

40. Signing of Contract

40.1 Promptly after notification, the Employer shall send the successful Bidder the Contract Agreement.

40.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer.

40.3 A formal Joint Venture agreement shall be in place at the time of signing of the contract.

41. Performance Security

41.1 Within twenty-eight (28) days of the receipt of notification of award from the Employer, the successful Bidder shall furnish the performance security in accordance with the conditions of contract, subject to ITB Clause 34.5, using for that purpose the Performance Security Form included in Section 9 (Contract Forms), or another form acceptable to the Employer.

41.2 Failure of the successful Bidder to submit the above-mentioned Performance Security and or to sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

41.3 The above provision shall also apply to the furnishing of a domestic preference security if so required.

**42. Appeals Against
Contract Awards
Recommended by
CAPC**

The Secretary to the line ministry will inform to all the bidders in writing the selection of the successful bidder and the intention of contract award to such bidder. The unsuccessful bidders if they so wish, within one week of such notice may make representation to the Procurement Appeal Board at the address given below. Such representation shall be self – contained to enable the Appeal Board to arrive at a conclusion and a cash deposit to amount given below shall be made. The Appeal Board may request the bidder who had made representation to submit further evidence during the investigations. The cash deposit will be forfeited unless the Employer changes the original contract award decision in favour of the bidder who has made such representation.

If the procurement is within the authority limit of CAPC.

Address : The Secretary
Appeal Board,
Presidential Secretariat
Colombo.

Cash Deposit : SL Rupees 50,000.00