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INSTRUCTIONS TO BIDDERS

A. General

- 1. Scope of Bid**
 - 1.1 Cabinet Appointed Procurement Committee on behalf of the National Water Supply & Drainage Board, Sri Lanka (hereinafter referred to as “the Employer”), wishes to receive Bids (hereafter, in the Condition of Contract called the “Tender” for the Bid”) for design-build and completion commissioning and Operation and Maintenance for 91 days period of the Water Supply Project as defined in these Bidding documents (hereinafter referred to as “the Works”).
 - 1.2 The successful Bidder will be expected to complete the Works within the day from the commencement date of the contract as specified in Bidding Data.
- 2. Source of Funds**
 - 2.1 Source of funds shall be as specified in the Bidding Data.
- 3. Eligible Bidders**
 - 3.1 This Invitation to Bid is open only to Bidders who fulfil the qualification criteria given in **Clause 5.0**. In the cast of Joint Venture (JV), all members shall be jointly and severally liable for the execution of the contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Bidding process and, in the event the JV is awarded the contract, during contract execution.
 - 3.2 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer as the Employer shall reasonably request.
 - 3.3 A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this Bidding process, if the Bidder:
 - a) directly or indirectly controls, is controlled by or is under common control with another Bidder; or
 - b) receives or has received any direct or indirect subsidy from another Bidder; or
 - c) has the same legal representative as another Bidder; or
 - d) has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the Bid of another Bidder, or influence the decisions of the Employer regarding this Bidding process; or
 - e) 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 such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one Bid; or

- f) any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the Bid; or
- g) any of its affiliates has been hired (or is proposed to be hired) by the Employer or Borrower as Engineer for the Contract implementation; or
- h) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the BDS ITB 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
- i) has a close business or family relationship with a professional staff of the Borrower (or of the project implementing agency, or of a recipient of a part of the loan) who: (i) are directly or indirectly involved in the preparation of the Bidding documents or specifications of the contract, and/or the Bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank throughout the procurement process and execution of the contract.

3.4 A Bidder may have the nationality of any country, subject to the restrictions imposed on the Bidder by the employer or employer's country or the funding agency (Donor). A Bidder shall be deemed to have the nationality of a country if the Bidder is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed sub-contractors or sub-consultants for any part of the Contract including related services.

4. Eligible Materials, Equipment and Services

4.1 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.

- 4.2 For purposes of **Sub-Clause 4.1** above, “services” means the works and all project-related services including investigations and design services.
- 4.3 For purposes of **Sub-Clause 4.1** 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;

5. Qualification of the Bidder

- 5.1 To be qualified for award of Contract, Bidders shall:
 - (a) submit a written power of attorney authorizing the signatory of the Bid to commit the Bidder;
 - (b) Company Registration and
 - (c) have adequate financial capacity and the technical capacity as given in **Clause 5.4** hereof to undertake the contract. This will include an assessment of Bidder’s proposals regarding design criteria and philosophy, outline design, work methods and schedule, in sufficient detail to demonstrate the adequacy of the Bidders’ proposals to meet the Employer’s Requirements and the time for completion.
 - (d) If Bidder is a Joint Venture of two or more firms, they shall also comply with the requirements mentioned in **Clause 5.2** hereof.
 - (e) Bidder should fulfil the requirements given in **Clause 5.3** hereof.
- 5.2 Bids submitted by a Joint Venture of two or more firms as partners shall comply with the following requirements:
 - (a) the Bid, and in case of a successful Bid, the Form of Contract Agreement, shall be signed so as to be legally binding on all partners;
 - (b) Representatives of each company in the Joint Venture should give power of attorney for their nominated partner for the Joint Venture.

- (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 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;
- (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 a relevant statement to this effect shall be included in the authorization mentioned under (c) above as well as in the Bid Form and the Form of Contract Agreement (in case of a successful Bid); and
- (f) letter of intend to form a Joint Venture before signing the Joint Venture agreement (the agreement entered into by the Joint Venture partners) shall be submitted with the Bid. This should be signed by all Joint Venture partners and attested by Attorney.

5.3 Bidders shall also submit proposals of design criteria and philosophy, outline design, work methods and all relevant schedules, in sufficient detail to demonstrate the adequacy of the Bidders' proposals to meet the Employer's Requirements (given in Volume II in this document) and the completion time referred to in **Sub-Clause 1.2** above.

The Bidders are required to undertake appropriate investigations/tests and/or surveys adequate enough to draw up a realistic design in line with the specifications and requirements of the Employer.

Preference will be given in the Bid evaluation to the most realistic designs which is capable of being implemented with least future modifications and/or least possible delay and with least overall cost including Operation and Maintenance.

5.4 Bidder shall fulfil the qualification criteria given in the **Contract Data**.

6. One Bid per Bidder

6.1 Each Bidder shall submit only one Bid either by itself, or as a partner in a Joint Venture. A Bidder who submits or participates in more than one Bid will cause all those Bids to be rejected.

7. cost of Bidding

7.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid and the Employer will in no case be responsible or liable for those costs.

8. Site Visit

8.1 The Bidder is strongly 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 the investigations design-

build and completion of the Works. The costs of visiting the Site and other costs shall be borne by the Bidder.

- 8.2 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 inspection, but only up to 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.
- 8.3 Pre-Bid meeting and site inspection conducted by the Employer as provided in the Instructions to Bidders is compulsory for prospective Bidders.

B. Bidding Documents

9. Content of Bidding Documents

- 9.1 The Bidding documents comprises following sections of the document, and should be read in conjunction with any Addenda issued in accordance with **Clause 11**:

- Section 1 Invitation for Bids
- 2 Instructions to Bidders & Bidding Data
- 3 3.1 FIDIC Conditions of Contract
- 3.2 Particular Conditions of Contract
- 4 Evaluation and Qualification Criteria
- 5 Bidding Forms
- 6 Form of Proposals & Appendices
- 7 Contract Forms
- 8 Employer's Requirement including specifications
- 9 Price schedules
- 10 Schedule of Payments
- 11 Technical Information
- 12 Drawings

- 9.2 The Bidder is expected to examine carefully the contents of the Bidding documents. Failure to comply with the requirements of Bid submission will be at the Bidder's own risk. Pursuant to **Clause 27**, Bids which are not substantially responsive to the requirements of the Bidding documents will be rejected.

10. Clarification of Bidding Documents

- 10.1 A prospective Bidder requiring any clarification of the Bidding documents may notify the Employer in writing or by fax (hereinafter the term "fax" is deemed to include electronic transmission such as facsimile, cable and telex) at the Employer's address indicated in the Invitation for Bids. The Employer will respond to any request for clarification which it receives earlier than 21 days prior to the deadline for submission of Bids. Copies of the Employer's response, including a description of the enquiry, will be forwarded to all purchasers of the Bidding documents.

- 11. Amendment of Bidding Documents**
- 11.1 At any time prior to the deadline for submission of Bids, the Employer may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, modify the Bidding documents by issuing addenda.
- 11.2 Any addendum thus issued shall be part of the Bidding documents pursuant to **Sub-Clause 9.1**, and shall be communicated in writing or by fax to all purchasers of the Bidding documents. Prospective Bidders shall acknowledge receipt of each addendum by fax to the Employer.
- 11.3 To afford prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Employer may extend the deadline for submission of Bids, in accordance with **Clause 21**.

C. Preparation of Bids

- 12. Language of Bid**
- 12.1 The Bid, and all correspondence and documents, related to the Bid, exchanged between the Bidder and the Employer shall be written in the English language. Supporting documents and printed literature furnished by the Bidder may be in another language provided they are accompanied by an accurate translation of the relevant passages in the English language, in which case, for purposes of interpretation of the Bid the English translation shall prevail.

- 13. Documents Comprising the Bid**
- 13.1 The Bid documents shall comprised two envelopes submitted simultaneously, one called the Technical Proposal containing the document listed in **Clause 13.2** and the other called the Financial Proposal containing the documents listed in **Clause 13.3**. (Two envelope, single stage Bidding) Both envelopes enclosed together in an outer single envelope.
- 13.2 The Technical Proposal submitted by the Bidder shall comprise the following:
- (i) Letter of Tender
 - (ii) Letter of intention to form a Joint Venture
 - (iii) Company Registrations (company registration of all partners)
 - (iv) Form of Technical Proposal and Appendix to Technical Proposal (Section 6)
 - (v) Bid Security (Section 7)
 - (vi) Power of Attorney;
 - (vii) Power of Attorney for individual partner in the JV by their Company;
 - (viii) Power of Attorney for the lead partner by other partners in the Joint Venture;
 - (ix) Bidding Forms (Section 5)
 - (x) Schedule of Drawings (Section 12)
 - (xi) Schedule of Major Items of Plant and Equipment;

- (xii) Schedule of Major Items of Constructional Plant;
- (xiii) Schedule of Key Personnel;
- (xiv) Schedule of Subcontractors;
- (xv) Schedule of Recommended Spare Parts for 5 years successful operation
- (xvi) Schedule of Financial data
- (xvii) Schedule of ongoing contracts
- (xviii) Schedule of Experience record
- (xix) Schedule of Contracts executed during the last 10 years
- (xx) Schedule of experience on Water Supply Schemes
- (xxi) Audited Financial Statements for past 3 Years;
- (xxii) Any other materials required to be completed and submitted by Bidder in accordance with these Instructions to Bidders.

13.3 The Financial Proposal shall comprise the followings:

- (i) Form of Financial Proposal and Appendix to Financial Proposal (Section 6)
- (ii) Price Proposal
- (iii) Schedule of Payments
- (iv) Any other documents required in Bid.

14. Bid Form and Price Schedules

14.1 The Bidder shall complete the Proposal Forms and the appropriate Price Proposal and Schedule of Payment furnished in the Bidding documents in the manner and detail indicated therein, following the requirements **Clause 15 and 16**;

15. Bid Prices

15.1 Unless specified otherwise in Employer’s Requirements, Bidder shall quote for the entire facilities on a “single responsibility” basis such that the total Bid price covers all the Contractor’s obligations mentioned in or to be reasonably inferred from the Bidding documents in respect of the detailed investigations, design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the facilities. This includes all requirements under the Contractor’s responsibilities for testing, pre-commissioning and commissioning of the facilities and, where so required by the Bidding documents, the acquisition of all permits, approvals and licenses, etc. operation, maintenance and training services and such other items and services as specified in the Bidding documents, all in accordance with the requirements of the Conditions of Contract and the Employer’s Requirements.

15.2 Bidders shall give a lump sum price in the manner and details requested in the Price Schedule.
The Bid price shall include all taxes, duties and other charges imposed outside Sri Lanka on the production, manufacture sale and transport of all the goods, materials and services in terms of foreign taxation and include business taxes income and all other taxes excluding custom duties and VAT in terms of local taxation.

For materials, plant and equipment offered from within the Employer's country shall include all costs all taxes and duties paid or payable on components and raw materials incorporated or to be incorporated in the plant equipment including customs duty, particulars etc.

- 15.3 Bidder shall give rates for all major items of work given in Schedule of rates in Section 9.
- 15.4 The terms EXW, CIF and FOB shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce, Paris.
- 15.5 If a Bidder has given a discount of his Bid price, the discount shall be distributed to each and every item excluding provisional sum in the Price Schedule by adjusting the rates in the Price Schedule by the percentage of discount offered. This rate is applicable for all extra works to complete the works in the Contract.

16. Currencies of Bid and Payment

- 16.1 Prices shall be quoted in the following currencies:
 - (a) The Bid Price shall be stated in US Dollars for foreign component and Sri Lankan Rupees for local component.
- 16.2 Bidders shall indicate their expected foreign currency requirements in the Appendix to Financial Proposal.
- 16.3 Bidders may be required to clarify their local and foreign currency requirements, and to substantiate that the amounts included in the Schedule of Prices as shown in the Appendix to Bid are reasonable and in accordance with the **Sub-Clause 15.1** in which case a detailed breakdown of its foreign currency requirements shall be provided by the Bidder.
- 16.4 During the progress of the Works, the foreign currency portions of the outstanding balance of the Contract Price may be adjusted by agreement between the Employer and the Contractor to reflect any changes in foreign currency requirements for the contract, in accordance with **Clause 14.15** of the General Conditions of Contract. Any such adjustment shall be effected by comparing the amounts quoted in the Bid with the amounts already used in the Works and the contractor's future needs for imported items.

17. Bid Validity

- 17.1 Bids shall remain valid for a period of 210 days after the date of Bid opening specified in **Sub-Clause 24.1**.
- 17.2 In exceptional circumstances, prior to expiry of the original Bid validity period, the Employer may request that the Bidders extend the period of validity for a specified additional period. The request and the responses thereto shall be made in writing or by fax. A Bidder may refuse the request without forfeiting its Bid security. A Bidder agreeing to the request will not be required or permitted to

modify its Bid, but will be required to extend the validity of its Bid security for the period of the extension, and in compliance with **Clause 18** in all respects.

- 18. Bid Security**
- 18.1 The Bidder shall furnish, as part of its Bid, a Bid security in the amount as specified in the Bidding Data.
- 18.2 Bid security which is encashable on demand equivalent to the sum stated in **Clause 18.1** shall be furnished in one of the following forms. Bid security shall be as per the format given in the Bidding Document to indicate the requirements.
- (a) Bank Guarantee issued by a reputed Bank operating in Sri Lanka, approved by the central Bank of Sri Lanka.
 - (b) Bank Guarantee issued by a bank based in another country but the Guarantee “confirmed” by a negotiate bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka.
 - (c) Certified cheque issued by a reputed local bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka in favour of the National Water Supply & Drainage Board,
- 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.**
- However, the requirement of confirmation of Bid Securities issued by a Bank based in another country, by a Bank operating in Sri Lanka is not necessary, if the entity that issues the guarantee is an Export Credit Agency of any foreign government or a reputed International Financier acceptable to the Central Bank of Sri Lanka.
- 18.3 Any Bid not accompanied by an acceptable Bid security shall be rejected by the Employer as non-responsive.
- 18.4 The Bid securities of unsuccessful Bidders will be returned as promptly as possible, but no later than 28 days after the expiration of the period of Bid validity.
- 18.5 The Bid security of the successful Bidder will be returned when the Bidder has signed the Contract Agreement and furnished the required performance security.

- 18.6 The Bid security may be forfeited
- (a) if the Bidder withdraws its Bid, except as provided in **Sub-Clause 23.1**,
 - (b) if the Bidder does not accept the correction of its Bid price, pursuant to **Sub-Clause 28.2**; or
 - (c) if it fails, in the case of a successful Bidder, within the specified time limit to
 - (i) sign the Contract Agreement,
 - (ii) furnish the required performance security

19. Format and Signing of Bid

- 19.1 The Bidder shall prepare one original and 02 copies of the Bid documents comprising the Bid as described in **Clause 13** of these Instructions to Bidders, bound with the volume containing the Form of Bid, and clearly marked “ORIGINAL” and “COPY1” and “COPY2” as appropriate. In the event of discrepancy between them, the original shall prevail.
- 19.2 The original and all copies of the Bid shall be typed or written in indelible ink (in the case of copies, Photostats are also acceptable) and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder, pursuant to **Sub Clauses 5.1 (a)** or **5.2 (b)**, as the case may be. All pages of the Bid where entries or amendments have been made shall be initialled by the person or persons signing the Bid.
- 19.3 The Bid shall contain no alternations, omissions or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialled by the person or persons signing the Bid.
- 19.4 If a Bidder has given a discount of his Bid price, the discount shall be distributed as stated in the **Sub Clause 15.5** hereof and Contractor shall adjust all Rates in Price Schedule 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.

D Submission of Bids

20. Sealing and Marking of Bids

- 20.1 The Bidder shall seal the ORIGINAL Technical Proposal and other documents mentioned in **Clause 13.1**, and ORIGINAL Financial Proposal and other documents specified in the same clause above, in separate inner envelopes and place these in one outer envelope, duly marking the inner envelopes as “ORIGINAL Technical Proposal” and “ORIGINAL Financial Proposal”. Two additional clearly marked envelopes, containing copies of (a) the Technical Proposal and (b) the Financial proposal shall be included in the outer envelope. Envelopes containing copies shall be duly marked as “COPY1” and “COPY2” Technical Proposal” and “COPY1” and “COPY2” Financial Proposal”.

- 20.2 The inner and outer envelopes shall be addressed as specified in the Bidding Data
- 20.3 In addition to the identification required in **Sub-Clause 20.2**, the inner envelope shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared “late” pursuant to **Clause 22**.
- 20.4 If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the Bid.
- 21. Deadline for Submission of Bids**
- 21.1 Bids must be received by the Employer at the address specified in the Bidding Data no later than the time and Date specified in the Bidding Data.
- 21.2 The Employer may, at its discretion, extend the deadline for submission of Bids by issuing an addendum in accordance with **Clause 11**, in which case all rights and obligations of the Employer and the Bidders previously subject to the original deadline will thereafter be subject to the deadline as extended.
- 22. Late Bids**
- 22.1 Any Bid received by the Employer after the deadline for submission of Bids prescribed in **Clause 21** will be rejected and returned unopened to the Bidder.
- 23. Modification and Withdrawal of Bids**
- 23.1 The Bidder may modify or withdraw its Bid after Bid submission, provided that written notice of the modification or withdrawal is received by the Employer prior to the deadline for submission of Bids.
- 23.2 The Bidder’s modification or withdrawal notice shall be prepared, sealed, marked and delivered in accordance with the provisions of **Clause 20**, with the outer and inner envelopes additionally marked “MODIFICATION” or “WITHDRAWAL”, as appropriate. A withdrawal notice may also be sent by fax but must be followed by a signed confirmation copy.
- 23.3 No Bid may be modified by the Bidder after the deadline for submission of Bids, except in accordance with **Sub-Clause 23.2** and **28.2**.
- 23.4 Withdrawal of a Bid during the interval between the deadline for submission of Bids and the expiration of the period of Bid validity specified in **Sub-Clause 17.1** may result in the forfeiture of the Bid security pursuant to **Sub-Clause 18.6**.

E. Bid Opening and Evaluation

24. Bid Opening

- 24.1 The Bid Opening Committee (BOC) approved by the Procurement Committee will open the Bids, including modifications made pursuant to **Clause 23**, in the presence of Bidders' representatives who choose to attend Bid opening shall be taken place at the location, Time and Date specified in the Bidding data.
- 24.2 Any Bid for which an acceptable notice of withdrawal has been submitted pursuant to **Clause 23** hereof and if BOC is satisfied with the content and authentication of the withdrawal letter, the Bidder's original Bid shall not be opened. But all the members of the BOC shall initial on the outer cover and keep in a secured place to return on the award of contract. Envelopes marked "WITHDRAWAL" shall be opened and read out first. Then envelopes marked "MODIFICATIONS" should be placed with the respective "Original" Bid and "Modification" shall be opened first and modifications proposed shall be read out. Then the respective "Original" shall be opened and read out. Completion of the all Bids that have been modified, envelopes marked "ORIGINAL" of other Bidders shall be opened and readout subsequently.
- 24.3 The Bid Opening Committee shall read out the following at the Bid opening.
- a) Name and address of the Bidder (if joint venture, read the name of the joint venture)
 - b) Bid modification and withdrawals
 - c) Absence or presence of the Bid security; All members of the committee shall initial the Bid security; and such other details as the employer may consider as appropriate.
 - d) Any other information that the BOC consider as relevant.
 - e) Financial proposal shall not be opened at this stage.

After opening original of each and read out the relevant information,

the BOC shall reseal the envelopes before handing over the documents to the chairman of TEC in sealed form.

- 24.4 The Bid Opening Committee shall prepare minutes of the Bid opening, including the information disclosed to those present in accordance with **Sub-Clause 24.3** hereof.

- 25. Process to be Confidential** 25.1 Information relating to the examination, clarification, evaluation and comparison of Bids and recommendations for the award of a contract shall not be disclosed to Bidders or any other persons not officially concerned with such process. Any effort by a Bidder to influence the Employer's processing of Bids or award decisions may result in the rejection of the Bidder's Bid.
- 26. Clarification of Bids** 26.1 To assist in the examination, evaluation and comparison of Bids, the Employer may, at its discretion, ask any Bidder for clarification of its Bid. The request for clarification and the response shall be in writing or by fax, but no change in the price or substance of the Bid shall be sought, offered or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids in accordance with **Clause 28** hereof.
- 27. Preliminary examination of Bids and Determination of Responsiveness** 27.1 Prior to the detailed evaluation of Bids the Procurement Committee will determine whether each Bid,
- a) meets the eligibility and qualification criteria defined in **Clauses 3 and 5** hereof.
 - b) has been properly signed and accompanied by a proper power of attorney.
 - c) is accompanied with the required Bid security as defined in **Clause 18** hereof .
 - d) has sufficient Bid validity period as per **Clause 17** hereof, and
 - e) provides any clarifications and/or substantiation that the Employer may require pursuant to **Clause 26** hereof.
 - f) is substantially responsive to the requirements of the Bid documents,
- If a Bid does not meet any one of the above requirements (a) to (c) it will be considered substantially non responsive and rejected by the procurement committee.
- 27.2 A substantially responsive Bid is one which conforms to all the terms, conditions and requirements of the Bidding documents, without material deviation or reservation.
- A material deviation or reservation is one when,
- a) Bidder requires price fluctuation whereas Bidding document specifies otherwise,;
 - b) Deviation from Bid documents which affects the Bid price but cannot be given monetary value;

- c) Departure from technical specifications of critical nature;
- d) Departure from the Employer's Requirement.
- e) 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.
- f) Bidder proposes to subcontract major components of the work against the conditions provided.
- g) Conditional Bids, that is, subject to prior sale, availability of components in the market,
- h) Un acceptable technical features
- i) Bids which are not responsive to critical, technical or commercial requirements in the Bidding document.
- j) which affects in any substantial way the scope, quality or performance of the Works; (j) which limits in any substantial way, inconsistent with the Bidding documents, the Employer's rights or the Bidder's obligations under the contract; or (k) whose rectification would affect unfairly the competitive position of other Bidders presenting substantially responsive Bids.

27.3 If a Bid is not substantially responsive, it will be rejected by the Procurement Committee, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

28. Correction of Errors

28.1 Where there is a discrepancy between the amounts in figures and in words the amounts in words will govern and where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity.

- (i) the unit rate as quoted will govern
- (ii) unless in the opinion of the Procurement Committee there is an obviously gross misplacement of the decimal point in the unit rate in which case the line item total as quoted will govern and the unit rate will be corrected.

28.2 The amount stated in the Financial Proposal of the Bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors and, shall be considered as binding upon the Bidder. If the Bidder does not accept the

corrected amount of Bid, its Bid will be rejected, and the Bid security may be forfeited in accordance with **Sub-Clause 18.6 (b)** hereof.

If the Bid price changes by the above procedure, the amount stated in the Financial Proposal of the Bid shall be adjusted with the concurrence of the Bidder and shall be considered as binding upon the Bidder.

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| 29. Conversion to Single Currency | 29.1 | The Procurement Committee will convert the amounts in various currencies in which the Bid Price is payable to the currency of the Employer's country at the selling exchange rates officially prescribed for similar transactions as established by Central Bank of Sri Lanka in the date of opening of Bids. |
| 30. Evaluation and Comparison of Bids | 30.1 | The Procurement Committee will evaluate and compare only the Bids determined to be substantially responsive in accordance with Clause 27 hereof. |
| | 30.2 | The Procurement Committee will carry out a detailed evaluation of the Bids in order to determine whether the Bidders confirm to meet the eligibility requirements and whether the Bids are substantially responsive to the requirements set forth in the Bidding documents. In order to reach such a determination, the Procurement Committee will examine the information supplied by the Bidders and other requirements in the Bidding documents, taking into account the following factors. |

For plant and equipment, the comparison shall be of the ex-factory price of plant and equipment offered from within the Employer's country, (*such price to include all costs as well as duties and taxes paid or payable on components and raw material incorporated or to be incorporated in the plant and equipment and all consumables for 91 days operation after commissioning*) and the CIF-named port of destination price offered from outside the Employer's country; plus the cost of local transportation civil works, installation and other services required under the contract. The Employer's comparison will also include the costs resulting from application of the evaluation procedures described in **Sub-Clause 30.2**.

The Employer's evaluation of a Bid will take into account, in addition to the Bid prices indicated in the Schedule of Prices, the following costs and factors that will be added to each Bidder's Bid price in the evaluation using pricing information available to the Employer, in the manner and to the extent indicated in **Sub-Clause 30.4** and in the Employer's Requirements.

- (i) The additional price, if any, reflected in the

supplementary price proposal. If the price stated is not realistic the Bid is liable to be rejected;

- (ii) compliance with the time schedule called for in the Appendix to Technical Proposal and evidenced as needed in a milestone schedule provided in the Bid;
- (iii) the projected operating costs during the initial period of operation of the facilities;
- (iv) the functional guarantees of the facilities offered against the specified performance criteria of the plant and equipment; and
- (v) the extra cost of work, services, facilities, etc., required to be provided by the Employer or third parties, if any

(a) Qualification

- (i) the determination will take into account the Bidder's updated financial, technical, commercial and production capabilities and past performance; it will be based upon an examination of the documentary evidence submitted by the Bidder, pursuant to **Sub-Clause 5.1(b)** hereof, as well as such other information as the Employer deems necessary and appropriate; and
- (ii) an affirmative determination will be a prerequisite for the Employer to continue with the evaluation of the Bid; a negative determination will result in rejection of the Bidder's Bid.

(b) Financial

Bidders financial capacity shall be evaluated based on the documentary evidence submitted by the Bidder pursuant to sub **Clause 5.4** hereof.

(c) Technical

- (i) overall completeness and compliance with the Employer's Requirements; the technical merits of plant and equipment offered and deviations from the Employer's Requirements; suitability of the facilities offered in relation to the environmental and climatic conditions prevailing at the site; quality, function and operation of any process control concept included in the Bid;
- (ii) achievement of specified performance criteria by the facilities;
- (iii) type, quantity durability and long-term availability of spare parts and maintenance services;

(d) Commercial

- (i) compliance with the time schedule included in Appendix to Financial Proposal and evidenced as needed in a milestone schedule provided in the Bid;
- (ii) Detailed production cost per annum (Including operation and maintenance cost) break down in accordance with attached schedule in Section 11 for the plant from the year 1 up to the design horizon at which point the plant is fully operational at designed capacity as specified in the Bidding Data.
- (iii) the functional guarantees of the facilities offered; and
- (iv) the extra cost of work, services, facilities etc., required to be provided by the Employer or their parties.
- (v) NPV is calculated at 10% discount rate.
- (vi) **Operating costs:** Since the operating costs of the facilities being procured form a major part of the life cycle cost of the facilities, these costs will be evaluated based on information furnished by the Bidder on power and chemical consumption and Schedules of Guaranteed Pump Performances to be included in his Technical Proposal as well as on past experience of the Employer or other employers similarly placed. Contractor shall suggest the method of testing pumps at site. Such costs shall be added to the Bid price for evaluation.

The operating cost factors for calculation are:

- number of years for initial period of operation: ten (10) years.
- operating costs (*eg: fuel, electricity, chemicals and or other input, and total operations requirements excluding manpower*)

- (vii) **Work, services, and facilities etc., to be provided by the Employer:** Where Bids include for the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions allowed for in the Bidding documents, the Employer shall assess the costs of such additional work, services and/or facilities during the duration of the contract. Such costs shall be added to the Bid price for evaluation; and

- (e) The production cost factors for calculation are:
 - (i) For the period from year 1 to the design horizon at which point the plant is fully operation at designed capacity as specified in the **Clause 30.2 (d) (ii)** in the Bidding Data.
 - (ii) operating costs [*e.g. fuel and/or other input, unit cost, annual and total operational requirements*]
 - (iii) 10% to be used to discount to present value all annual future costs.

The basis of calculation is specified in Section 11

- (f) Functional Guarantee of the facilities :
 - (i) Bidders shall state the functional guarantees (e.g. performance, efficiency, consumption) of the proposed facilities in response to the Employer's Requirements. Plant and equipment offered shall have a minimum (or a maximum, as the case may be) level of functional guarantees specified in the Employer's Requirements to be considered responsive. Bids offering plant and equipment with functional guarantees less (or more) than the minimum (or maximum) specified shall be rejected.

30.3 The Employer reserves the right to accept or reject any variation, deviation or alternative offer.

- 30.4
- (a) Any adjustments in price which result from the above procedures shall be added, for purposes of comparative evaluation only, to arrive at an "Evaluated Bid Price." Bid prices quoted by Bidders shall remain unaltered.
 - (b) The Employer reserves the right to accept or reject any variation or deviation. Variations, deviations, and other factors which are in excess of the requirements of the Bidding documents or otherwise result in the accrual of unsolicited benefits to the Employer shall not be taken into account in Bid evaluation.
 - (c) The estimated effect of the price adjustment provisions of the Conditions of Particular Application, applied over the period of execution of the Contract, shall not be taken into account in Bid evaluation.
 - (d) If the Bid of the successful Bidder is substantially below the Employer's estimate for the contract, the Employer may require the Bidder to produce detailed price analyses to demonstrate the internal consistency of those prices. After evaluation of the price analysis, the Employer may require that the amount of the performance security set forth in **Clause 36** be increased at the expense of the

successful Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.

- 30.5 Evaluation of the financial proposal;
- (i) For all substantially responsive Bids from post qualified Bidders, the Chairman, CAPC will open the Financial Proposal and determine the Adjusted Bid Price as follows;
 - a. Making any correction for errors pursuant to **Clause 28** hereof.
 - b. making appropriate adjustments to reflect discounts or other price modifications offered.
 - c. Convert the amounts in various currencies in which the Bid price to the currency of the Employer's country in accordance with the **Clause 29.1** hereof.
 - (ii) For subsequently responsive Bids from Post-Qualified Bidders, The Chairman, CAPC will rank the Bids according to the price score point pursuant to the above evaluation criteria in accordance with **Clause 30.4 and 30.5** hereof. Adjusted Bid Price, in accordance with **Clause 28** hereof will be used to evaluate the price score point.
 - (iii) The Technical Evaluation Committee (TEC) shall prepare a detailed report on the evaluation and comparison of Bids setting forth the specific reasons on which the recommendation is based for the Award of the Contract for the CAPC, who will in turn obtain final approval from the Cabinet for the Award of the Contract. The Bid evaluation report shall be confidential and will not be available to the Bidders.
 - (iv) Procurement Committee will determine to its satisfaction whether the Bidder selected on having submitted the lowest evaluated substantially responsive Bid is qualified to satisfactory perform the contract.
 - (v) The determination will take into account that the Bidders who makes the lowest evaluated price, provided that such Bidder has been determined to be
 - (i) eligible in accordance with the provision of **Clause 3** hereof.
 - (ii) Qualified in accordance with the provision of **Clause 5** hereof.
 - (iii) Qualified in accordance with **Clause 30** hereof.
 - (vi) An affirmative determination by the Procurement Committee will be a prerequisite for award of the Contract to the Bidder. A negative determination will result in rejection of the Bidder's

Bid, in which event the Procurement Committee will proceed to the next lowest evaluated Bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.

Award of Contract

- 31. Award** 31.1 Subject to **Clause 34**, the Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the Bidding documents and who marks the lowest evaluated price score point, provided that such Bidder has been determined to be (i) eligible in accordance with the provisions of **Clause 3**, (ii) qualified in accordance with the provisions of **Clause 5 and (iii)** qualified in accordance with **Clause 30**.
- 32. Debriefing** 32.1 The Employer shall inform the Bidders that any Bidder who wishes to ascertain the grounds, on which its Bid was not selected, shall request an explanation from the Employer after award the contract. The Employer shall promptly provide an explanation of why such Bid was not selected, either in writing/or in a debriefing meeting, at the option of the Employer. The requesting Bidder shall bear all the costs of attending such a debriefing.
- 33. Employer's Right to Accept any Bid and to Reject any or all Bids** 33.1 Notwithstanding **Clause 33**, 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 award of Contract.
- 34. Notification of Award** 34.1 Prior to expiration of the period of Bid validity prescribed by the Employer, the Employer will notify the successful Bidder by fax, confirmed by registered letter, that its Bid has been accepted. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") shall name the sum which the Employer will pay the Contractor in consideration of the execution, completion and maintenance of the Works by the Contractor as prescribed by the Contract (hereinafter and in the Conditions of Contract called "the Contract Price").
- 34.2 The notification of award will constitute the formation of the Contract
- 34.3 Upon the furnishing by the successful Bidder of a performance security, the Employer will promptly notify the other Bidders that their Bids have been unsuccessful.
- 34.4 **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.

Address : The Secretary
Appeal Board,
Presidential Secretariat
Colombo.

Cash Deposit : SL Rupees 100,000.00

35. Signing of Contract Agreement

- 35.1 At the same time that he notifies the successful Bidder that its Bid has been accepted, the Employer will send the Bidder the Form of Contract Agreement provided in the Bidding documents, incorporating all agreements between the parties.
- 35.2 Within 28 days of receipt of the Form of Agreement, the successful Bidder shall sign the Form of Agreement and return it to the Employer.
- 35.3 If a Bidder has given a discount of his Bid price, the discount shall be distributed to each and every item excluding provisional sum 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.

36. Performance Security

- 36.1 Within 28 days of receipt of the notification of award of contract (Letter of Acceptance) from the Employer, the successful Bidder shall furnish to the Employer a performance security in an amount of 10 percent of the Contract Price in accordance with the Conditions of Contract. The form of performance security provided in Section 7 of the Bidding documents shall be used or some other form acceptable to the Employer.
- 36.2 Failure of the successful Bidder to comply with the requirements of **Clauses 34 or 35** shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid security.

