

# **1. INSTRUCTIONS TO BIDDERS**

# INSTRUCTIONS TO BIDDERS

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# NATIONAL WATER SUPPLY AND DRAINAGE BOARD

## SUPPLY AND DELIVERY OF POLYETHYLENE (PE) PIPES, FITTINGS, SPECIALS AND ACCESSORIES

### INSTRUCTIONS TO BIDDERS

#### A. GENERAL

#### 1. Scope of Bids

1.1 Procurement Committee on behalf of The National Water Supply and Drainage Board (hereinafter called “the Procurement Committee”) invites Bids for supply of PE Pipes, Fittings, Specials and Accessories from manufacturers or their local accredited agents as per the **Bidding Data** and their delivery according to the Delivery Schedule given in the **Contract Data**.

#### 2. Eligibility and Qualifications of Bidders

##### 2.1 Eligibility of Bidders

Eligible bidder is one who satisfies all the following requirements.

2.1(a) The Bidder shall be a manufacturer or their local accredited agent.

(b) The Bidder shall provide ISO 9001: 2015 Quality Management System requirement certificate for Quality Assurance for the goods manufacturing factory from an accredited agency. Accredited Agency shall be a member of International Accredited Forum (IAF) and shall have the authority for the accreditation of mentioned goods in their scope of accreditation. Scope of the production shall be clearly specified in the certificate. Manufacturer shall maintain the validity of this certificate during the contract Period. If the supply is made from several factories, ISO 9001: 2015 certificates for quality management system requirement shall be submitted for each factory.

(c) The Bidder shall provide certificates for the conformity of goods for the standards given in the specifications in section – 6 (Relevant ISO or BS/BSEN Standards) of the bidding document from an Accredited Agency, Accredited Agency shall be a member of International Accredited Forum (IAF) and shall have the authority for the accreditation of mentioned goods in their scope of accreditation, valid at the time of awarding the contract. Manufacturer shall maintain the validity of this certificate during the Contract Period.

(d) The Bidder shall provide a certificate for the confirmation from WRAS (UK) or NSF International laboratories for the suitability for the drinking water purposes.

(e) The Bidder shall submit a certified copy of business registration with the Registrar of Companies.

(f) The Bidder shall not be disqualified/ Blacklisted by NWSDB/ NPA.

- (g) Compliance with Contract Act No 03 of 1987 as given in **Clause 38** hereof.
- (h) Bidder shall have proof of authorization for the signatory to bid.
- (i) Bidder shall have the authorization from the manufacturer to sign and negotiate in the bidding on behalf of the manufacturer.
- (j) Bidder shall provide with bid a valid Bid Security for the amount and validity up to the date specified in the Bidding Document in the section 4.
- (k) Bidder shall duly filled and signed in the Form of Bid.

## 2.2 **Qualifications of Bidders**

The Bidder shall have the minimum qualifications as specified in the **Bidding Data** and the qualifications stated as follows to be considered as responsive for the Contract.

### 2.2 (a)

- (i) That the manufacturer shall be as stated in this **Bidding Data**. List of supplies of PE pipes & fittings and certified copies of award letters and Final Acceptance certificates of such supplies shall be submitted with the bid in the form given in Appendix 1.
- (ii) That the PE Pipes and Fittings shall be from same Manufacturer. If Pipes and Fittings from different Manufacturer, the bidder should submit a guarantee in the form given in Appendix 3 to confirm that;
  - a. The pipes, fittings and rubber rings supplied under this contract match and fit properly and adequately each other allowing for no leaks.
  - b. The Bidder will unconditionally under take to replace unacceptable / rejected materials within a pre determined time period with no additional cost to the NWSDB ensuring the timely implementation of the Project.
  - c. The Bidder will unconditionally undertake that the Nominated Inspection Agency issue a certificate ensuring that PE pipes and fittings and rubber rings inspected shall fit properly and adequately to ensure leak proof pipe line Installation under all working conditions upon shipment.

### 2.2 (b)

- (i) That the Bidder has the financial and technical capability necessary to perform the Contract. Bidder shall have working capital as specified in the Bidding Data. The Bidder shall submit the financial details requested in Appendix 2 including audited financial statements for the last three years. If the business has not been in operation for three years, the appendix shall be submitted for the period that the business has been in operation together with the aforesaid financial statements. The bidder shall provide an authority for the Procurement committee to seek reference from the Bidder's bankers on the bidder's financial status in the form given in Appendix 2A.

- (ii) That the agreement of the manufacturer or producer to confirm that the supply will be made in accordance with the Delivery Schedule and that the manufacturer of the goods has the production capability necessary to perform the Contract. This confirmation shall be submitted with the bid in the form given in Appendix 4.
- (iii) That, in the case of a bidder offering to supply goods under the Contract which the bidder does not manufacture or otherwise produce, the bidder has been duly authorized by the goods' manufacturer or producer to sign and negotiate in the bidding on behalf of the manufacturer as the local Accredited agent. This authorization shall be submitted with the bid in the form given in Appendix 5.

### **3. Eligible Goods and Services**

- 3.1 All goods and related services to be supplied under the contract shall be from manufacturer or their local accredited agent.
- 3.2 The Bidder shall furnish, as documentary evidence, to establish the eligibility and conformity to the bidding documents of all goods and services which the bidder proposes to supply under the Contract.
- 3.3 The Bidder shall provide documentary evidence for the conformity to the requirement in the bidding documents in the form of literature, drawings and data, and shall furnish a detailed description of the goods' essential technical and performance characteristics including details requested in **Clause 10.1** hereof.
- 3.4 Bidder shall provide Product Conformity certificates to prove that Goods conform to the standards as stipulated in the specifications in Section 6. As such the relevant standard certificates shall be provided to cover all the respective items offered as stated in the Specifications.
- 3.5 Bidder shall provide a guarantee to confirm that the pipes, fitting and rubber rings match and fit properly and adequately to ensure leak proof pipe line under all working conditions upon shipment.

### **4. Source of Funds**

Funds required for this project will be provided by the source stated in the **Bidding Data**.

### **5. Cost of Bidding**

- 5.1 The Bidder shall bear all costs associated with the preparation and submission of his Bid in compliance with Bid requirements and the Board will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the Biding process.

## B. BIDDING DOCUMENT

### 6. Contents of Bidding Document

6.1 The Bidding document comprises the following sections of the documents and any addenda that will be issued in accordance with **Clause 8** hereof.

Page iii	Checklist of Submission.
Page VI	Invitation for Bids.
Section 1	Instructions to Bidders.
Section 2	General Conditions of Contract.
Section 3	Form of Bid.
Section 4	Bidding Data.
Section 5	Contract Data.
Section 6	Specifications.
Section 7	Schedule of Particulars.
Section 8	Deviation from Specification.
Section 9	Key Features of Specifications.
Section 10	Bills of Quantities.
Section 11	Specimen Forms for Contract Agreement, Securities and Guarantees.
Section 12	Appendices
	Appendix 1. – Details of similar supplies carried out within the last three years and ongoing similar ones.
	Appendix 2 – Financial Statement.
	Appendix 2A – Authorization to seek references from Bankers.
	Appendix 3 – Guarantee for PE pipes, Fittings & rubber rings.



Appendix 4. – Confirmation of Capability of Production and Supply according to Delivery Schedule.

Appendix 5 - Manufacturer's authorization to sign the contract.

Appendix 6 - Contractor's authorization to sign the contract.

Appendix 7 - TOR for Independent Inspection Agency.

Appendix 8 - Manufacturer's awareness of the TOR.

Appendix 9 – Check list for Pre-shipment inspection of PE Pipes & Fittings by NWSDB Engineers.

Appendix 10 – Manufacturer's warranty for the goods supplied under the contract.

Appendix 11 – Forms for Manufacturer's test Certificates.

Appendix 12 – Confirmation of Supplying Goods manufactured at the Factory quoted.

Appendix 13 – Affidavit by the Bidder.

Appendix 14 - Pre-Qualification of Manufacturers for Supply & Delivery of PE Pipes & Fittings.

Appendix 15 – Entitled allowance on foreign travels and related expenses.

- 6.2 The set of Bidding document shall be purchased by the prospective Bidders from the address as stated in the **Bidding data**.
- 6.3 The Bidder is expected to examine all the sections of the set of Bidding Document. Failure to furnish all information required by the Bidding documents, or submission of a Bid which is not substantially responsive will be at the Bidder's risk and may result in rejection of his Bid.

## 7. Clarification of Bidding Documents

- 7.1 A prospective Bidder requiring any clarification of the Bidding Documents may notify the Procurement Committee in writing or by facsimile at the address indicated in the Invitation for Bids. The Procurement Committee will respond in writing or by facsimile to any request for clarification, which it receives earlier than 14 days prior to the deadline for the submission of Bids. Copies of written response of the Procurement Committee (including a description of the enquiry but without identifying its source) will be sent to all the prospective Bidders who have purchased the Bidding Documents. Any request for clarifications which are submitted less than 14 days prior to the deadline of submission of Bids will not be entertained.

## 8. Amendment of Bidding Documents

- 8.1 At any time prior to the deadline for submission of Bids, the Board 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 an addendum/ addenda.
- 8.2 The addendum/addenda will be notified in writing to all prospective Bidders who have purchased the Bidding documents and it will be deemed to be binding on them. Prospective Bidders shall promptly acknowledge receipt thereof in writing to the Procurement Committee at the address provided in the **Bidding Data**, under **Clause 17.2 (a)** hereof.
- 8.3 In order to afford prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Procurement Committee may, at its discretion, extend the deadline for the submission of Bids, in accordance with **Sub- Clause 18.3** hereof.
- 8.4 Such addendum/addenda shall be submitted along with the Bids as per **Clause 10.1** hereof.

## C. PREPARATION OF BIDS

### 9. Language of Bid

- 9.1 The Bid prepared by the Bidder and all correspondence and documents relating to the Bid exchanged by the Bidder and the Board shall be written in the English Language.

### 10. Documents Comprising the Submission of Bid

- 10.1 Each bidding document submitted by the bidder shall comprise the following components:
- a) Duly perfected set of Bidding Documents which include sections 1 to 12.
  - b) The subsequent addendum/ addenda (if any).

- c) Documentary evidence established in accordance with **Clause 2** hereof, to prove that the bidder is eligible to bid and is qualified to perform the contract if his bid is accepted.
- d) Documentary evidence established in accordance with **Clause 3** hereof, to prove that the goods and ancillary services to be supplied by the bidder are eligible goods and services and conform to the bidding documents.
- e) Bid security furnished in accordance with **Clause 13** hereof and as per specimen form issued with the bidding documents. (Original Bid security shall be furnished with the original bidding document. Photocopy shall be attached to the copy of the bidding document).
- f) Proof of Authorization for the signatory to bid as specified in **Clause 15.3** hereof.
- g) The bidder shall provide certificates for the conformity of goods for the standards given in the specifications in section – 6 (Relevant ISO or BS/BSEN Standards) of the bidding document from an accredited Agency, valid at the time of awarding the contract. Manufacturer shall maintain the validity of this certificate during the contract Period.
- h) The bidder shall provide a certificate for the confirmation from WRAS (UK) or NSF International laboratories for the suitability for the drinking water purposes.
- i) ISO 9001: 2015 Quality Management System certificate from an accredited agency, valid during contract period.
- j) Details of similar suppliers during last three years in the form given in appendix 1.
- k) Financial details of bidder in the form given in Appendix 2.
- l) Authorization to seek reference from Bidders Bankers in the form given in Appendix 2A.
- m) Guarantee to confirm that pipes, fittings and rubber rings match and fit properly and adequately each other to ensure leak proof pipe line in the form given in Appendix 3.
- n) Confirmation for that the production capacity of manufacture to produce Goods offered in the bid and the delivery of Goods according to the Delivery Schedule in the form given in Appendix 4.
- o) Authorization from the manufacturer to sign and negotiate in the tender on behalf of the manufacturer in the form given in appendix 5.
- p) Manufacture's awareness on TOR for Independent Inspection Agency & Check list for Pre shipment Inspection.

- q) Details of warranty and the items covered by the warranty within the period of warranty of each item in the form given in Appendix 10.
- r) Duly completed Schedule of Particulars.
- s) Any other documents required in the Bidding Document.

10.2 The photostat copies of documentary evidence shall be one sided copies to the original size which bear both the initials and the seal of the Bidder. The Bidder shall certify these copies referred to, as follows:

I/We hereby certify that this is a true photostat copy of the certificate which has .....page(s), issued by.....  
 .....(name of the institution which issued the certificate).

.....  
 Authorised Signature/Date

.....  
 Seal of the company

10.3 ISO 9001:2015 Quality Management Systems certificate and Product Conformity Certificate will be accepted only if they are issued by a recognised accredited agency, acceptable to the Board.

**11. Bid Prices**

- 11.1 Prices quoted by the Bidder shall be firm and not subject to variation on any account. A Bid submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to **Clause 24** hereof.
- 11.2 If a bidder does not quote for a item of a bill, the particular bill shall be considered as incomplete and that bill shall not be taken for evaluation.
- 11.3 All local cost and Agency commission shall be included in Sri Lanka Rupees and only foreign cost shall be included in foreign currency in United State dollars (US\$).
- 11.4 In pricing the items of the Bills of Quantities, the bidder shall cover himself and will be deemed to have covered himself for:
  - a) All services and goods which according to the true intent and meaning of the contract may be reasonably inferred as necessary for completion of delivery of the goods in sound condition to the Stores which is specified in Contract data.
  - b) All the duties, obligations, liabilities and responsibilities which the Contract documents place upon the bidders in connection with or in relation to the Contract.

- a. All costs arising out of inspection except inspection as per **Clause 8.1.5 and 8.2** of General Conditions of Contract, testing, packing, transportation, clearing, loading, unloading, stacking, shipping line charges, warehouse rent, any demurrages, Agents Commission if any and other minor expenses.
- b. All Costs including all taxes and duties and other charges imposed outside Sri Lanka on raw materials, production, manufacture, sales, transport and any other cost that may be incurred of all goods.
- c. Import duties, business taxes, income and all other taxes except customs duty and port charges that may be levied in purchaser's country (Sri Lanka).
- d. Cost of accessories not specially listed, but necessary for proper completion.
- e. Price charged by the supplier for the preceding incidental services.
- f. Custom' duties, import license fees and port charges levied on the goods supplied under contract shall be directly paid by the Purchaser as per **Clause 32.4** of the General Conditions of Contract.

11.5 **If Bidders are registered for the purpose of VAT**, they should indicate the amount of VAT claimed separately in the Bidding documents, in addition to the value of the Bidding, along with the VAT registration number. Declaration of VAT registration number is a mandatory requirement to pay the VAT amount.

**If any Bidder is not registered for VAT**, he should indicate the value of the Bid in Bidding Documents. Under this category, Bidder should obtain a letter from the Commissioner of Inland Revenue Department certifying that his Company has not been registered for VAT and that letter should be attached to the Bidding Document.

11.6 Bidder shall quote in FOB price including all cost which are to be incurred outside Sri Lanka in foreign cost column of BOQ and all local cost including Agency Commission cleaning, inland transportation, loading and unloading, staking shipping line chargers and other minor expenses, etc. Which are to be incurred locally in the local cost column of the BOQ. Freight chargers and inspection chargers shall be included in the Summary of each Bills in BOQ. Summary of each bill shall be carried forwarded to the "Summary of Bills" in the BOQ and that will be carried forwarded to the Form of Bid. "Breakdown of Summary of Bills" shall be provided to obtain details of the breakdown of Bid Price only for evaluation purposes and the prices in this page shall not be carried forward to the "Summary of Bills". Other local cost in Summary of Breakdown means the all cost to be incurred within Sri Lanka excluding Agency Commission.

11.7. **Insurance shall be carried out by the Purchaser with a reputed insurance Company/Corporation registered under Insurance Board of Sri Lanka as per Clause 11 of the General Conditions.**

- 11.8 Shipping of PE Pipes, Fittings Specials and Accessories shall be done as described in **Clause 37** hereof.
- 11.9 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.

## **12. Currencies of Bid and Payment**

- 12.1 The Contract Price shall be paid in the currencies in which the price has been quoted in the successful Bid. The foreign component will be paid as per the payment schedule given in Contract Data and **Clause 16** of General Conditions of Contract.
- 12.2 Local charges shall be paid in Sri Lanka Rupees.
- 12.3 Charges for clearing from port, Local transport, and all other local costs shall be included in the bid price and quoted in Sri Lanka Rupees. Agency commission should be separately indicated as a percentage of in relation to the FOB price. If no local agency commission is payable, it should be clearly stated in the summary of Bills.
- 12.4 Custom duties, Port dues, and import license fee levied on imported materials by the Government of the Democratic Socialist Republic of Sri Lanka, shall be paid directly by the Purchaser to the Government of the Democratic Socialist Republic of Sri Lanka on production of certified customs entries. Any other charges, demurrages, etc shall be borne by the Contractor. Any VAT payable shall be charged to the purchaser as a separate item and should be supported with VAT registration number and Tax Invoice.

### **12.5 Letter of Credit**

- 12.5.1 The Purchaser shall establish an irrevocable Letter of Credit for the foreign component quoted in accordance with **Clause 16.1** General Conditions of Contract less the local agency commission which will be paid to the local agent in Sri Lanka Rupees.
- 12.5.2 The successful Bidder shall submit the necessary Performa invoices and other connected documents together with a letter requesting the Purchaser to open Letter of Credit in the name of the beneficiary. These documents shall be submitted within 02 weeks of the award of the contract.
- 12.5.3 The contractor shall be responsible for clearing the PE Pipes, Fittings, Specials and Accessories from port, transport and delivery/stacking of PE Pipes, Fittings, Specials and Accessories to the Stores listed in the Delivery Schedule. Any other local cost should be specified in the other charges of the Summary of Bills.

### 13. Bid Security

- 13.1 The Bid security is required to ensure the Bidder's compliance with the requirements of Bidding.
- 13.2 A Bid security which is encashable on demand equivalent to the sum as stated in the **Bidding Data** shall be furnished in one of the following forms. The Bid security shall be as per the format in the Bidding Document to indicate the requirement and payable to the National Water Supply & Drainage Board, Sri Lanka.
- (a) A Bank Guarantee issued by a bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka.
  - (b) A Sri Lanka Rupee cash deposit to the National Water Supply and Drainage Board, Sri Lanka (The original receipt for such deposit shall be attached to the original Bidding Document).
  - (c) A certified cheque issued by a bank operating in Sri Lanka in favour of the National Water Supply and Drainage Board, Sri Lanka.
  - (d) A Bank guarantee issued by a Bank based in another country but the security or guarantee counter issued by a reputed 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.**
- 13.3 The validity of the above security shall be up to the date specified in the **Bidding Data**.
- 13.4 Any Bid not accompanied by an acceptable Bid security shall be rejected by the Procurement Committee as non-responsive pursuant to **Clause 24** hereof.
- 13.5 Unsuccessful Bidders' Bid securities will be discharged and returned as promptly as possible, but not later than 30 days after the expiration of the period of Bid validity prescribed by the Board, pursuant to **Clause 14** hereof.
- 13.6 The successful Bidder's Bid security will be discharged upon the Bidder's executing and furnishing the Performance Guarantee pursuant to **clause 34** hereof.
- 13.7 The Bid security shall be forfeited:
- (a) If a Bidder withdraws his Bid during the period of Bid validity; or
  - (b) If the bidder does not accept the correction of its Bid Price, pursuant to **ITB Clause 25**; or

- (c) In case of the successful Bidder, if he fails within the specified time limit to
  - (i) Furnish the required Performance Guarantee.
  - (ii) Sign the Contract Agreement.

13.8 No interest will be paid on Bid Security.

#### **14. Period of Validity of Bid**

- 14.1 Bids shall remain valid up to the period as mentioned in the **Bidding Data**. A Bid valid for a shorter period may be rejected by the Board as non responsive.
- 14.2 In exceptional circumstances, the Board may solicit the Bidder's consent to an extension of the period of validity of the Bid. The request and the responses thereto shall be made in writing (or by facsimile). The Bid Security provided under **Clause 13** hereof shall also be extended accordingly. A Bidder who may refuse the request shall not be liable for forfeiture of his Bid security. A Bidder who accepts the request shall not be permitted to modify his Bid.

### **D. SUBMISSION OF BIDS**

#### **15. Format and Signing of Bid**

- 15.1 Alternative offers shall not be accepted. The bid shall be submitted in duplicate as per **Sub- Clause 15.2** hereof.
- 15.2 The Bidder shall, for each independent Bid prepare one original and one copy of the document comprising the Bid as described in **Clause 10** hereof by clearly marking each "ORIGINAL" and "COPY" as appropriate. In the event of any discrepancy between them, the original shall prevail.
- 15.3 The original and the copy of each independent Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorised. Proof of authorisation shall be furnished to accompany the Bid. All pages of the Bid where entries or amendments have been made shall be initialed by the person or persons signing the Bid.
- 15.4 The complete Bid shall be without alterations, inter- lineations or erasures, except those to accord with instructions issued by the Board, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the persons signing the Bid.

#### **16. Alternative Bid(s) by Bidders**

- 16.1 Each set of document shall contain only one offer. Alternative offers shall not be accepted. Bids with alternative offers in one document will be rejected without assigning reasons.



## 17. Sealing and Marking of Bids

- 17.1 The Bidder shall seal the original and the copy of each independent Bid in separate envelopes (hereinafter called as inner envelopes) by duly marking the envelopes as "ORIGINAL" and "COPY", as appropriate, and then contain them in an outer envelope and seal.
- 17.2 The inner and outer envelopes shall:
- (a) Be addressed as provided in the **Bidding Data**.
  - (b) Bear the name and identification number of the contract and
  - (c) Provide a warning not to open before the specified time and date of the deadline for Bid submission as defined in the **Bidding Data**.
- 17.3 In addition to the identification required in sub **Clause 17.2** hereof, the outer envelopes 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 19.1** hereof.
- 17.4 If the outer envelope is not sealed and marked as instructed above, the Procurement Committee will assume no responsibility for the misplacement or premature opening of the Bid submitted.

## 18. Deadline for Submission of Bid

- 18.1 Bids must be addressed to the Chairman, Procurement Committee, at the address specified in the **Bidding Data** and received not later than the time and date of the deadline for Bid submission specified in the **Bidding Data**.

In the event of the specified date for the submission of Bids being declared a holiday, the Bids will be received up to the specified time on the next working day.

- 18.2 Bids may be dispatched to be received on or before the deadline for submission of Bids as aforesaid.
- 18.3 The Board may, at its discretion, extend the deadline for submission of Bids by issuing an addendum in accordance with **Clause 8.3** hereof, in which case all rights and obligations of the Board and the Bidders previously subject to the original deadline shall be construed as applicable from the extended date.

## 19. Late Bids

- 19.1 No submission of or notices of withdrawal or modification of Bid will be accepted after the deadline for submission of Bids. Any submission received after the deadline for closing of Bids, will be returned unopened to the Bidder.

## 20. Modification and Withdrawal of Bids

- 20.1 The Bidder may modify or withdraw his Bid after submission, provided that the modification or notice of withdrawal is received in writing at the address designated to receive Bids prior to the prescribed deadline in **Clause 18** hereof for submission of Bids.
- 20.2 The Bidder's modification or notice of withdrawal shall be prepared, sealed, marked and delivered in duplicate in accordance with the provisions of clause 18 hereof for the submission of Bids, with the inner and outer envelopes additionally marked "MODIFICATION" or "WITHDRAWAL" as appropriate.
- 20.3 Subject to **Clause 23** hereof, no Bid may be modified subsequent to the deadline for submission of Bids.
- 20.4 Withdrawal of a Bid during the interval between the deadline for submission of Bids and expiration of the period of Bid validity specified by the Bid shall result in the forfeiture of the Bid security pursuant to **Clause 13.7** hereof.
- 20.5 Bidders may offer discounts but shall specify the items for which discounts are made. In case the Bidder offers discounts without mentioning the items for which discounts are made then the discount will be applicable proportionately to all items except provisional sum(s). Bidders may modify the prices of their Bids by submitting Bid modifications in accordance with this **Clause 20**, or included in the original Bid submission.

## E. BID OPENING AND EVALUATION

### 21. Opening of Bids

- 21.1 The Bid opening Committee (BOC) approved by the respective procurement committee will open Bids, including submissions made pursuant to clause 20 hereof, in the presence of Bidders' representatives who choose to attend, immediately after the deadline for Bid submission and in the place specified in the **Bidding Data**. The Bidders' representatives who are present shall sign a register evidencing their attendance. In the event of the specified date of Bid opening is declared a holiday the Bids shall be opened at that specified time and location on the next working day.
- 21.2 Any Bid for which an acceptable notice of withdrawal has been submitted pursuant to **Clause 20** 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 "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.

- 21.3 The Bid Opening Committee shall read out the following at the bid opening committee.
- a) Name and address of the bidder.
  - b) Absence or presence of the bid security; All members of the committee shall initial the bid security.
  - c) The bid price given in words in the form of bid; if the bid price is not given in words the bid price given in figures; if bid price is not filled in the form of bid, the respective price given in the BOQ or Price Schedules; Whether the announced prices are inclusive or exclusive of VAT shall be indicated clearly.
  - d) If the contract will be awarded as a whole the announcement of final bid price is suffice; If contracts will be awarded in different items or lots such prices shall be announced.
  - e) The discounts offered shall be announced separately by clearly indicating that the announced prices are inclusive or exclusive of discounts.
  - f) Any other information that the BOC consider as relevant; however, the details of the make-up of the bid price shall not be read out.
- 21.4 After opening original of each and read out the relevant information, the BOC shall reseal the envelopes before handing over the documents to the PE. The PE shall hand over the bid documents to the chairman of TEC in sealed form.
- 21.5 The Bid Opening Committee will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with sub **Clause 21.3** hereof.

## **22. Confidentiality of the Process**

- 22.1 Information relating to the examination, evaluation and comparison of Bids and recommendations for the award of a contract shall not be disclosed to Bidders or any other person not officially concerned with such process until the award to the successful Bidder has been announced.
- Any effort by a Bidder to influence the Procurement Committee and/or the officials of Board or the Ministry/ or the Cabinet of Ministers in processing of Bids or award decisions may result in the rejection of his Bid.

## **23. Clarification of Bids**

- 23.1 During the evaluation of the bids, there may be a need to seek clarification from a bidder with the sole purpose of ensuring that the Bid can be properly and fairly evaluated. These clarifications should not
- (a) permit any substantive change to the bidder's initial response ; and
  - (b) Change in the bid price except correction of arithmetical errors in the pricing of the bid.

- 23.2 The bidder should not be able to clearly comprehend that any clarification sought is only for the aforementioned purpose only.
- 23.3 At the request made by the Technical Evaluation Committee (TEC), the procurement Entity (PE) will seek such clarification from the bidder in writing.

#### **24. Examination of Bids and Determination of Responsiveness**

- 24.1 Prior to the detailed evaluation of Bids the Procurement Committee will determine whether each Bid,
- a) Meets the eligibility and qualification criteria defined in **Clause 2 and 3** hereof.
  - b) Has been properly signed and accompanied by a proper power of attorney (Authority to sign the contract).
  - c) Is accompanied with the required Bid Security as defined in **Clause 13** hereof.
  - d) Has sufficient bid validity period as per **Clause 14** hereof, and,
  - e) Is substantially responsive to the requirements of the Bid Documents.

If a bidder does not meet any of (a) – (d), that bid shall be considered non responsive and shall be rejected by the Procurement Committee.

- 24.2 A substantially responsive Bid is one which conforms to all the terms in **Clause 24.1** hereof without any material deviation or reservation.

A material deviation or reservation is one,

- 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) 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.
- e) Which limits in any substantial way the scope, quality or performance of the Goods.
- f) Bidder proposes to sub contract the work against the conditions provided.

- g) Conditional bids, that is, subject to prior sale, availability of components in the market,
- h) Which limits any substantial way, inconsistent with the bidding document, the Employer's right or bidder's obligation under the contract.
- i) Un acceptable technical features.
- j) Bids which are not responsive to critical, technical or commercial requirements in the bidding document.

24.3 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 non conforming deviation or reservation.

## 25 Correction of Errors

25.1 Bids determined to be substantially responsive will be checked by the Procurement Committee, for any arithmetic errors.

Errors will be corrected by the Procurement Committee as follows:

- a) Where there is a discrepancy between the amounts in figures and in words, the amounts in words will govern and
- b) 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.

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

25.3 If the bidder does not accept the corrected amount of Bid, its Bid shall be rejected, and the bid security shall be forfeited in accordance with **Clause 13.7 (b)** hereof.

## 26. Currency for Bid Evaluation

26.1 The Board will convert the amounts in various currencies in which the Bid price is payable, to Sri Lanka Rupees at the selling exchange rates established by the Central Bank of Sri Lanka on the date specified for the closing of Bids.

## 27. Evaluation and Comparison of Bids

- 27.1 The Procurement Committee will evaluate and compare Bids previously determined to be substantially responsive, pursuant to **Clause 24** hereof.
- 27.2 In evaluating the Bids the Procurement Committee will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:
- a) Making any correction of errors pursuant to **Clause 25** hereof.
  - b) Discounts , if any disclosure in the Bid opening.
  - c) Domestic Preference for Domestic Manufacturers as per **Clause 27.4**.
  - d) Evaluation of Acceptable omissions. ( line items or parts of work)
  - e) Conversation to a common currency.
  - f) Delivery periods or completion times.
  - g) Adjustment for various minor deviations.
  - h) The availability of after sale services and spare parts. (If applicable)
  - i) The acceptable departures of warranties.
  - j) Assessment of monetary implications on deviations and other matters.
- 27.3 For the evaluation purposes the rates and prices in the BOQ will be considered to be excluding VAT. Any notes or remarks by Bidders contrary to this will be disregarded.

### 27.4 Preference for Domestic Manufacturers for GOSL funded supplies

When Domestic PE Pipe manufacturers are allowed to bid with Foreign Manufacturers, for GOSL funded PE pipes supplies domestic preference for Domestic PE Pipe manufacturers shall be applied. Domestic Manufacturers are eligible for margin of Preference of 20% for GOSL funded supplies in comparison of their Bids with Foreign PE pipes manufacturers, subjected to the following conditions.

- a) Bidder shall establish to the satisfaction of the Procurement Committee that,
  - (i) Labour, raw materials components from within Sri Lanka shall be indicated separately and will account to minimum of Thirty percent (30%) of EXW (Ex works) price of the PE pipes + fittings offered.
  - (ii) The production facility in which these PE pipes and fittings would be manufactured at least since the time of Bid submission.
- b) In addition to the above, in GOSL funded supplies, Bidder should satisfy the following:
  - (i) For an individual / sole proprietorship the bidder shall be a Sri Lankan.

- (ii) For partnership fifty percent (50%) of member of the partnership shall be Sri Lankan.
- (iii) For an individual firm:
  - Such firm shall be registered in Sri Lanka; and
  - Should have more than fifty percent (50%) ownership by Sri Lankans.

## **F. AWARD OF CONTRACT**

### **28. Post-qualification**

- 28.1 For supply and delivery of Goods, the Procurement Committee will determine to its satisfaction whether the Bidder selected as having submitted the lowest-evaluated substantially responsive Bid is qualified to satisfactorily perform the Contract.
- 28.2 The determination will take into account the Bidder's financial, technical and production capabilities. It will be based upon an examination of the documentary evidence of the Bidder's qualifications submitted with the Bid, pursuant to **Clause 10** hereof, as well as such other information as the Procurement Committee deems necessary and appropriate.
- 28.3 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.

### **29. Award of Contract**

- 29.1 Subject to **Clause 30** hereof, the Board/ Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest evaluated bid price, provided that such bidder has been determined to be eligible and qualified in accordance with the provisions of the bidding document.

### **30. Board's Right to vary Quantities at the Time of Award**

- 30.1 The Board reserves the right at the time of Award of Contract to increase or decrease by up to 25 percent the quantity of Goods and Services specified in the Bills of Quantities without any change in unit rates or other terms and conditions including discounts offered.

**31. Right of the Procurement Committee to Accept any Bid and to Reject any or all Bids**

31.1 The Procurement Committee reserves the right to accept or reject any Bid, and to annul the Bidding process and reject all Bids, at any time prior to the award of contract, without thereby incurring any liability to the affected Bidder or Bidders any obligation to inform the affected Bidder or Bidders of the grounds of the Procurement Committee's action. The Procurement Committee reserves the right to award the Bid in whole or in Bill wise.

**32. Notification of Award**

32.1 Prior to the expiration of the period of Bid validity prescribed by the Board, the Board will notify the successful Bidder by registered letter or by facsimile that his Bid has been accepted. This letter (hereinafter called the "Letter of Acceptance") will state the sum to be paid to the contractor in consideration of the execution and completion of the supply as per the Delivery Schedule by the Contractor.

32.2 The notification of award will constitute the formation of the Contract.

32.3 Upon the successful Bidder's furnishing of performance security in accordance with the provisions of **Clause 33** hereof, the Board will promptly notify each of the unsuccessful Bidders and will discharge their Bid Securities, pursuant to **Clause 13** hereof

**33. Signing of Contract**

33.1 The successful Bidder will be required to sign a Contract Agreement. The Contract Agreement must be executed within twenty eight (28) days after the receipt of the Letter of Acceptance.

33.2 The Contract Agreement will be prepared by the Board. The Supplier will be required to pay the stamp duty in accordance with the law relating to stamp duty in Sri Lanka. The prevailing rate of stamp duty on contracts for supply of goods is prescribed in the **Bidding Data**.

33.3 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.

**34. Performance Security**

34.1 Within fourteen (14) days of the receipt of the notification of the acceptance of the contract by the Board, the successful Bidder shall furnish to the Board a Performance Security encashable on demand in accordance with the **Clause 7** of the Conditions of Contract, in the format of Performance Security provided in the Bidding Document.



- 34.2 The Performance Security shall be valid until a date 28 days beyond the Contract Period. On due performance of the contract in all respects and issuance of the Final Acceptance Certificate by the Engineer the Performance Security will be returned to the Contractor without any interest.
- 34.3 Failure of the successful Bidder to comply with the requirements of **Clause 33** or **Clause 34** hereof shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid security, in which event the Board may make the award to the next lowest evaluated Bidder or call for new Bids.

### **35 Advance payment**

- 35.1 No Advance payment will be made for this contract.

### **36. Fraud & Corruption**

- 36.1 Bidders and officials shall ensure that they maintain strict confidentiality throughout the bidding process.
- 36.2 Officials shall refrain from receiving any personal gain from any procurement action. No gifts or inducement shall be accepted. Suppliers/contractors are liable to be disqualified from the bidding process if found offering any gift or inducement which may have an effect of influencing a decision or impairing the objectivity of an official.
- 36.3 The attention of the bidders shall be drawn to the **Sub-Clause 24.1 (c)** of the General Conditions of Contract which shall apply to any bidder.

### **37. Shipping through Vessels of Sri Lankan Shipping Corporation**

Bidders shall quote freight charges on Vessels own by any shipping line that the bidder intended to deliver goods. The quoted freight charges shall be considered to calculate the CIF Price for the purpose of bid evaluation. Before opening of Letter of Credit, the Purchaser shall obtain the freight charges from Ceylon Shipping Corporation Ltd (CSCL), Sri Lanka. If the Freight charges offered by the CSCL is less than that of the successful bidder, then Letter of Credit shall be opened on FOB basis and CSCL shall under take carriage of goods. If the Freight charges offered by CSCL is higher than that of successful bidders, then Letter of Credit shall be opened on C&F basis.

### **38. Compliance with Contract Act No.3 of 1987**

Bidder shall comply with the requirements of the Public Contracts Act No.3 of 1987 and subsequent Gazette Notifications, for amount of bid more than Rs.5 million.

Bidder shall be required to submit their certificates of registration under this Act with the Bid and shall register the contract with the Registrar of Public Contracts.

### **39. Data in Schedule of Particulars**

Bidder shall fill the Questionnaire in Schedule of Particulars.

#### **40. Unloading During Daytime**

Contractor shall be held responsible for their crews use for unloading and he shall obtain prior permission from the Engineer for the crews used for unloading at strategic unloading locations in high security zones. Unloading shall be done only during day time.

## **2. GENERAL CONDITIONS OF CONTRACT**

## GENERAL CONDITIONS OF CONTRACT

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## GENERAL CONDITIONS OF CONTRACT

### 1 Definitions

1.1 In this Contract, the following terms shall be interpreted as indicated:

- (a) "Award of Contract" means the formal acceptance of bid by the Purchaser incorporating any adjustments or variations to the Bid agreed between the Purchaser and the Supplier.
- (b) "Bills of Quantities" means the completed and priced Schedule of Prices with corrections as per **Clause 25** of Instructions to Bidders, in any or any part or individual schedule thereof, submitted by the Supplier with his bid and forming a part of the Contract documents.
- (c) "Contract" means the agreement entered into between the Purchaser and the Supplier, as recorded in the Contract Agreement Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein;
- (d) "Contract Price" means the price acceptable by the Purchaser under the Contract for the full and proper performance of his contractual obligations;
- (e) "Contract sum" means the price payable to the Supplier under the contract for the full and proper performance of his contractual obligations.
- (f) "Contract Period" means as specified in the **Contract Data**.
- (g) "Contract Agreement" means the obligations agreed between the Purchaser and the Supplier.
- (h) "The Contractor" or "The Supplier" means the person or persons, firm or firms, company or companies who is the manufacturer or his local accredited agent and have contracted for supply of the Goods and provision of the services under this Contract.
- (i) "Drawing" means all the drawings and information provided by the Purchaser or the Engineer to the Contractor under the Contract.
- (j) "Employer's authorized representative" is the person for the time being holding the office of or acting as the Chairman of National Water Supply and Drainage Board, Galle Road, Ratmalana.
- (k) "Engineer" means the officer for the time being holding the office of or acting as the General Manager of the National Water Supply and Drainage Board, or any other person appointed by the Purchaser from time to time by notice in writing to the Supplier to act in replacement of.

- (l) "Final Acceptance Certificate" means the certificate that shall be issued by the Engineer to the Contractor upon the satisfactory completion of the contract by the Contractor.
- (m) "Goods" means all materials which the Supplier is required to supply to the Purchaser for the due performance of his contractual obligations under the Contract.
- (n) "Performance Security" means the "performance guarantee" to be provided by the Supplier in accordance with **Sub-Clause 7.3** for the due performance of the Contract.
- (o) "Purchaser" or the "Employer" or the "Board" means the National Water Supply and Drainage Board.
- (p) "The Services" means services ancillary to the supply of the Goods, such as transportation, insurance, and any other incidental services, such as storing, stacking provision of technical assistance, training and other such obligations of the Supplier covered under the Contract;
- (q) "Site" means the place or places to which goods are to be delivered.
- (r) "Works" means the supply of Goods and provision of the Services.
- (s) Accredited Agency shall be a member of International Accredited Forum (IAF) and shall have the authority for the accreditation of mentioned goods in their scope of accreditation.

## 1.2 Interpretation

Words importing persons or parties shall include firms and corporations and any organisation having legal capacity.

Words importing the singular only, also include the plural and vice versa where the context so requires.

Words importing masculine gender shall also include the feminine gender and vice versa where the context so requires.

## 1.3 Written Communications

Wherever in the Contract provision is made for a communication to be "written" or "in writing, this means any hand-written, type written or printed communication, including facsimile transmission.

## 1.4 Periods

In these Conditions "day" means calendar day "month" means calendar month and "year" means calendar year.

## **2. Application**

2.1 These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract.

## **3. Engineer and Engineers' Representative**

3.1 The Engineer is the General Manager of National Water Supply & Drainage Board who is the person authorised by the Purchaser to administrate the Contract on behalf of the Purchaser.

3.2 The Engineer may delegate to such person or persons such of the powers, directions and authorities vested in him as he may think fit. Such person (referred to as "the Engineer's Representative") will be named in the **Contract Data**.

## **4. Standards**

4.1 The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications, BOQ notes and BOQ. When no applicable standard is mentioned, the Goods shall conform to the authoritative standard appropriate to the Goods' country of origin and such standards shall be the latest issued by the concerned institution.

## **5. Use of Contract Documents and Information**

5.1 The Supplier shall not, without the Purchaser's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of the Purchaser in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

5.2 The Supplier shall not, without the Purchaser's prior written consent, make use of any document or information enumerated in para 5.1 except for purposes of performing the Contract.

5.3 Any document, other than the Contract itself, enumerated in para 5.1 hereof shall remain the property of the Purchaser and shall be returned (in all copies) to the Purchaser on completion of the Supplier's performance under the Contract if so required by the Purchaser.

## **6. Patent Rights**

6.1 The Supplier shall indemnify the Purchaser against all third party claims of infringement of patent, trademark or industrial design rights arising from use of the Goods or any part thereof in the Purchaser's country.

## **7. Performance Security**

7.1 Within 14 days after the Supplier's receipt of notification of acceptance of the Contract by the Board, the Supplier shall furnish Performance Guarantee (unconditional) encashable on demand to the Purchaser in the amount of 10% of the Contract Price in the format of performance guarantee included in the Bidding document and shall be issued as stated below from any one of the following forms.

- a) A Bank Guarantee issued by a Bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka.
- b) A Sri Lanka Rupee cash deposit to the National Water Supply and Drainage Board, Sri Lanka (The original receipt for such deposit shall be attached to the original bidding document).
- c) A certified cheque issued by a Bank operating in Sri Lanka in favour of the National Water Supply and Drainage Board, Sri Lanka.
- d) A Bank guarantee issued by a Bank based in another country but the security or guarantee counter issued by a reputed Bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka

However, the requirement of confirmation of performance guarantees 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.

**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.**

- 7.2 The proceeds of the performance guarantee shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete his obligations under the Contract.
- 7.3 The performance guarantee shall be denominated in the currency of the Contract and shall be submitted in the format provided in the Bid document.
- 7.4 The performance guarantee will be discharged by the Purchaser and returned to the Supplier not later than 30 days following the date of completion of the Supplier's testing and acceptance by the Engineer, including any warranty obligations, under the Contract.
- 7.5 The amount of performance guarantee shall be notified to the supplier by the Letter of Acceptance of Contract.

## **8. Inspections and Testing of Goods**

### **8.1 Testing and Inspection Agencies**

- 8.1.1 The Employer or his representative shall have the right to inspect and/or to test the Goods for their conformity to the Contract. The Contract Data of Contract



and/or the Technical Specifications shall specify what inspections and tests the Purchaser requires not specified anywhere and where they are to be conducted. The Purchaser shall notify the Supplier in writing of the identity of any representatives retained for these purposes.

8.1.2 The inspections and tests may be conducted on the premises of the Supplier or his subcontractor(s), at point of delivery and/or at the Good's final destination. Where conducted on the premises of the Supplier or its subcontractor(s), all reasonable facilities and assistance including access to drawings, documents and production data shall be furnished to the inspectors at no charge to the Purchaser.

8.1.3 Should any inspected or tested Goods fail to conform to the specifications, the Purchaser may reject them and the Supplier shall either replace the rejected Goods or make all alterations necessary to meet specification requirements free of charge to the Purchaser.

8.1.4 The Purchaser's right to inspect, test and, where necessary, reject the Goods after the Goods' arrival in the Purchaser's stores shall in no way be limited or waived by reason of the Goods having previously been inspected, tested and passed by the Purchaser or its representative prior to the delivery of Goods or Goods' shipment from the country of origin, in case of importing.

8.1.5 The Employer requires the goods to be supplied under this contract shall conform to the requirements given in Section 6. The Supplier shall obtain the Certificates of Inspection for the specific requirement of this contract document carried out by one of the following inspection agencies acceptable to the Purchaser.

1. M/s Lloyds Register,  
Lloyds Register Industrial Division,  
Register House, 29 Wallesley Road,  
Croydon DRO-2AJ, U.K.
2. M/s Crown Agents,  
Quality assurance & Inspection Service,  
Townend House, Walsall WSI INT,  
U.K.
3. M/s Societe Generale de Surveillance S.A.,  
1, Place des Alpes,  
Case Postale 898, CH-1211 Geneva 1,  
Switzerland.
4. Bureau of Veritas,  
Cedex 44,  
92077 Paris Le Defense,  
France.

The selected inspection authority's name and cost to same has to be given in summary of price schedule. On the acceptance of the bid, the Purchaser shall inform directly to the selected inspection authority with a copy to Supplier, the specific requirements for testing including deviations accepted by the purchaser, if any, to be tested. However, the payment to the Inspection Authority has to be made directly by the Supplier on production of test reports.

- 8.1.6 Nothing in **Clause 8** shall in any way release the Supplier from any warranty or other obligations under this Contract.
- 8.1.7 The Supplier shall obtain the approval of the Engineer to ship the goods to be imported for the Works or to deliver such materials and plant to the site. Applications for such consent to ship shall be accompanied by manufacturer's test certificates and certificates of inspection prescribed in the Contract or agreed with the Engineer. Application shall be made so as to give the Engineer a reasonable time to deal with such applications.
- 8.1.8 Nominated Inspection Agency shall carryout inspection and testing during Manufacturing process, after Manufacturing and at any time prior to shipping and shall confirm that goods are in conformity with specifications included in the contract document. He shall submit his inspection report to the Employer including all items given in the Terms of Reference (TOR) for the Nominated Inspection Agency which is included in the contract document as Appendix – 7.

## 8.2 **Pre-shipment Inspection by National Water Supply & Drainage Board (NWSDB) Engineers**

The Contractor shall arrange for 2 NWSDB Engineers for pre-shipment inspection visit to country of manufacture before dispatching the Goods.

Each shipment should be inspected by NWSDB Engineers before dispatching at Manufacturer's factory.

The Contractor shall in his bid provide detailed proposals for pre-shipment inspection visit he offers to provide under this clause. The following guidelines shall be used by the Contractor to formulate his proposals.

- 8.2.1 The duration of inspection for each NWSDB Engineer shall not be less than Ten (10) days.
- 8.2.2 Most of the time shall be centered round the manufacturer's goods which the Contractor proposes to use in the work.
- 8.2.3 The inspection at the specific manufacturer shall include;
- A general introduction to the manufacturer's country, area, town & source of materials, etc.
  - introduction to design standards and production procedures adopted.

- introduction to relevant procedures and quality control standards.
- manufacturing process, and Quality Assurance procedure.
- testing procedures, mill certificates, product conformity certificate, Quality Management System Certificate, calibration certificate of all equipment and testing instruments apparatus and any other relevant certificates etc. regarding the products.
- packing & dispatching procedure
- Site visits to inspect installed or application of similar products/materials

- 8.2.4. NWSDB Engineers shall be guided by experienced engineers and quality controllers who are also competent in English language.
- 8.2.5. Each NWSDB Engineer shall be paid a per diem to include combined allowances, and incidental allowance the amount specified in the Appendix 13 prior to departure prior to departure by the contractor of Volume-2.
- 8.2.6 All visas, Insurance (Life, Health and Travel), air fares, permits, taxes, transfer fees, travelling within the manufactures country and all other facilities required to carry out pre-shipment inspections at the manufacturer's factory/premise shall be arranged and paid for by the Contractor and shall be included in the rates and prices of the contract. Contractor is not liable for providing food and accommodation. Contractor shall assist NWSDB Engineers for booking accommodation if required.
- 8.2.7 The NWSDB Engineers shall be provided with printed catalogues, manuals, illustrative videos etc., relevant to the manufacturing process and also obtain extra information requested by them, and shall arrange to dispatch these to NWSDB Engineers, by the Contractor at his own cost.
- 8.2.8 Contractor shall provide a Terms of Reference (TOR) for the inspection jointly agreed by the contractor and the Engineer and detailed programme (itinerary) showing details of inspection, travelling, and all other arrangement etc. required for the pre-shipment Inspection and submit to the inspection team prior to departure. Contractor shall discuss the inspection programme in detail with the inspection team and shall be agreed with the Pre-shipment Inspection team prior to departure.
- 8.2.9 Contractor shall assist for obtaining visa for the inspection from the relevant Embassy / High commission for NWSDB Engineers.

- 8.2.10 NWSDB Engineers shall inspect and test the Goods as per the attached check list for pre shipment as given in Appendix 9. Manufacturers shall perform any other tests which may be required by the NWSDB Engineers as per the specification
- 8.3 Nominated inspection agency shall be present during pre-shipment inspection by the NWSDB Engineers and shall assist the NWSDB Engineers for the testing and inspection.
- 8.4 Any inspections carried out by Inspection Agencies or NWSDB shall not relieve the Contractor of his obligations under the Contract.
- 8.5 Contractor/Manufacturer shall not ship/deliver by plane or any other means the materials from the Manufacture's factory or Stores without approval of the Engineer.

## **9. Packing Manufacture's factory**

- 9.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract and, subject to **Clause 18** hereof in any subsequent instructions ordered by the Purchaser.
- 9.3 The Supplier will be required to make separate packages for each consignee. Each package will be marked on three sides with proper indelible paint as follows:
- i) National Water Supply & Drainage Board, Sri Lanka.
  - ii) Contract No.
  - iii) Description of Goods
  - iv) Country of Manufacture of Goods
  - v) Suppliers' Name
  - vi) Packing List Reference No.

## **10. Delivery and Documents**

- 10.1 Upon shipment, the Supplier shall notify the Purchaser and the Insurance Company by facsimile or e-mail the full details of the shipment including Contract Number, description of Goods, quantity, the vessel, the bill of lading number and date, port of loading, date of shipment, port of discharge, etc. The Supplier shall courier the following documents to Purchaser, with a copy to the Insurance Company.

- i) Copies of the Supplier's invoice showing description of Goods, quantity, unit price, total amount and HS Code Number.
- ii) 3 copies of clean on-board bill of lading marked freight prepaid
- iii) 3 Copies of packing list identifying contents of each package and measurements..
- iv) Manufacturer's/Supplier's warranty certificate as per **Clause 15** hereof and as given in Appendix – 10.
- v) Inspection certificates, issued by the nominated inspection agency and the Pre-shipment Inspection Team, where applicable.
- vi) Manufacturer's Inspection and Test Certificate
- vii) Certificate of origin.
- viii) Certificate of conformity to the standards specified in the specifications.

The above documents shall be received by the Purchaser at least one week before arrival of Goods at the port and, if not received; the Supplier will be responsible for any consequent expenses.

- 10.2 Delivery of the Goods shall be made by the Supplier in accordance with the terms specified by the Purchaser in the **Contract Data**.

## **11. Insurance**

- 11.1 All goods and services stand at the risk of the Purchaser who shall make good at his own cost, all damages or loss thereof caused by any cause whatsoever other than war, rebellion and earth quakes and for the delivery of the materials to the Purchaser's site clean and complete in every particular.
- 11.2 The marine insurance shall be in an amount equal to 110% of the CIF value of the goods from "Warehouse to Warehouse" on "All Risks" basis.
- 11.3 The Purchaser shall at his own cost and expense insure the goods for loading transport and delivery, unload and stacking at Purchaser's stores against all risks and damage by Sri Lanka Insurance Corporation.

## **12. Transportation**

- 12.1 Contractors shall quote freight charges on Vessels own by any shipping line that the contractor intended to deliver goods. The quoted freight charges shall be considered to calculate the CIF Price for the purpose of contract evaluation. Before opening of Letter of Credit, the Purchaser shall obtain the freight charges from Ceylon Shipping Corporation Ltd (CSCL), Sri Lanka. If the Freight charges offered by the CSCL is less than that of the successful contractor, then Letter of Credit shall be opened on FOB basis and CSCL shall under take carriage of goods. If the Freight charges offered by CSCL is higher than that of successful contractor, then Letter of Credit shall be opened on C&F basis.

- 12.2 The Contractor shall be required to meet all transport and storage expenses until delivery to the destination as specified in the **Clause 10.2** hereof.
- 12.3 Contractor shall be held responsible for their crews use for unloading,, stacking at purchaser's stores and he shall obtain prior permission from the Engineer for the crews used for unloading at strategic unloading locations in high security zones.

### **13. Incidental Services**

- 13.1 The Supplier shall provide any or all of the following services, without any extra cost to the Purchaser.
- (a) Furnishing of tools required for assembly and/or maintenance of the supplied Goods.
  - (b) Furnishing of a detailed installation, operations and maintenance manual for each appropriate unit of the supplied Goods.
  - (c) Conduct training of the Purchaser's personnel, at the Supplier's plant and/or on-site, in assembly, operation, maintenance and/or repair of the supplied Goods.
- 13.2 Prices charged by the Supplier for the preceding incidental services, shall be included in the Contract Price for the Goods.

### **14. Spare Parts**

- 14.1 The Supplier shall be required to provide the following materials and notifications pertaining to spare parts manufactured or distributed by the Supplier:
- (a) Such spare parts as the Purchaser may elect to purchase from the Supplier, provided that this election shall not relieve the Supplier of any warranty obligations under the Contract.
  - (b) The Supplier shall carry sufficient inventories to assure ex-stock supply of consumable spares such as Gaskets, Plugs, Bolts, Nuts and Washers etc. Other spare parts and components shall be supplied as promptly as possible but in any case within six months of placement of order and establishment of Letter of Credit.
  - (c) In the event of termination of production of the spare parts:
    - (i) Advance notification to the Purchaser of the pending termination, in sufficient time to permit the Purchaser to procure needed requirements; and

- (iii) Following such termination, furnishing at no cost to the Purchaser, the blue-prints, drawings and specifications of the spare parts, if and when requested.

## 15. Warranty

- 15.1 The Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models and incorporate all recent improvements in design and materials unless otherwise provided in the Contract. The Supplier further warrants that the Goods supplied under this Contract shall have no defect arising from design, materials or workmanship (except in so far as the design or material is required by the Purchaser's Specifications) or from any act or omission of the Supplier, that may develop under normal use of the supplied Goods in the conditions prevailing in the country of final destination.
- 15.2 This warranty shall remain valid for Thirty Six (36) months after the Goods, or any portion thereof as the case may be, have been delivered (and commissioned) to the final destination indicated in the Contract, unless specified otherwise in the **Contract Data**.
- 15.3 The Purchaser shall promptly notify the Supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the Supplier shall, with all reasonable speed, repair or replace the defective Goods or parts thereof, without costs to the Purchaser other than, where applicable, the cost of inland delivery of the repaired or replaced Goods or parts from the port of entry to the final destination.
- 15.5 If the Supplier, having been notified, fails to remedy the defect(s) within a reasonable period, the Purchaser may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.
- 15.6 The manufacturer shall submit the warranty for all Materials Supplied by him for 36 months in the form given in Appendix 10.

## 16. Payment

- 16.1 If the Manufacturer is a local Manufacturer;  
**(A) Documents to be submitted**

The following documents shall be submitted by the Supplier to the Purchaser when making request(s) for payment at different stages of payment as follows.

Engineer's representative should carefully go through these documents and inspect all delivered goods at site prior to approving payments and he should be fully satisfied with the quantity, quality, unloading stacking and etc. of goods at site prior to approve the payments.

(i). On requesting Advance Payment

- (a) Written request for payment of mobilization advance in the form of a tax invoice.
- (b) A Bank Guarantee for Mobilization advance payment to the equivalent amount in the form prescribed in the bidding document.
- (c) A Performance guarantee.
- (d) Warranty Certificate as per **Clause 15**.

(ii). On Delivery to Site

- (a) Supplier's tax invoice based on the BOQ and showing description of Goods delivered, quantity, units, amount and total amount with a copy.
- (b) Manufacturer's test certificate (Original).
- (c) Manufacturer's Warranty (Original).
- (d) Certificate of Standard for pipes and fittings issued by the relevant institution of Standards specified in the specifications.
- (e) Testing at site by the Engineer's Representative
- (f) Inspection certificate issued by the Engineers' Representative or his Authorized Officer.
- (g) Pre delivery inspection certificate as per Appendix 15.

(iii). On final Acceptance by the engineer

- (a) Supplier's request for balance payment in the form of a Tax Invoice.
- (b) Copy of Final Acceptance Certificate issued by the Engineer.

**(B) Method of Payment**

The payment for Goods and Services under the different stages in **Clause 16.1** hereof, shall be made as follows;

16.2 If the Manufacturer is not a local Manufacturer;

**(A) Letter of Credit**

- i The Purchaser shall establish an irrevocable Letter of Credit for the foreign component quoted in accordance with **Clause 18.1** hereof.
- ii The successful Bidder shall submit the necessary proforma invoice and other connected documents together with a letter requesting the Purchaser



to open Letter of Credit in the Beneficiary's name. These Documents shall be submitted within 2 weeks of the award of the contract.

- iii The Bidder shall be responsible for clearing the materials from port, transport delivery and stacking of the materials at the stores as prescribed in the Delivery Schedule.
- iv. Any delay in submitting proforma invoice and other connected documents as required to open the letter of credit shall be a delay of the contractor and liquidated damages shall be imposed.

## **(B) Terms of Payment**

Engineer's Representative should carefully go through these documents and inspect all delivered goods at site prior to approving payments and he should be fully satisfied with the quantity, quality, unloading stacking and etc. of goods at site prior to approve the payments.

### **i. Local Component**

- (a) 90% of the total Rupee Component of the contract price less Agent's commission shall be paid on delivery and stacking of the goods at site in compliance with the contract.
- (b) The balance 10% of the total Rupees Component of the Contract price less Agent's commission shall be paid within 60 days (sixty) after the materials have been accepted by the Engineer.
- (c) The Agent's Commission shall be paid on acceptance of all the materials and equipment delivered to site.

### **ii. Foreign Component**

Engineer's Representative should carefully go through the documents requested for payments and inspect all documents at the initial payments for foreign component and inspect all delivered goods at site prior to approving for final payments and he should be fully satisfied with the quantity, quality, unloading, stacking and etc. of goods at site prior to approving the final payment.

Subject to **Clause 16.1** hereof payments with respect to the foreign component shall be made in foreign currency or currencies agreed under the contract under a Letter of Credit which will be opened in favour of manufacturers through a local bank as follows:

- (a) 75% of the foreign component shall be paid on production of all the documents as detailed in **Clause 10** hereof. If the item shipped is only a part of that in the Bill of Quantities 75% of the foreign component of that portion only will be payable.

- (b) The balance 25% shall be paid within 60 (sixty) days after satisfactory delivery and stacking of materials at Employer's stores site, on production of a Final Acceptance Certificate issued by the Engineer.

**(C) Mode of Payment**

The amounts due to the Supplier in terms of the contract shall be paid to the Supplier by the Purchaser in the following manner.

- (a) In respect of payment due in Sri Lanka Rupees, by a cheque in favour of the Supplier.
- (b) In respect of payments due in foreign currency through an irrecoverable Letter of Credit established by the Purchaser.

Payment shall be made by the Purchaser within 14 days after the certificate of an invoice/claim.

**17. Bid Prices**

- 17.1 Prices quoted by the Bidder shall be firm and not subject to variation on any account.
- 17.2 The bidder shall fill in rates and prices for all items of the bill/section described in a Bill/s in the Bill of Quantities (BOQ). If a bidder does not quote for a item of a bill, the particular bill shall be considered as incomplete and that bill shall not be taken for evaluation.
- 17.3 All local cost and Agency commission shall be included in Sri Lanka Rupees and only foreign cost shall be included in foreign currency in United State dollars. (US\$)
- 17.4 In pricing the items of the Bills of Quantities, the Bidder shall cover himself and will be deemed to have covered himself for:
- a) All services and goods which according to the true intent and meaning of the contract may be reasonably inferred as necessary for completion of delivery of the goods in sound condition to the Stores which is specified in Contract Data.
- b) All the duties, obligations, liabilities and responsibilities which the Contract documents place upon the bidders in connection with or in relation to the Contract.
- c) All costs arising out of inspection except inspection as per **Clause 8.1.5 and 8.2** of General Conditions of Contract, testing, packing, transportation, clearing, loading, unloading, stacking, shipping line charges, warehouse rent, any demurrages, Agents Commission if any and other minor expenses.

- d) All Costs including all taxes and duties and other charges imposed outside Sri Lanka on raw materials, production, manufacture, sales, transport and any other cost that may be incurred of all goods.
- e) Import duties, business taxes, income and all other taxes except customs duty and port charges that may be levied in purchaser's country (Sri Lanka).
- f) Cost of accessories not specially listed, but necessary for proper completion
- g) Prices charged by the supplier for the preceding incidental services.
- h) Custom duties, import license fees and port charges levied on the goods supplied under contract shall be directly paid by the Purchaser as per **Clause 32.4** of the General Conditions of Contract.

17.5 **If Bidders are registered for the purpose of VAT**, they should indicate the amount of VAT claimed separately in the Bidding documents, in addition to the value of the Bidding, along with the VAT registration number. Declaration of VAT registration number is a mandatory requirement to pay the VAT amount.

**If any Bidder is not registered for VAT**, he should indicate the value of the Bid in Bidding documents. Under this category Bidder should obtain a letter from the Commissioner of Inland Revenue Department certifying that his Company has not been registered for VAT and that letter should be attached to the Bidding document.

17.6 **Insurance shall be carried out by the Purchaser with a reputed insurance Company/Corporation registered under Insurance Board of Sri Lanka as per Clause 11 of the General Conditions.**

17.7 Shipping of PE Pipes, Fittings, and Accessories shall be done as described in **Clause 37** of Instructions to Bidders.

## 18. Change orders

18.1 The Purchaser may at any time, by a written order given to the Supplier pursuant to **Clause 31** hereof, make changes within the general scope of the Contract in any one or more of the following:

- (a) Drawings, designs or specifications, where Goods to be furnished under the Contract which are to be specifically manufactured for the Purchaser.
- (b) The method of shipment or packing.
- (c) The place of delivery; or
- (d) The Services to be provided by the Supplier.

18.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any part of the Works under the Contract, whether changed or not changed by the order, an equitable adjustment shall be made in the Contract Price or Delivery Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this clause must be asserted within thirty (30) days from the date of the Supplier's receipt of the Purchaser's change order.

## **19. Contract Amendments**

19.1 Subject to **Clause 18** hereof; no variation or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

## **20. Assignment**

20.1 The Supplier shall not assign, in whole or in part, his obligations to perform under the Contract, except with the Purchaser's prior written consent.

20.2 A charge in favour of the Supplier's bankers of any monies due under the Contract shall not be considered an assignment.

## **21. Subcontracts**

21.1 The Supplier shall not subcontract the Works, except where otherwise provided by the contract, the Supplier shall not subcontract any part of the Works without the prior consent of the Engineer. The Supplier however, not require such consent for purchase of materials or to place Contracts for minor details or for any part of the Works of which the manufacturer is named in the Contract.

The Supplier shall be responsible for the acts, defaults and neglects of any subcontractor, his agents or employees as fully as if they were the acts, defaults or neglects of the Supplier, his agents or employees.

21.2 The Supplier shall guarantee that, any and all subcontractors of the Supplier, appointed for the performance of any part of the Works under the Contract, will comply fully with the terms and conditions of the Contract applicable to such part of the work under the Contract.

## **22. Delays in Supplier's Performance**

22.1 Delivery of the Goods and performance of Services shall be made by the Supplier in accordance with the time schedule specified by the Purchaser in **Clause 10** hereof.

22.2 If at any time during the performance of the Contract, the Supplier or his subcontractor(s) should encounter conditions impeding timely delivery of the Goods and performance of Services, the Supplier shall promptly notify the Purchaser in writing of the fact of the delay, its likely duration and its cause(s).

As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at his discretion extend the Supplier's time for performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of the Contract.

- 22.3 Except as provided under **Clause 25** hereof , a delay by the Supplier in the performance of his delivery obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to **Clause 23** hereof, unless the extension of time is agreed upon pursuant to **Clause 22.2** without the application of liquidated damages.

### **23. Liquidated Damages**

- 23.1 Subject to **Clause 24** hereof , if the Supplier fails to deliver any or all of the Goods or perform the Services within the time period(s) specified in the Contract, the Purchaser shall, without prejudice to his other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to that stated in the **Contract Data**, for each day of delay until actual delivery or performance, up to a maximum deduction of (10%) of the Contract Price. Once the maximum is reached, the Purchaser may consider termination of the Contract with encashing the Performance Guarantee and recovering any other damages incurred by him.
- 23.2 If a portion of goods to be delivered is delayed, the liquidated damages shall be deducted only for the delayed portion of goods, until actual delivery or performance up to a maximum of 10% of the contract Price.

### **24. Termination for Default**

- 24.1 The Purchaser may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, terminate the Contract in whole or in part:
- (a) if the Supplier fails to deliver any or all of the Goods within the time period(s) specified in the Contract, or any extension thereof granted by the Purchaser pursuant to **Clause 22** hereof; or
  - (b) if the Supplier fails to perform any other obligation(s) under the Contract.
  - (c). The Contractor/Supplier has engaged in corrupt or fraudulent practices, in competing for or in executing the contract.
- 24.2 In the event the Purchaser terminates the Contract in whole or in part, pursuant to **Clause 24.1**, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods similar to those undelivered, and the Supplier shall be liable to the Purchaser for any excess costs for such similar Goods. However, the Supplier shall continue performance of the Contract to the extent not terminated.

## **25. Force Majeure**

- 25.1 Notwithstanding the provisions of **Clause 22,23 and 24** hereof, the Supplier shall not be liable for forfeiture of his Performance Guarantee, liquidated damages or termination for default, if and to the extent that, his delay in performance or other failure to perform his obligations under the Contract is the result of an event of Force Majeure.
- 25.2 For purposes of this clause "Force Majeure" means an event beyond the control of the Supplier and not involving the Supplier's fault or negligence and not foreseeable. Such events may include, but not restricted to, acts of the Purchaser either in its sovereign or contractual capacity, wars or revolutions, fires, unseasonal floods, epidemics, quarantine restrictions and freight embargoes.
- 25.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform his obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

## **26. Termination for Insolvency**

- 26.1 The Purchaser may at any time terminate the Contract by giving written notice to the Supplier, without compensation to the Supplier, if the Supplier becomes bankrupt or otherwise insolvent, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.

## **27. Termination for Convenience**

- 27.1 The Purchaser, may by written notice sent to the Supplier, terminate the Contract, in whole or in part, at any time for his convenience.

The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Works under the Contract is terminated, and the date upon which such termination becomes effective.

- 27.2 The Goods that are complete and ready for shipment within 30 days after the Supplier's receipt of notice of termination shall be purchased by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
- (a) to have any portion completed and delivered at the Contract terms and prices; and/or
  - (b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and for materials and parts previously procured by the Supplier.

## **28. Resolution of Disputes**

### **28.1 Amicable settlement**

- 28.1.1 Any dispute of whatever nature arising out of or in relation to this agreement shall in the first instance be attempted to be resolved by way of amicable settlement by the purchaser and the supplier.
- 28.1.2 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 28.1.3 If after thirty (30) days from the commencement of such informal negotiation the Purchaser and the Supplier have been unable to resolve amicably a contractual dispute, either party may require that the dispute be referred for resolution to the formal mechanism stated in **Clause 28.2** herein. These mechanisms may include, but not restricted to, condition mediated by a third party, adjudication in an agreed national forum and/or arbitration.

### **28.2 Dispute Adjudication Board (DAB)**

#### **28.2.1 Appointment of the Dispute Adjudication Board (DAB)**

Any dispute of whatever nature arising out of or in relation to this agreement shall be referred to a "Dispute Adjudication Board (DAB) for decision. The Parties shall appoint a DAB.

The DAB shall comprise, three suitably qualified persons ("the members"), who shall be professionals experienced in the type of Works and with the interpretation of contractual documents, one of whom shall serve as chairman.

Each of the Parties shall appoint one member to serve on the Dispute Adjudication board (DAB). The Parties shall consult both these members and shall agree upon the third member, who shall be appointed to act as the chairman.

The terms of the remuneration of the three members, including the remuneration of any expert whom the DAB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment of the member or such expert (as the case may be). Each Party shall be responsible for paying one-half of this remuneration.

If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DAB (including each member) shall expire when the Issuing Final Acceptance Certificate.

#### 28.2.2 Failure to Agree on the Composition of the Dispute Adjudication Board

If any of the following conditions apply, namely:

- (a) either Party fails to nominate a member of a DAB by such date,
- (b) the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DAB by such date, or
- (c) The Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment.

Then Construction Industry Development Authority (CEDA) shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DAB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the expenses / disbursements incurred by CEDA.

#### 28.2.3 Obtaining Dispute Adjudication Board's Decision

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer, either Party may refer the dispute in writing to the DAB for its decision, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause.

The DAB shall be deemed to have received such reference on the date when it is received by the chairman of the DAB.

Both Parties shall promptly make available to the DAB all such additional information, further access to the Site, and appropriate facilities, as the DAB may require for the purposes of making a decision on such dispute. The DAB shall be deemed to be not acting as arbitrators(s).

Within 84 days after receiving such reference, or within such other period as may be proposed by the DAB and approved by both Parties, the DAB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the



Contractor shall continue to proceed with the Works in accordance with the Contract.

If either Party is dissatisfied with the DAB's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction and intention to commence arbitration. If the DAB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.

In either event, this notice of dissatisfaction shall state that it is given under this Sup-Clause, and shall set out the matter in dispute and the reasons(s) for dissatisfaction. Except as stated in **Sub-Clause 28.2.4** [Failure to Comply with Dispute Adjudication Board's Decision] and **Sub-Clause 28.2.5** [Expiry of Dispute Adjudication Board's Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

If the DAB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DAB's decision, then the decision shall become final and binding upon both Parties.

#### 28.2.4 Failure to Comply with Dispute Adjudication Board's Decision

In the event that a Party fails to comply with a DAB decision which has become final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under **Sub-Clause 29.3** [Arbitration]. **Sub-Clause 29.2.3** [Obtaining Dispute Adjudication Board's Decision] shall not apply to this reference.

#### 28.2.5 Expiry of Dispute Adjudication Board's Appointment

If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DAB in place, whether by reason of the expiry of the DAB's appointment or otherwise:

- (a) **Sub-Clause 28.2.3** [Obtaining Dispute Adjudication Board's Decision] shall not apply, and
- (b) the dispute may be referred directly to arbitration under **Sub-Clause 28.3** [Arbitration]

### 28.3 Arbitration

Any dispute of whatever nature arising from, out of or in connection with this agreement, on the interpretation thereof, or the rights, duties, obligations or liabilities of any Party, or the operation, breach, termination, abandonment, foreclosure or invalidity thereof, shall be referred to by either Party to

arbitration for final settlement, in accordance with the Arbitration Act No. 11 of 1995, or any amendment thereof. Venue of the arbitration shall be Colombo, Sri Lanka.

Arbitration shall be proceed with UNCITRAL Rules.

## **29. Governing Language**

29.1 The governing language for the Contract is English Language. Subject to **Clause 30** hereof, that language version of the Contract shall govern its interpretation. All correspondence and other documents pertaining to the Contract which are exchanged by the parties shall be written in English and the language for day to day communication is English.

## **30. Applicable Law**

30.1 The Contract shall be interpreted in accordance with the laws of the Democratic Socialist Republic of Sri Lanka.

## **31. Notices**

31.1 Any notice given by one party to the other pursuant to the Contract shall be sent to the other party in writing or by facsimile and confirmed in writing to the other party's address given in the **Contract Data**, or any other address notified by either party for the purpose of this clause.

31.2 A notice shall be effective from the date of delivery or on the notice's effective date, whichever is later.

## **32. Taxes and Duties**

### **32.1 Foreign Taxation**

The Supplier's rates and prices shall include all taxes, duties and other charges imposed outside Sri Lanka on the production, manufacture, sale and transport of all the goods.

### **32.2 Local Taxation**

The prices quoted by the Supplier shall include all duties other than duties mentioned in sub **Clause 32.4**, business taxes, income and other taxes that may be levied according to the laws and regulations of the Democratic Socialists Republic of Sri Lanka in being as of the date 30 days prior to the closing date for submission of bids, in the Purchaser's country on the goods and services supplied under the Contract. Nothing in the Contract shall relieve the Supplier from his responsibility to pay any tax that may be levied in the Purchaser's country on profits made by him in respect of the Contract.

### 32.3 **Income Taxes on Staff**

The Supplier's Staff, personnel and labour will be liable to pay personnel income taxes in the Purchaser's Country in respect of such of their salaries and wages as are chargeable under the laws and regulations of the Democratic Socialist Republic of Sri Lanka for the time being in force, and the Supplier shall perform such duties imposed on him by such laws and regulations.

### 32.4 **Custom Duties, Cess and VAT**

Custom dues and import license fees levied on the goods supplied under the Contract shall be paid by the Purchaser directly to the Department of Customs on production of Certified Custom Entries by the Supplier. Local Accredited Agency shall pay Sri Lanka Port Authority (SLPA) charges and reimburse the same after clearing the shipment and producing SLPA original payment. Any other charges, warehouse rent, demurrages, etc shall be borne by the Contractor.

National Water Supply & Drainage Board is a VAT registered institution according to Value Added Tax Act No. 14 of 2002. The VAT registration number of NWSDB is 4090 31820 7000. The contractors who are VAT liable shall issue VAT invoices specifically stated as 'TAX INVOICES' to NWSDB including their VAT registration numbers and showing bill amounts and applicable VAT separately along with the requests for payments. The date of TAX INVOICE shall be within 28 days of work done.

## 33. **Final Acceptance**

Upon successfully completion of the supply & delivery as per **Clause 1** of ITB the contractor shall request the Engineer to issue a Final Acceptance Certificate for the satisfactory completion of the Supply & Delivery of Goods as per the contract and the Engineer shall issue the Final Acceptance Certificate upon being satisfied that the Contractor has fulfilled all obligations as per the contract.