

# **1. INSTRUCTIONS TO BIDDERS**

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# 1. Instructions to Bidders

## Instructions to Bidders Clause Reference

### General

- |   |  |
|---|--|
| <b>1. Scope of bid</b>  | <b>1.1</b> The Employer (As stated in the <b><u>Bidding Data</u></b> ) invites bids from the registered clearing Agents possessing a valid Wharf clearance License from Sri Lanka Customs or Sri Lanka Ports Authority for the clearing and delivering of cargo consigned to the Board.  |
|   | <b>1.2</b> The contractor shall carryout the clearing and transportation of cargo from Air Port or Harbour as stated in <b><u>Bidding Data</u></b> to the stores at designated place or places for a period as stated in the <b><u>Bidding Data</u></b> .  |
| <b>2. Collection of Bidding Documents, closing of Bidding and opening of bids</b> | <b>2.1</b> Bidding document shall be collected on production of a written request on the business letter head from the Address stated in <b><u>Bidding Data</u></b> .  |
|   | <b>2.2</b> The non refundable fee as stated in Invitation for Bids shall be payable in cash.   |
|   | <b>2.3</b> The time for closing of bids and opening of bids shall be as stated in <b><u>Bidding Data</u></b> . Bids shall be opened at the office as stated in the <b><u>Bidding Data</u></b> .  |
| <b>3. Ethics, Fraud and Corruption</b>  | <b>3.1</b> Parties associated with procurement actions, namely, contractors and officials shall ensure that they maintain strict confidentiality throughout the process;   |
|   | <b>3.2</b> 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. |

#### **4. Eligibility and Qualification of the Bidder**

##### **4.1 Eligibility**

- a. Bid shall accompany a valid Bid Security.
- b. Bidder shall have duly signed in the form of bid.
- c. The bidder shall not be a blacklisted contractor at the time of bidding and at the time of award of contract.
- d. Bidder shall be a clearing agent registered with Sri Lanka Customs and for Sri Lanka Ports Authority for clearing of cargo and shall possess a valid Wharf Clearing License. Status with Sri Lanka customs shall be Gold card holder or Normal card holder.
- e. Bidder shall be a registered company and shall submit a certified copy of business registration with the Registrar of Companies.
- f. Compliance with contract Act No.3 of 1987.
- g. Bidder shall have proof of authorization for the signatory to bid.

##### **4.2 Qualifications**

Bidder shall fulfill the following qualification requirements to qualify to award the contract.

- a. Bidder shall have a minimum of 05 years of experience in clearing and transporting of imported cargo of public and private sector organizations with Sri Lanka customs.
- b. Bidder shall have completed a minimum number of similar contracts as states in **Bidding Data** during last 5 years. The completion certificates of clearing contracts by clients shall be submitted with the bid.
- c. Bidder shall have completed an average annual volume of work as stated in **Bidding Data** during last three (03) years.
- d. Bidder shall have sufficient working staff as stated in the **Bidding Data**
- e. Bidder shall have capital equipment as stated in the **Bidding Data**
- f. Bidder shall have a financial capability as stated in the **Bidding Data**.
- g. Bidder shall have an own TIN and VAT number as a clearing Agent with Sri Lanka customs.
- h. Bidder shall have EDI online system with customs.

The documentary evidence of the bidder's qualification to perform the contract shall be submitted with the bid.

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

Bidder shall bear all costs associated with the preparation and submission of its bid.

Employer shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

**6. Content of Bidding Document**

Bidding document consist of following documents

- Invitation for bids
- Section 1 - Instructions to bidders
- Section 2 - General Conditions of Contract
- Section 3 - Form of Bid
- Section 4 - Bidding Data & Contract Data
- Section 5 - Specimen Forms
- Section 6 - Schedule of particulars
- Section 7 –Schedule of Prices
- Section 8– Appendices

**7. Clarification of Bidding Documents**

**7.1** A bidder requiring any clarification of the bidding documents shall contact the employer in writing by facsimile at the Employer’s address indicated in the **Bidding Data**

**7.2** Employer will respond in writing to any such request for clarification received no later than seven (7) Days prior to the deadline for submission of bids.

**7.3** Copies of Employer’s response will be forwarded to all purchasers of the bidding documents, including a description of the inquiry but without identifying its source.

**8. Amendment of Bidding Documents**

**8.1** At any time prior to the deadline for submission of bids, the Employer may amend the bidding documents by issuing addenda;

**8.2** Any addendum thus issued shall be a part of the bidding documents;

**8.3** Any addendum shall be communicated in writing or by facsimile to all purchasers of the bidding documents.

**Preparation of Bids**

**9. Language of Bid**

The bid as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer, shall be written in English language.

**10. Documents  
Comprising the  
Bid**

Each bidding document submitted by the bidder shall comprise the following components.

- a. Duly perfected set of bidding documents which include Section 1 to Section 8.
- b. Subsequent addendum/addenda (if any);
- c. Documentary evidence to prove the experience in clearing and transporting of imported cargo during last 5 years (Refer Appendix-1) (Certificates from clients to be attached).
- d. Registration with Sri Lanka customs and Ports Authority for clearing of cargo.
- e. Valid Warf clearing license
- f. Registration of company with Registrar of companies.
- g. Registration of Bid with Registrar of contracts according to Act No.3 of 1987.
- h. Bid security furnished in accordance with Clause 14 of ITB and as per the specimen form included in the bidding document (Original Bid Security shall be furnished with the bidding document, Photocopy shall be attached to the copy of the bidding document);
- i. Proof of authorization for the signatory to the Bid as specified in Clause 17.4 hereof and in the form given in **Appendix 4**
- j. Scheduled of staff proposed in **Appendix 2**;
- k. Schedules of plant and equipment proposed to be used in **Appendix 2A**;
- l. Financial details of Bidder in the form stipulated in **Appendix 3**;
- m. Authorization to seek bank reference from Bidder's bankers in **Appendix 3A**;
- n. Audited financial statements for last 3 years
- o. Duly completed Scheduled of Particulars
- p. Any other information requested in the Bidding Document

**11. Bid Prices**

Bid price shall include;

- 11.1** All cost including any indirect costs to perform the clearing and transport services as stated in the scope of the bid.
- 11.2** The amount written in the Form of Bid shall be without VAT. VAT shall be shown separately.
- 11.3** The Contract is not subjected to any price adjustments.

- 11.4**All cost for attending Custom Formalities, Sri Lanka Ports Authority Formalities, Exchange Control Formalities and such other formalities to clear cargo
- 11.5** To obtain delivery order charge, container deposit, FCL / LCL charges and such other which are connected to shipping on reimbursement bares
- 11.6**To obtain letter of liability from Ports Authority Steamer Agent
- 11.7** Dealing with document listed in Clause 15.2 of Condition of Contract and Contract Data
- 11.8** Documents to be provided and dealing as specified in Clause 15 of Condition of Contract
- 11.9**Dealing with all liabilities as specified in Clause 15 of Condition of Contract
- 11.10**Provision of ware house and Transport to the final Destination as notified by the Engineer time to time

**12 Currency of Bid  
and  
Payment**

Contract rates shall be quoted and paid in Sri Lanka Rupees.(LKR)

**13 Period of  
Validity of  
Bids**

- 13.1** The Bid shall be valid for a period stipulated in the **Bidding Data** from the date of closing of the bids.
- 13.2** A bid valid for a shorter period shall be rejected by the Employer.
- 13.3** In exceptional circumstances, prior to expiry of the period of validity of bids, the Employer may request in writing that the bidders to extend the period of validity for a specified additional period;
- 13.4** A bidder agreeing to the request shall not be required or permitted to modify its bid, but shall be required to extend the validity of its bid security for the period of the extension and in compliance with Clause 13 in all response.



## **14 Bid Security**

Bid shall include a Bid Security as part of this bid.

Bid Security which is encashable on demand equivalent to the sum specified in the **Bidding Data** in the form included in the Section 5 specimen forms and shall be valid until the date specified in **Bidding Data** from an agency stipulated in **Bidding Data** shall be included with the bid.

Any bid not accompanied by a bid security in accordance with this clause, shall be rejected by the Employer.

The bid security of unsuccessful bidders shall be returned promptly upon the successful bidder furnishing the performance security.

The bid security may be forfeited;

- a). If a bidder withdraws its bid during the period of the bid validity
- b) if the successful bidder fails within the time to;
  - i) sign the contract or
  - ii) furnish the required performance security.

No interest shall be paid on Bid security.

## **15 Alternative Bids by Bidders**

Each set of bidding documents shall contain only one offer. All alternative offers shall be rejected without assigning reasons. If offers marked as offer 1, 2 etc., offer 1 shall be treated as the original offer and others as alternative offers. Bidders may purchase bidding documents in required numbers and may submit one or more independent offers. The independent offers shall be in separate set of bidding documents together with separate bid securities.

## **16 Pre-Bid Meeting**

The bidder's authorized representative is invited to attend the pre-bid meeting which is stated in **Bidding Data**.

**17 Format and  
Signing of Bid**

- 17.1** The bidder shall prepare one ORIGINAL of the documents comprising the bid as described in Clause 18 and clearly marked “ORIGINAL”;
- 17.2** In addition, the bidder shall submit one copy of the bid, clearly marked as “COPY”;
- 17.3** In the event of discrepancy between them, the original shall govern;
- 17.4** The original and the copy of the bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the bidder.
- 17.5** The bid shall contain no alterations or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the bidder, in which case such corrections shall be initialed by the person or persons signing the bid.

**Submission of Bids**

**18 Sealing and  
Marking of  
Bids**

- 18.1** The bidder shall seal the original and the copy of the bid in two inner separate envelopes and one outer envelope, duly mark the inner envelopes as “ORIGINAL” and “COPY”.
- 18.2** The inner and outer envelopes shall
- a) Be addressed to the Employer at the address provided in **Bidding Data**.
  - b) Bear the name and identification number of the contract in accordance with **Bidding Data**;
  - c) Provide a warning not to open before the specified time and date for bid opening as defined in **Bidding Data**.
- 18.3** In addition to the identification required above, the inner envelopes shall indicate the name and address of the bidder to enable the bid to be returned unopened in case it is declared late.

- 19 Deadline for Submission of Bids**
- 19.1** Bids shall be delivered to the Employer at the address specified in Bidding Data no later than the time and date stipulated in Bidding Data.
- 19.2** The Employer may extend the deadline for submission of Bids by issuing an addendum in accordance with Clause 8, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will then be subjected to the new deadline.
- 20 Late Bids**
- Any bid received by the Employer after the deadline for submission of bids shall be returned unopened to the bidder.
- 21 Modification & Withdrawal of Bids**
- 21.1** 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 19 thereof for submission of Bids.
- 21.2** The Bidder's modification or notice of withdrawal shall be prepared, sealed, marked and delivered in duplicate in accordance with the provisions of Clause 19 hereof for the submission of Bids, with the inner and outer envelopes additionally marked "MODIFICATION" or "WITHDRAWAL" as appropriate.
- 21.3** Subject to Clause 24 hereof, no Bid may be modified subsequent to the deadline for submission of Bids.
- 21.4** 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 14 hereof.

## **Bid Opening and Evaluation**

- 22 Bid Opening**
- 22.1** The Bid opening Committee (BOC) approved by the respective procurement committee will open Bids, including submissions made pursuant to clause 21 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.

22.2 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Any Bid for which an acceptable notice of withdrawal has been submitted pursuant to clause 21 hereof, and if BOC is satisfied with the content and authentication of the withdrawal letter, the bidder's original bid should 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. Then envelopes marked "MODIFICATIONS" should be placed with the respective "Original" bid and "Modification" shall be opened first and modifications proposed shall be read out. Then the respective "Original" shall be opened and read out. Completion of all the bids that have been modified, Envelopes marked "ORIGINAL" of other bidders shall be opened and readout subsequently.

22.3 The Bid Opening Committee shall read out the following at the bid opening.

- 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 rates given in words in the form of bid; if the bid rates is not given in words the bid rates 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 rate is suffice; If contracts will be awarded in different items or lots such rates shall be announced;
- e) The discounts offered shall be announced separately by clearly indicating that the announced rates 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.

22.4 After opening original of each and read out the relevant information, the BOC shall reseal the envelopes before handing over the documents to the Procurement Entity PE). The PE shall hand over the bid documents to the chairman of TEC in sealed form.

22.5 The Bid Opening Committee will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with sub clause 22.3 hereof.

**23 Process to be confidential**

Information relating to any details of the 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.

**24 Clarification of Bids**

**24.1** 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.

**24.2** The bidder should not be able to clearly comprehend that any clarification sought is only for the aforementioned purpose only.

**24.3** At the request made by the Technical Evaluation Committee (TEC), the procurement Entity (PE) shall seek such clarification from the bidder in writing.

**25 Examination of Bids and Determination of Responsiveness**

**25.1** Prior to the detailed evaluation of bids, the Employer will determine whether each bid:

- (a) meets the eligibility criteria;
- (b) has been properly signed and accompanied by a proper power-of-attorney
- (c) has accompanied with the required bid security according to Clause 14.
- (d) is substantially responsive to the requirements of the bidding documents
- (e) If a bid does not meet any one of the requirements (a) to (d) stated above, it shall be considered substantially non responsive and rejected by the Procurement Committee.

**25.2** A substantially responsive bid is one which confirms to all the terms, conditions, of the bidding documents, without any deviations or reservation which affect unfairly the competitive position of other bidders presenting substantially responsive Bids.

**25.3** If a bid is not substantially responsive;

- (a) It shall be rejected by the Employer
- (b) And may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

**26 Correction of Errors**

Bids determined to be substantially responsive shall be checked for any arithmetic errors;

In case of an obvious gross misplacement of decimal point, of the rate, the Engineer may correct it and the corrected rate will govern

**27 Evaluation and Comparison of Bids**

**27.1** The Procurement Committee shall evaluate and compare Bids previously determined to be substantially responsive, pursuant to clause 25 hereof.

**27.2** In evaluating the Bids the Procurement Committee shall determine for each Bid the evaluated Bid price (Schedule of Rates) by adjusting the Schedule of Rates as per the evaluation criteria and by adjusting the Schedule of Rates as follows:

- a) Evaluation of Acceptable omissions ( line items or parts of work)
- b) Adjustment for various minor deviations
- c) Assessment of monetary implications on deviations and other matters.
- d) Omissions/Missing items

The Schedule of Rates shall be adjusted to account for items not included in the bid, provided that the bid,

- i Can be accepted as substantially responsive on account of the unquoted items being not of a critical nature, and
- ii Value of such items is marginal

**27.3.** For the evaluation purposes the rates in the BOQ shall be considered to be excluding VAT. Any notes or remarks by Bidders contrary to this will be disregarded.

**27.4.** Bidders qualification shall be evaluated in accordance with clause 4.2

**28 Award of Contract**

Subject to Clause 29 of ITB, Employer shall 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;

- a) Eligible in accordance with the provisions of Clause 4.1; and
- b) Qualified in accordance with the provisions in Clause 4.2

- 29 Employer's Right to Accept Any Bid and to Reject Any or all Bids** Employer reserves the right to;
- (a) Accept or reject any bid;
  - (b) Annul the bidding process; and
  - (c) Reject all bids;
- at any time prior to the award of contract without thereby incurring any liability to the affected bidder(s)
- 30 Notification of Award**
- 30.1** Prior to the expiration of the bid validity period, the Employer shall notify the successful bidder that his bid has been accepted.
  - 30.2** The letter ("Letter of Acceptance") shall state the rates that the Employer shall pay the Contractor in consideration of providing the services by the Contractor as prescribed by the contract.
  - 30.3** The notification of award shall constitute the formation of the Contract;
  - 30.4** Upon the successful Bidder's furnishing of performance security in accordance with the provisions of Clause 32 hereof, the Employer shall promptly notify each of the unsuccessful Bidders and shall discharge their Bid Securities, pursuant to Clause 14 hereof.
- 31 Signing of Agreement**
- 31.1** The agreement shall be signed within 14 days from the date of the letter of acceptance at the office as stated in the **Bidding Data** on submission of valid performance security..
- 32 Performance Security**
- 32.1** Within fourteen (14) days of the receipt of the notification of the acceptance of the contract by the Employer, the successful Bidder shall furnish to the Employer a Performance Security encashable on demand in accordance with the Conditions of Contract, in the format of Performance Security provided in the Bidding Document. The amount of Performance Security shall be as specified in the **Bidding Data**.
  - 32.2** The Security shall be issued as stated below from any one of the forms listed under clause 13.2 of Conditions of Contract.
  - 32.3** On due performance of the contract in all respects and issuance of the Final Acceptance Certificate by the Engineer the Performance Security shall be returned to the Contractor without any interest.



**32.4** Failure of the successful Bidder to comply with the requirements of Clause 31 and Clause 32 hereof shall constitute sufficient grounds for the breach of contract and annulment of the award and forfeiture of the Bid security, in which event the Employer may resort to award the contract to the next lowest evaluated responsive Bidder or call for new Bids at the discretion of the Employer.

**33 Advance  
Payment**

No advance payment shall be made.

## **2. CONDITIONS OF CONTRACT**

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## 2. CONDITIONS OF CONTRACT

### Conditions of Contract Clause Reference

### General Provisions

- 1. Definitions** In the contract as defined below, the words and expressions defined shall have the following meanings assigned to them, except otherwise stated elsewhere.
- 1.1 The Contract** The contract is the contract between the Employer and the Contractor to execute the services of Clearing and forwarding of imported goods and shall include the documents listed in Clause 2 below.
- 1.2 Initial Contract Rates** Initial contract rates are the schedules of rates stated in the letter of acceptance.
- 1.3 Letter of Acceptance** Letter of acceptance means the letter signed and issued by the Employer accepting the Bid submitted by the Contractor for the execution and completion of the services.
- 1.4 Employer** Employer means the party named in the **Bidding Data**, who employs the contractor to carry out the services of clearing and forwarding imported goods.
- 1.5 Contractor** Contractor means the person who bids to carry out the services has been accepted by the Employer and named in the Agreement.
- 1.6 Engineer** Engineer is the person named in the **Contract Data** who is responsible for administrating and supervising the execution of the services.
- 1.7 Scope of Work** Scope of work shall be as stated in the **Contract Data**.
- 1.8 Force majeure** Means Any event beyond the reasonable control of the parties, which by the exercise of due diligence neither the party is able to over come and which makes a party's performance of its obligations hereunder impossible or as impracticable as reasonably to be considered impossible under the circumstance.

### Dates, Times and Periods

- 1.9 Start Date** Start Date shall mean the date as specified in the **Contract Data**.
- 1.10 Day** Day means the calendar day.
- 1.11 Money and Payments- Cost** Cost means all expenditure properly incurred by the contractor, whether on or off the site, including overheads and similar charges, but shall not include profit.

- 1.12 Plant and Equipment** Means all apparatus, plant, machinery, vehicles, facilities and other things required for the execution of the services for Clearing and forwarding of imported goods but not include materials.
- 1.13 Materials** Materials means things of all kinds intended to form or forming part of the works and services
- 1.14 Site** Site means the places provided by the Employer where the services are to be executed and any other places specified in the contract as forming part of the site.
- 1.15 Services** Services mean all the work and services to be performed by the contractor specified in the scope of work, schedule of prices etc. including temporary work and any variation.
- 1.16 Variation** Variation means a change to the scope of work and/or schedule of prices which is instructed by the Engineer.
- 2. Priority of Documents** The documents forming the contract are to be taken as mutually explanatory of one another;
- If any ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary instructions to the Contractor.
- The priority of the documents shall be in accordance with the order as listed below;
1. The contract agreement
  2. Addendum/addenda issued prior to signing the agreement
  3. The letter of acceptance
  4. The Contractors bid
  5. Contract Data
  6. Conditions of Contract
  7. Schedule of prices
- 3. Law** The laws of the Democratic Socialist Republic of Sri Lanka is applicable.
- 4. Communications** Communication by any person under the contract shall be in English.
- The Employer**
- 5. Execution of Contract** The Contract is in force within 7 days after the date of the Letter of Acceptance.
- 6. Provision of site for Deliveries** The Employer shall provide the site where the cargo to be delivered, completion of deliveries and right of access to the designated site in the delivery schedule in the format given in the contract data with the clearing order.
- 7. Engineer's** The Contractor shall comply with all instructions given by the Engineer

**Instructions** in respect of the services for Clearing and forwarding of imported goods including the suspension of all or part of the services.

**8. Approvals** No approval or consent or absence of comment by the Employer or the Engineer shall affect the Contractor's obligations

### **The Engineer**

**9. Engineer's Decisions** Except where otherwise specifically stated, the Engineer shall decide contractual matters between the Employer and the Contractor. Engineer shall coordinate, supervise and administer the contract. He shall approve any variation or modification to the contract.

**10. Engineer's Representative** Engineer shall nominate a representative to assist the Engineer and to supervise the contract. Engineer may time to time notify the contractor of the Engineers Representative and shall assign or change or remove his duties on the discretion of the Engineer.

- The Engineer's Representative shall be responsible to the Engineer and his duties are to administer and supervise the services for Clearing and forwarding for imported goods. He shall have no authority to relieve the Contractor of any of his duties or obligations under the Contract nor, except as expressly provided hereunder or elsewhere in the Contract, to order any work involving delay or any extra payment by the Employer, nor to make any variation of or in the Works.
- The Engineer may from time to time in writing delegate, to the Engineer's Representative any of the powers and authorities vested in the Engineer and shall furnish to the Contractor. Any written instructions or approval given by the Engineer's Representative to the Contractor within the terms of such delegation, but not otherwise shall bind the Contractor and the Employer as though it had been given by the Engineer provided always as follows;
  - a) Failure of the Engineer's Representative to disapprove any Services shall not prejudice the power of the Engineer thereafter to disapprove such services and to order the pulling down, removal or breaking up thereof.
  - b) If the Contractor shall be dissatisfied by reason of any decision of the Engineer's Representative, he shall be entitled to refer the matter to the Engineer, who shall thereupon confirm, reverse or vary such decision.
  - c) The Engineer's Representative shall take every possible course

of action to study contractual details well in advance so that contractual disparities in contract document that may give rise to contractual variations should be identified in time.

## **The Contactor**

### **11. General Obligations**

The Contactor shall

- 11.1 Carry out the Services properly and in accordance with the Contract
- 11.2 Provide all supervision, labour, materials, plant and equipment which may be required to carryout all the services.
- 11.3 Clear and deliver the cargo for the period stated in the **Contract Data**.

### **11.4 Plant and Equipment**

The contractor shall own a minimum requirement of vehicles and plant as stated in clause 4.2 (d) in **Bidding Data**)

### **11.5 Warehouse facilities**

The contractor shall have own or leased yard /warehouse facilities to perform the Contract sufficiently

### **12. Contractor's Representative**

The Contractor shall submit to the employer for consent the name and particulars of the person authorized to receive instructions on behalf of the Contractor.

### **13. Performance Security**

**13.1** 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 Conditions of Contract, in the format of Performance Security provided in the Bidding Document. The amount of Performance Security shall be as specified in the **Bidding Data**.

**13.2** The Security shall be issued as stated below from anyone 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 fixed deposit or a pass book of a Bank operating in Sri Lanka approved by the Central bank of Sri Lanka, with deposits made in the name of the National Water Supply and Drainage Board, Sri Lanka.
- c) A Sri Lanka Rupee cash deposit to the National Water Supply & Drainage Board, Sri Lanka.
- d) A certified cheque issued by a Bank operating in Sri Lanka



approved by the Central Bank of Sri Lanka, in favour of National Water Supply & Drainage Board, Sri Lanka.

- e) A Bank Guarantee issued by a Bank based in another country but the security or guarantee “confirmed” by a Bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka

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.

## **Execution of the Contract**

### **14.1 Execution of the works**

The Contractor shall provide the services for Clearing and forwarding of imported goods in strict accordance with the Contract to the satisfaction of the Engineer and shall comply with and adhere strictly to the instructions given by the Engineer’s Representative.

### **14.2 Bid Price**

Rates quoted in the Price schedule shall include but not limited to the followings

- a) All cost for attending Custom Formalities, Sri Lanka Ports Authority Formalities, Exchange Control Formalities and such other formalities to clear cargo
- b) To obtain delivery order charge, container deposit, FCL / LCL charges and such other which are connected to shipping on reimbursement bases
- c) To obtain letter of liability from Ports Authority Steamer Agent
- d) Dealing with document listed in Clause 15.2 of Condition of Contract and Contract Data
- e) Documents to be provided and dealing as specified in Clause 15 of Condition of Contract
- f) Dealing with all liabilities as specified in Clause 15 of Condition of Contract
- g) Provision of ware house and Transport to the final Destination as notified by the Engineer time to time
- h) All cost including any indirect costs to perform the clearing and transport services as stated in the scope of the bid.

- i) The amount written in the Form of Bid shall be without VAT. VAT shall be shown separately.
- j) The Contract is not subjected to any price adjustments.

**15. Documents to be provided**

- 15.1 The Contractor will be provided with copies of the bill of Landings, Invoice, Packing List and Insurance policy for framing of Customs, Declaration and to obtain Ports authority Deliver Order, after which the contractor shall forward to the employer the dully satisfied Customs Declaration copy for payments of Customs duty followed by the Ports Authorities' Delivery Order copy for landing charges to enable the board to clear the consignment within three (03) days.
- 15.2 The Contractor shall, but not limited to, use and deal with the documents listed in the **Contract Data** and shall adhere to the requirements that may be necessary to clear the goods.
- 15.3 Once the cargo is cleared and delivered to the designated place the Customs stamped documents and the finalized Port Authority Delivery Order shall be forwarded to the Employer within fourteen (14) days of the delivery date.
- 15.4 If the cargo or a part of it is lost or damaged, the contractor shall arrange with the underwriters to survey the cargo and obtain reports from the Steamer Agent, Sri Lanka Ports Authority etc. regarding their liability and forward the same to the Employer without any delay so that a claim could be instituted within the stipulated period.

**16. Liability**

- 16.1.** The Contractor shall ensure that no Second Harboring rent and dues and double handling chargers are incurred on cargo consigned to the Employer. In case of necessity to do so, the Contractor shall submit an intermediate report to the Employer outlining the circumstances under which such a need has arisen. The contractor shall have to bare all the cost incurred as a result of the fault or negligence of the contractor.
- 16.2.** The Contractor shall brought to the notice of the Employer any query raised by the custom within the time period stated in the **Contract Data** from the receipt of the query to ensure that the Employer answers the same immediately.
- 16.3.** The Contractor shall transport the cargo to the destinations as directed by the Engineer. The Contractor shall keep the Employer and the Engineer informed about all the cargo movements.

**16.4.** The Contractor shall be responsible to perform the following obligations.

- a) To attend to all customs formalities
- b) To attend to all Port Authority formalities
- c) To attend to all Exchange Control formalities
- d) To obtain Delivery Order, Delivery Order charge, Container deposit, Full Container Load/ Less Container Load (FCL/LCL)charges etc. connected to shipping on reimbursement basis, after producing receipts
- e) To obtain letter of liability from Ports Authority/ Steamer Agent

**16.5.** If the Contractor fails to forward the necessary documents subject to **Clause 15.4** and if the claim lapses due to the same, the loss or damage incurred shall be born by the Contractor.

**16.6.** The Contractor shall take action to ensure cargo against damages during transits and packages shall be kept in upwrite position according to sign indicated on the packages in order to keep them secured in the vehicle. The Contractor shall bare all the cost of damage which occurs during loading, unloading, transporting and final delivery.

**16.7.** The entire responsibility for the safe custody of goods of every descriptions from the time of taking over at the Wharf until the time of delivery at the final destination as the case may be rest with the Contractor. In the event of loss or damage during such period the full value of goods lost or damaged pulse the Custom duty paid thereon and any additional chargers payable shall be recovered from the Contractor. The Contractor shall be liable for any cargo rendered unserviceable during this period due to damage etc. The value of such damages shall be recovered from the payments due to the Contractor or any other means the Contractor may deemed.

**17. Extension of Time**

Engineer may extend the initial contract period for a maximum of six months at the prices stated in the schedule of prices. If so extended, Contractor shall execute the contract for the extended period at the quoted prices in the contract.

**18. Completion Certificate**

The Employer shall issue a completion certificate at the successful completion of the contract.

## Payment

- 19. Contractor's claims** On completion of Clearing and delivering of particular consignment, the Contractor shall submit his claim with the documents listed in **Contract Data** within the time period stated in **Contract Data**.
- 20. Currency** Payment shall be made in Sri Lanka Rupees only.
- 21. Price Adjustment** No price adjustment shall be paid under this Contract.
- 22. Subsequent Legislation** If after the date 14 days prior to the latest date of submission of bids for the contract;
- changes in any Statute, Ordinance, Decree, or other Law or any regulation or by-law of any local or other duly constituted authority; or
  - introduction of any such State Statute, Ordinance, Decree, Law, regulation or by-law
- which cause additional or reduced cost to the Contractor, in the execution of the contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.
- 23. Advance Payment** No advance payment shall be paid under this contract.

## Default

- 24.1 Default by Contractor** Engineer may give notice referring to this clause and stating the default of the Contractor:
- abandons the services;
  - refuses or fails to comply with a valid instruction of the Engineer;
  - fails to proceed expeditiously and without delay despite a written complaint.
- If the Contractor fails to take all practicable steps to remedy the default within 14 days after the Contractor's receipt of the Engineer's notice, the Employer may by issuing a letter within a 21 days, terminate the Contract.
- Notwithstanding anything to the contrary herein contained if the Contractor commits a breach or violation of any of the terms and

conditions herein contained and fails to remedy such breach or violation within 14 days from the date of receipt of notice of such violation, then the Employer shall terminate the Contract forthwith.

If the Contractor has engaged in corrupt or fraudulent practices, in competing for or in executing the Contract, the Employer may, after given 14 days notice to the Contractor, terminate the contract.

“Corrupt practice means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in Contract execution;

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Employer, and includes collusive practice among bidders (prior to or after the bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

#### **24.2 Termination for Insolvency**

27.1 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.

#### **24.3 Termination for Convenience**

28.1 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.

28.2 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 Works and for materials and parts previously procured by the Supplier.

## **25. Force Majeure**

- a) Failure of a Party to fulfill any of its obligations hereunder as a result of an event of Force Majeure arising after the date of signature of the Contract shall not be considered a breach of, or default under, this Contract.
- b) A Party affected by an event of Force Majeure shall notify as soon as practicable the other Party of occurrence of such event and afterwards of restoration of normal conditions.
- c) Upon notification of occurrence of an event of Force Majeure by the affected Party, the performance of the Services shall be considered suspended until the notification of restoration of normal conditions or, if the achievement of the objectives of the Contract is no longer possible at all or not to a satisfactory degree, until the Parties' decision to terminate the Contract.

## **Risk and Responsibility**

### **26. Contractor's care of the services**

- 26.1** The Contractor shall be responsible for all accidents and injury to persons (whether they are employed by the Contractor or NWSDB or otherwise), property, services materials, goods or things. If damaged, disturbed or injured by the Contractor in the course of execution of the said services or in connection therewith then the Contractor shall make good or settle all claims against damages or re-instatement costs, charges and expenses in respect thereof and shall indemnify the Employer from all such claims and responsibilities what so ever is nature for such damages.

In the event of the Contractor failing to compensate for or properly make good any damage as aforesaid or settle any claims, costs, charges and expenses as aforesaid, the Employer shall pay all compensations or do all for making good, or settle all claims, costs, charges and expenses and the cost of such amounts paid shall be deducted from any sum or sums that is due or may become due to the Contractor under the terms of this agreement or otherwise.

## **Dispute Resolution**

### **27.1 Amicable settlement**

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 Employer and the Contractor.

The Employer and the Contractor 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.

If after thirty (30) days from the commencement of such informal negotiation the Employer and the Contractor 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 27.2 herein. These mechanisms may include, but not restricted to, condition mediated by a third party, adjudication in an agreed national forum and/or arbitration

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

#### **27.2.1 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 within 28 Days from the Commencement Date.

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.

Within 28 Days from the commencement Date 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 agreement between the Parties and each of the three members shall incorporate by reference the General Conditions of Dispute Adjudication Agreement contained in the Appendix to these **Contract Data**, with such amendments as are agreed between them.

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.

**27.2.2 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 Institute for Construction Training and Development (ICTAD) 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 the ICTAD.

**27.2.3 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 27.2.4 [Failure to Comply with Dispute Adjudication Board's Decision] and Sub-Clause 27.2.5 [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.

**27.2.4 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 36.3 [Arbitration]. Sub-Clause 27.2.3 [Obtaining Dispute Adjudication Board's Decision] shall not apply to this reference.

**27.2.5 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 27.2.3 [Obtaining Dispute Adjudication Board's Decision] shall not apply, and
- (b) the dispute may be referred directly to arbitration under Sub-Clause 27.3 [Arbitration]

**27.3**

**Arbitration**

- (a) 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 & Language : The venue of arbitration shall be in Sri Lanka and the proceedings shall be conducted and the award shall be rendered in English language.

## **Taxes and VAT**

- 28.1 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.
- 28.2 Value Added Tax (VAT)** 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.

