

# **1. INSTRUCTIONS TO BIDDERS**

# INSTRUCTIONS TO BIDDERS

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## 1. Instructions to Bidders

### Clause Number

### General

#### 1. Scope of Bid, Site location, Contract Period

- 1.1 The Employer as named in **Bidding Data** invites **Bids** for providing unskilled and skilled workmen services as stated in **Bidding Data**.
- 1.2 The successful Bidder will be expected to provide the unskilled and skilled workmen services within the Intended period stated in **Bidding Data**.
- 1.3 Intended Contract period is provided in **Bidding Data** and completion date shall be calculated from the Starting Date, which is defined under Clause 2.2 in the Conditions of Contract.
- 1.4 The office for collection of Bidding Document is stated in **Bidding Data**.
- 1.5 The non-refundable fee is stated in **Bidding Data**.
- 1.6 The time of closing/opening of Bids and the details of the document issue are stated in **Bidding data**.

#### 2. Source of Funds

Source of funding is as stated in **Bidding Data**.

#### 3. Ethics, Fraud and Corruption

- 3.1 Parties associated with procurement actions, namely, contractors and officials shall ensure that they maintain strict confidentiality throughout the process;
- 3.2 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.

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

##### 4.1 Eligibility

- a. Bidder shall have experience in performing supply of Unskilled or Skilled workmen services for a minimum of three years.

- b. Bidder shall be a registered company under Registrar of Companies in Sri Lanka or Provincial Registrar of Business names of Provincial councils or the Community Base Organization (CBO) registered under Divisional Secretary in the relevant area.
- c. Compliance with Contract Act No 03 of 1987 as given in Clause 36 hereof.

#### **4.2 Qualifications**

Bidder should fulfill the following requirements to qualify to award the contract.

- a. Bidder shall have completed number of similar services stated in the **Bidding Data**.
- b. Bidder shall have average annual volume of work stated in the **Bidding Data** during last three years.
- c. Bidder shall have working capital as stated in **Bidding Data**.

#### **5. Eligible Unskilled/Skilled Workmen**

Age of eligible Unskilled and Skilled workmen shall be not less than 18 years and not more than 60 years shall possess a valid National Identity Card & Grama Niladari Certificate and they should be in good health condition and fitness to carry out the works.. This workmen's service is not considered to have a permanent position in National Water Supply & Drainage Board.

##### **Only for skilled workmen**

Eligible workmen's Curriculum Vitae (CV) shall be signed by themselves and submitted as per Appendix 6. The workmen who have submitted CVs shall be reported to the work site with all the documents to prove authenticity.

Eligible workmen qualification requirements are mentioned in the Section 6.2 under the Employer's Special Terms & Conditions.

**6. Cost of Bidding** Bidder shall bear all costs associated with the preparation and submission of the Bid. Employer will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

**7. Site Visit** Site visits will not be held.

## **Bidding Documents**

**8. Content of Bidding Documents**

**8.1 Bidding** document consist of following documents:

- Section 1: Instructions to Bidders
- Section 2: General Conditions of Contract
- Section 3: Form of Bid and Qualification Information
- Section 4: **Bidding Data**
- Section 5: Contract Data
- Section 6: Employer’s Special Terms & Conditions
- Section 7: Bill of Quantities
- Section 8: Standard Forms
- Section 9: Appendices

**8.2** The set of bidding document shall be purchased by the prospective Bidders from the office as stated in the **Bidding Data**.

**9. Clarification of Bidding Documents**

**9.1** A Bidder requiring any clarification of the Bidding documents shall contact the employer in writing by a facsimile to the Employer’s address at least Fourteen (14) days prior to close of Bids indicated in **Bidding Data**.

**9.2** Employer will respond in writing to any such request for clarification received no later than Seven (07) Days prior to the deadline for closing of Bids.

**9.3** 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.

**10. Amendment of Bidding Documents**

**10.1** At any time prior to the deadline for closing of Bids, the Employer may amend the bidding documents by issuing addenda;

**10.2** Any addendum thus issued shall be part of the bidding document.

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

**Preparation of Bids**

**11. Language of Bid**

All documents relating to the **Bid** shall be in the language stated in the **Bidding Data**.

**12. Documents Comprising the Bid**

Each Bid submitted by the Bidder shall comprise the followings;

**(A) Enclosed in the Envelope marked as “Original”**

- a. Duly filled and signed Form of Bid and Qualification Information in the formats indicated in Section 3.
- b. Subsequent addendum/addenda (if any)
- c. Documentary evidence established in accordance with **Clause 4** hereof to prove that the Bidder is eligible and is qualified to perform the contract if his Bid is accepted;
- d. Bid Security furnished in accordance with **Clause 16** of ITB and as per the specimen standard form included under Section 8 of the Bidding document (Original Bid Security shall be furnished with the original Bid, Photocopy shall be attached to the copy of the Bidding document)
- e. Section 4-Bidding Data
- f. Section 5-Contract Data
- g. Section 6- Employer’s Special Terms & Conditions
- h. Section 7- Bill of Quantities
- i. Section 8- Duly filled Standard Forms
- j. Section 9- Duly filled Appendices
- k. Any other information required to be completed and submitted by the Bidders as specified in **Bidding Data**.

**(B) Enclosed in the Envelope marked as “Copy”**

- a. Duly filled and signed form of **Bid** and Qualification information in the formats indicated in Section 3.
- b. Section 7 - Bill of Quantities
- c. Section 8 - Duly filled Standard Forms
- d. Section 9 - Duly filled Standard Appendices
- e. Any Other information required to be completed and submitted by Bidders, as specified in the **Bidding Data**.

**13. Bid Prices**

**13.1** Overhead and profit percentage quoted by the Bidder shall be firm and not subjected to variations on any account ;

**13.2** All duties, taxes, compensation, EPF/ETF, insurance, Bid Security, performance security and other levies payable by the Service Provider under this contract, or for any other cause, as of the date 14 days prior to the date of closing of Bids, shall be included in the overhead and profit component submitted by the Bidder;

**13.3** All cost of accessories which are required to carry out the work as stated in **Employer’s Special Terms & Conditions** and **Clause 6.1.3**.

**13.4** VAT shall not be included in the Overhead and Profit percentage.

**13.5** The Contract is not subjected to any price adjustment. However, the Employer has the discretion on making the decision.

**14. Currency of Bid and Payment**

Prices shall be quoted entirely in Sri Lanka Rupees (LKR) and shall be paid in Sri Lanka Rupees (LKR).



**15. Period of  
Validity of Bids**

**15.1** The Bid shall be valid for a period stipulated in the **Bidding Data** from the date closing of the Bids.

**15.2** A Bid valid for a shorter period shall be rejected by the Employer.

**15.3** In exceptional circumstances, prior to expiry of the period of validity of Bids, the Employer may request the Bidders to extend the period of validity for a specified additional period;

**15.4** A Bidder agreeing to the request will not be required or permitted to modify its Bid, but will be required to extend the validity of its Bid Security for the period of the extension and in compliance with **Clause 16** in all response.

**16. Bid Security**

- Bid shall furnish a Bid Security as part of this Bid in the format included in Section 8.
- Bid Security which is encashable on demand equivalent to the sum specified in the **Bidding Data** and shall be valid until the date specified in Bidding Data from an agency stipulated in **Bidding Data**.
- Any Bid not accompanied by an acceptable Bid Security shall be rejected by the Procurement Committee as non-responsive.
- 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 Bid validity specified in the **Bidding Data**.
- b) If the Bidder does not accept the corrections of Bid pursuant to ITB **Clause 28**; or
- c) If the successful Bidder fails within the time to;
  - i) Sign the contract or
  - ii) Furnish the required performance security.

**17. Alternative  
Bids by Bidders**

Each set of Bidding documents shall contain only one Bid. All alternative offers will be rejected without assigning reasons.

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.

**18. Pre-Bid Meeting**

The Bidder’s authorized representative is invited to attend a pre-Bid meeting which convened and stated so in the **Bidding Data**. Venue and time shall be stated in the **Bidding Data**.

**19. Format and Signing of Bid**

**19.1** The Bidder shall prepare one ORIGINAL of the documents comprising the Bid as described in **Clause 12** above and clearly marked “ORIGINAL”;

**19.2** In addition, the Bidder shall submit one copy of the Bid, clearly marked as “COPY”;

**19.3** In the event of discrepancy between them, the original shall govern;

**19.4** 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.

**19.5** 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.

**19.6** The Tenderer is at liberty to submit any additional information or details which he may consider desirable and the same shall be set out in a covering letter which shall accompany the tender. Any such additional or alternative details shall not be binding on the Board unless they are approved by the Tender Board and subsequently incorporated in the contract.

**Submission of Bids**

**20. Sealing and Marking of Bids**

**20.1** The Bidder shall seal the original and the copy of the Bid in two inner separate envelopes and one outer envelope, duly marking the inner envelopes as “ORIGINAL” and “COPY”.

**20.2** 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**.

**20.3** 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.

**21. Deadline for Submission of Bids** Bids shall be delivered to the Employer at the address no later than the time and date stipulated in **Invitation of Bid** and **Bidding Data**.

**22. Late Bids** Any Bid received by the Employer after the deadline for submission of Bids will be returned unopened to the Bidder.

**23. Modification & Withdrawal of Bids** **23.1** 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 21** hereof for submission of Bids.

**23.2** The Bidder's modification or notice of withdrawal shall be prepared, sealed, marked and delivered in duplicate in accordance with the provisions of **Clause 20** and **Clause 21** hereof for the submission of Bids, with the inner and outer envelopes additionally marked "MODIFICATION" or "WITHDRAWAL" as appropriate.

**23.3** 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 16** hereof.

## **Bid Opening and Evaluation**

**24. Bid Opening** **24.1** Bids will be opened in the presence of the Bidders' representatives who choose to attend at the time and in the place specified in the **IFB** and **Bidding Data**;

**24.2** The envelope marked as "Original" will be opened. If no envelope is marked as "Original" the Employer may open one or more envelopes;

**24.3** The Bidders' names, the quoted percentage for Overhead and Profit, for each category of workmen services and such other details as the Employer may consider appropriate, will be

announced by the Employer at the Bid opening;

**24.4** No Bids shall be rejected at the Bid opening except for the late Bids.

**25. 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.

**26. Clarification of Bids**

**26.1** 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.

**26.2** The Bidder shall be able to clearly comprehend that any clarification sought is not only for the aforementioned purpose.

**26.3** At the request made by the Technical Evaluation Committee (TEC), the relevant procurement Entity (PE) will seek such clarification from the Bidder in writing.

**27. Examination of Bids and Determination of Responsiveness**

**27.1** Prior to the detailed evaluation of Bids, the Employer will determine whether each Bid:

- (a) meets the eligibility criteria;
- (b) has accompanied with the required Bid Security according to **Clause 16**.
- (c) is substantially responsive to the requirements of the Bidding documents

If any Bid does not meet above (a) to (c), that Bid shall be rejected by the Employer.

**27.2** A substantially responsive Bid is one which confirms to all the terms, conditions, and Employer's Special Terms & Conditions of the Bidding documents.

**27.3** If a Bid is not substantially responsive;

- (a) It will be rejected by the Employer and may not subsequently be made responsive

**28. Correction of Errors**

**28.1** Errors will be corrected by the Employer as follows:

- (a) Where there is a discrepancy between the amounts in figures and in words, the amounts in words will govern.
- (b) 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.
- (c) If the Bidder does not accept the corrections of Bid, his Bid shall be rejected and the Bid Security may be forfeited or bid-securing declaration executed in accordance with **Clause 16**.

**29. Evaluation and Comparison of Bids**

**29.1** The Employer will evaluate and compare Bids determined to be substantially responsive, pursuant to **Clause 27** hereof.

**29.2** In evaluating the Bids the Procurement Committee will determine the Overhead and Profit percentage which is quoted by the Bidder for each Category in the Bill of Quantities pursuant to **Clause 28** hereof.

**29.3** For the evaluation purposes the price in the Bill of Quantities (BOQQ) will be considered to be excluding VAT. Any notes or remarks by Bidders contrary to this will be disregarded.

**29.4** The overhead and profit percentage shall be valid for one-year period from the date of award. This percentage of overhead and profit shall be fixed for the Contract period.

**Award of Contract**

**30. Award of Contract**

Subject to **Clause 31** of ITB, 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 percentage for Overhead and profit component, 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**

Even though the Bidders meet eligibility and qualification criteria specified, they are subjected to disqualify if they have

- a) Made misleading or false representation in the forms, statements and attachments submitted in proof of the eligibility and

qualification requirements or

- b) Participated in the fraud and corrupt practice or
- c) Record of poor performance in previous contracts

**31. 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).

**32. Notification of  
Award**

**32.1** Prior to the expiration of the period of Bid validity prescribed by the Employer, the Employer 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 service and the percentage for overhead and profit component for supply of unskilled and skilled workmen service under each category.

**32.2** The notification of award (notice of acceptance) 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 35** hereof, the Board will promptly notify each of the unsuccessful Bidders and will discharge their Bid Securities, pursuant to **Clause 16** hereof.

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

**33.1** The Board reserves the right at the time of Award of Contract to increase or decrease by up to 10% percent the quantity of Services specified in this document without any change in rates provided in the schedule of rates / Bill of Quantities (BOQQ) or other terms and conditions including discounts offered.

**34. Signing of  
Agreement**

**34.1** The Contractor should contact the person stated in **Bidding Data** to get an appointment for signing of the agreement;

**34.2** The agreement shall be signed within 14 days from the date of the letter of acceptance.

**35. Performance  
Security**

- 35.1** Within fourteen (14) days of the receipt of the notification of the acceptance of the Bid by the Employer, the successful Bidder shall furnish to the Board a Performance Security unconditional 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 5% of the contract sum and validity shall be 28 days beyond the contract period.
- 35.2** The Security 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 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.
- 35.3** 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.
- 35.4** Failure of the successful Bidder to comply with the requirements of **Clause 34** or **Clause 35.1 and 35.2** hereof shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid security, in which event the Employer may make the award to the next lowest evaluated Bidder or call for new Bids.

**36. Compliance  
with Contract  
Act No.3 of 1987**

**36.1** Bidder shall comply with the requirements of the Public Contracts **Act No.3 of 1987** and subsequent Gazette Notifications, for an amount of Bid more than **Rs.5 million**. Except for principal bidders, all agents, sub-agents, representatives, or nominees for and on behalf of the bidders shall be required to submit their certificates of registration under this Act with the Bid and shall register the contract with the Register of Public Contracts



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

# CONDITIONS OF CONTRACT

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## CONDITIONS OF CONTRACT

Conditions of  
Contract Clause  
No.

### 1. General Provisions

#### 1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

(a) "Bills of Quantities" means the completed prices with corrections as per Clause 28 of Instructions to Bidders, overhead and profit quoted to be performed by the Service Provider.

(b) "Completion Date" means the date of completion of the Services by the Service Provider as certified by the Employer.

(c) "Contract" means the Contract signed by the Parties, to which these Conditions of Contract (CC) are attached, together with all the documents listed in **Clause 1** of such signed Contract;

(d) "Contract Price" means the price to be paid for the performance of the Services, in accordance with **Clause 6**;

(e) "Employer" means the party who employs the Service Provider

(f) "Party" means the Employer or the Service Provider, as the case may be, and "Parties" means both of them;

(g) "Workmen" means persons hired by the Service Provider as employees and assigned to the performance of the Services or any part thereof;

(h) "Service Provider/Contractor" is a person or corporate body whose Bid to provide the Services has been accepted by the Employer;

(i) "Bid" means the completed Bidding document submitted by the Service Provider to the Employer

(j) "Employer's Special Terms & Conditions" means the Employer's Special Terms & Conditions of the service included in the Bidding document.

(k) “Services” means the work to be performed by the Service Provider pursuant to this Contract, as described in Employer’s Special Terms & Conditions; and Bill of Quantities included in the Service Provider’s Bid.

**1.2 Applicable Law** The Contract shall be interpreted in accordance with the laws of the Socialist Democratic Republic of Sri Lanka.

**1.3 Language** This Contract shall be executed in English Language

**1.4 Notices** Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, to such Party at the address specified in the **Contract Data**.

**1.5 Location** The Services shall be performed at such locations as are specified in the Employer’s Special Terms & Conditions and, where the location of a particular task is not so specified, at such locations, as the Employer may require.

**1.6 Authorized Representatives** Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Employer or the Service Provider may be taken or executed by the officials specified in the **Contract Data**.

## **2. Commencement, Completion, Modification, and Termination of Contract**

**2.1 Effectiveness of Contract** This Contract shall come into effect on the date the Contract Agreement is signed by either parties or such other later date as may be stated in the **Contract Data**.

**2.2 Starting Date** The Service Provider shall start carrying out the Services seven (07) days after the date the Contract becomes effective, or at such other date as may be specified in the **Contract Data**.

**2.3 Intended Completion Date** Unless terminated earlier pursuant to **Clause 2.6**, the Service Provider shall complete the activities by the Intended Completion Date, as is specified in the **Contract Data**. In this case, the

Completion Date will be the date of completion of all activities.

**2.4 Additional Services**

Additional Services as may be agreed with the Employer should be carried out at an agreed lump-sum price.

**2.5 Force Majeure**

**2.5.1 Definition**

For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

**2.5.2 No Breach of Contract**

The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract , and (b) has informed the other Party as soon as possible about the occurrence of such an event.

**2.5.3 Extension of Time**

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

**2.5.4 Payments**

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

## 2.6 Termination

### 2.6.1 By the Employer

The Employer may terminate this Contract, by a written notice of termination not less than fourteen (14) days' to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause 2.6.1 and twenty-eight (28) days' in the case of the event referred to in (e):

- (a) if the Service Providers do not remedy a failure in the performance of their obligations under the Contract, within thirty (30) days after being notified or within any further period as the Employer may have subsequently approved in writing;
- (b) if the Service Provider become insolvent or bankrupt;
- (c) if, as the result of Force Majeure, the Service Provider/s are unable to perform the Services for a period of not less than sixty (60) days; or
- (d) if the Service Provider does not maintain a Performance Security in accordance with Clause 3.6;
- (e) if the Employer, in its sole discretion, decides to terminate this Contract for his convenience.

### 2.6.2 By the Service Provider

The Service Provider may terminate this Contract, by a written notice to the Employer not less than thirty (30) days', such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this **Clause 2.6.2**:

- (a) if the Employer fails to do any payments due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to **Clause 8** within forty-two (42) days after receiving written notice from the Service Provider that such payment is overdue; or
- (b) if, as the result of Force Majeure, the Service Providers are unable to perform the Services for a period of not less than sixty (60) days.

### 2.6.3 Payment upon Termination

Upon termination of this Contract pursuant to **Clauses 2.6.1 or 2.6.2**, the Employer shall make the following payments to the Service Provider:

- (a) remuneration pursuant to **Clause 6** for Services satisfactorily performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to paragraphs (a), (b), (d), (e) of **Clause 2.6.1**, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract.

### **3. Obligations of the Service Provider**

#### **3.1 General**

The Service Providers shall perform the Services in accordance with the Employer's Special Terms & Conditions and the Bill of Quantities (BOQQ), and carry out their obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Providers shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Employer, and shall at all times support and safeguard the Employer's legitimate interests in any dealings with Subcontractors or third parties.

#### **3.2 Confidentiality**

The Service Providers and the Personnel of the service provider shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the National Water Supply & Drainage Board, the Services, this Contract, or the Employer's business or operations without the prior written consent of the Employer.



- 3.3 Service Provider's Actions Requiring Employer's Prior Approval**
- The Service Providers shall obtain the Employer's prior approval in writing before taking any of the following actions:
- (a) entering into a subcontract for the performance of any part of the Services,
  - (b) appointing such members of the Personnel not listed by name in Employer's Special Terms & Conditions and Appendices
  - (c) changing the Program of activities; and
  - (d) any other action that may be specified in the **Contract Data**.
- 3.4 Reporting Obligations**
- The Service Providers shall submit to the Employer the reports and documents specified in Employer's Special Terms & Conditions in the form, in the numbers, and within the periods set forth in the said Appendix.
- 3.5 Documents Prepared by the Service Providers to be the Property of the Employer**
- All plans, drawings, Employer's Special Terms & Conditions, designs, reports, and other documents by the Service Providers in accordance with Clause 3.4 shall become and remain the property of the Employer, and the Service Providers shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Employer, together with a detailed inventory thereof. The Service Providers may retain a copy of such documents. Restrictions about the future use of these documents, if any, shall be specified in the **Contract Data**.
- 3.6 Performance Security**
- The Service Provider shall provide the Performance Security to the Employer no later than the date specified in the Letter of acceptance. The Performance Security shall be issued in an amount stated in **Contract Data** and form and by a bank or surety acceptable to the Employer. The performance Security shall be valid until a date 28 days beyond the Completion Date of the Contract.
- Performance Security shall be issued by an agency stipulated below using the Performance security included in Section 8, Standard Forms.
- a) 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, deposits made in the name of the National Water

Supply and Drainage Board.

- c) A Sri Lanka rupee cash deposit to the National Water Supply and Drainage Board, (The original receipt for such deposit shall be attached to the original tender document).
- d) A certified cheque issued by a Bank operating in Sri Lanka in favour of National Water Supply and Drainage Board.

### **3.7 Insurance**

#### **3.7.1 Workmen Compensation Insurance**

The Service provider's liability for personal injury or death of workmen shall be as provided for in the Workmen's Compensation Act and any other statutory modifications or amendments thereto.

#### **3.7.2 Failure to insurance**

If the contractor fails to effect or keep in force any of the insurances referred to in the previous Sub-Clauses, or fails to provide satisfactory evidence, policies or receipts, the Employer may, without prejudice to any other right or remedy, effect insurance for the cover relevant to such default and pay the premiums due and recover the same with an additional charge of 30% of premium paid, as a deduction from and other monies due to the Contractor.

### **3.8 Taxes and Duties**

3.8.1 The Service provider shall comply with the regulations of the Department of Inland Revenue of Sri Lanka for payment of Value Added Tax, and any other taxes arising out of the Contract.

3.8.2 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.

#### 4. Service Provider's Personnel

**4.1 Description of Personnel** The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Employer's Special Terms & Conditions.

**4.2 Removal and/or Replacement of Personnel**

- (a) Except as the Employer may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide a replacement of equivalent or better qualifications.
- (b) If the Employer finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal act, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Service Provider shall, at the Employer's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Employer.
- (c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

#### 5. Obligations of the Employer

**5.1 Assistance and Exemptions** The Employer shall use its best efforts to ensure that the Employer shall provide the Service Provider such assistance and exemptions as specified in the **Contract Data**.

**5.2 Change in the Applicable Law** If, any change in the Applicable Law **on or after the Date of 14 days prior to dead line for submission of Bids for the Contract** with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider takes place, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by an agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in **Clauses 6.2**, as the case may be.

**5.3 Services and Facilities** The Employer shall make available to the Service Provider the Services and Facilities listed under Employer’s Special Terms & Conditions.

## **6. Payments to the Service Provider**

**6.1 Contract Price** The Contract Price as may be ascertained in accordance with the Conditions of Contract, Employer’s Special Terms & Conditions, overhead and profit percentage quoted and set forth in the said Bill of Quantities.

**6.2 Payment for Additional Services, and Performance Incentive Compensation** For the purpose of determining the remuneration due for additional Services as may be agreed under **Clause 2.4 hereof**, the workmen rate per day and other allowances are provided in the **Clause 6.1.9 of Employer’s Special Terms & Conditions**.

**6.3 Terms and Conditions of Payment** Payments will be made to the Service Provider as stated in the **Contract Data**. Any other payment shall be made after the conditions listed in the **Contract Data** for such payment have been met, and the Service Provider have submitted an invoice to the Employer specifying the amount due.

**6.4 Interest on Delayed Payments** If the Employer has delayed payments beyond twenty-eight (28) days after the due date stated in the **Contract Data**, interest shall be paid to the Service Provider for each day of delay at the rate stated in the **Contract Data**.

## **7. Quality Control**

**7.1 Lack of Performance Penalty** (a) Penalty for absentees & late arrival will be imposed as per **Contract Data**. If the Contractor is failed to work according to the contract agreement, action to be taken into include to the low performing Contractor’s list and will refrain issuing Bidding Documents in future.

(b) Engineer shall suspend the whole or part of the contract, if the performance of the contract or workmen is not satisfactory. When Engineer ordered, the Contractor shall, at his own cost re- do any services or replace the workmen that is completed and/or is being done by him if such services is determined by the Engineer or his representative as not satisfactory.

## **8. Settlement of Disputes**

**8.1 Amicable Settlement**            The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

**8.2 Dispute Settlement**

8.2.1 Any dispute arises between the Employer and the Service Provider in connection with, or arising out of, the Contract or the provision of the Services, whether during carrying out the Services or after their completion, which was not settled amicably in as with sub **Clause 8.1** above, shall be finally settled by arbitration in accordance with Arbitration Act No 11 of 1995.

8.2.2 The arbitral tribunal shall consist of a sole arbitrator, who shall be appointed in the manner provided under sub **Clause 8.2.3**.

8.2.3 The Party desiring arbitration shall nominate three arbitrators out of which one to be selected by the other Party within 21 Days of the receipt of such nomination. If the other Party does not select one to serve as Arbitrator within the stipulated period, then the Arbitrator shall be appointed in accordance with Arbitration Act No 11 of 1995, or any other amendments thereof.