

# **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 Un Skilled and Skilled workmen services as specified in the Bid
- 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. The **Bidder** shall not be a blacklisted contractor at the time of **Bidding** and at the time of award of contract.
  - b. **Bidder** shall have experience in performing supply of Unskilled or Skilled workmen services for minimum of two years.

- c. **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.

#### 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

Eligible Unskilled/Skilled workmen shall be not less than 18 years and not more than 60 years and 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 service is not considered as permanent nature.

#### Only for skilled workmen

Eligible workmen's Curriculum Vitae (CVs) 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 requirement.

#### 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 Requirements
- Section 7: Schedule of Rates.
- 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 Ten (10) 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 Five (05) 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** documents;

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

## **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 Requirements
- h. Section 7- Schedule of Rates with Overhead and profit component
- 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 –Schedule of Rates with Overhead and profit component
- 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 requirement** 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 a substantially responsive **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 **Bid** validity specified in the **Bidding Data**.
- b) If the **Bidder** does not accept the correction of its **Bid** overhead and profit percentage 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. If offers marked as offer 1, 2 etc., offer 1 will 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.

## 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 Requirement 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 Overhead and profit percentage in figures and in words, the Overhead and profit percentage in words will govern.

- (b) If the overhead and profit percentage 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.

- a) In evaluating the Bids the Employer will determine the Overhead and Profit percentage which is quoted by the Bidder for each Category in the Schedule of Rates pursuant to **Clause 28** hereof.

**29.2** For the evaluation purposes the Overhead and Profit percentage (%) quoted under each category of workmen in the Schedule of Rates will be considered to be excluding VAT. Any notes or remarks by Bidders contrary to this will be disregarded.

**29.3** The Employer will decide to evaluate the Bid as follows, if required:

The percentage of Overhead and Profit for provision of Unskilled and Skilled Workmen Services will be decided through a negotiation and the process of which one negotiated percentage for each category separately for an area accordingly will be decided for all Bidders who's Bids were considered for the award of the Contract.

The 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 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 (BOQs) 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 and the validity of the performance security shall be 5% of the initial contract sum.
- 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.



## **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) “Schedule of Rates,” is the priced for each category, including Rate, EPF/ETF and Overhead and Profit quoted to be performed by the Service Provider forming part of his Bid.

(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 Requirements” means the Employer’s Requirements of the service included in the Bidding document submitted by the Service Provider to the Employer

(k) “Services” means the work to be performed by the Service Provider pursuant to this Contract, as described in Employer’s Requirement; and Schedule of Rates 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 Requirements 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 Requirements and the Price Schedule / Bill of Quantities (BOQs), 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 Requirement (“Key Personnel and Subcontractors”),
- (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 Requirement 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 Requirements, 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, Profit 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 Requirement.

**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 as 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 action, 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 Requirement.

**6. Payments to the Service Provider**

**6.1 Contract Price**

The Contract Price as may be ascertained in accordance with the Conditions of Contract, **Contract Data, Employer's Requirement, Overhead and profit percentage** quoted and set forth in the said Schedule of Rates.

**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**, a breakdown of the Workmen rate per month and other allowances is provided in the **Employer's Requirement**.

**6.3 Terms and Conditions of Payment**

Payments will be made to the Service Provider as stated in the **Contract Data**. Unless otherwise stated in, the Contract Data, first payment shall be made against the provision by the Service Provider of a bank guarantee for the same amount, and shall be valid for the period 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 Identifying Defects** The Employer shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities.

**7.2 Correction of Defects, and Lack of Performance Penalty**

- (a) The Employer shall give notice to the Service Provider of any Defects before the end of the Contract.
- (b) Every time when notice of a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the Employer's notice.
- (c) If the Service Provider has not corrected a Defect within the time specified in the Employer's notice, the Employer will assess the cost of having the Defect corrected, the Service Provider will pay this amount, and a Penalty for Lack of Performance/non providing required amount of Un Skilled and Skilled workmen calculated as described in the **Contract Data** will be charged.

## **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.

