

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 workmen services as specified in the Bid
- 1.2 The successful bidder will be expected to provide the Labour requirement within the Intended period stated in **Bidding Data**.
- 1.3 Intended completion date shall be calculated from the Start Date, which is defined in the Conditions of Contract.
- 1.4 The office for collection of bid forms 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 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.

- d. Compliance with Contract Act No 03 of 1987 as given in Clause 38 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 Workmen** Eligible workmen shall be not less than 18 years and not more than 62 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.
- 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. One bid per bidder** Each bidder shall submit only one bid either individually or as a partner in a Joint Venture. A bidder who submit or participate in more than one bid will cause bidder's all proposals be disqualified.
- 8. Site Visit** Site visits will not be held.

Bidding Documents

9. Content of Bidding Documents

9.1 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 : Bill of Quantities (BOQs).
- Section 8 : Standard Forms
- Section 9 : Appendices

9.2 The set of Bidding document shall be purchased by the prospective Bidders from the office as stated in the **Bidding data**.

10. Clarification of Bidding Documents

10.1 A bidder requiring any clarification of the bidding documents shall contact the employer in writing by a facsimile to the Employer's address indicated in **Bidding Data**

10.2 Employer will respond in writing to any such request for clarification received no later than Ten (10) Days prior to the deadline for submission of bids.

10.3 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.

11. Amendment of Bidding Documents

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

11.2 Any addendum thus issued shall be part of the bidding documents;

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

Preparation of Bids

- 12. Language of Bid** All documents relating to the bid shall be in the language sated in the **Bidding Data**.
- 13. Documents Comprising the Bid** Each Bid submitted by the bidder shall comprise the followings;
- a. Duly perfected set of bidding documents
 - 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 17 of ITB and as per the specimen form included in 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. Proof of authorization for the signatory to the Bid as specified in Appendix 5;
 - f. Details of similar services carried out during last two years in the form stipulated in Appendix 1;
 - g. Financial details of Bidder in the form stipulated in Appendix 2;
 - h. Authorization to seek reference from the Bidders Bankers in the form given in Appendix 2A.

14. Bid Prices

- 14.1** Price quoted by the bidder shall be firm and not subjected to variations on any account ;
- 14.2** The bidder shall fill-in rates and prices for all categories of items of the services described in the Price Schedule / Bill of Quantities (BOQs);
- 14.3** Items for which no rates or prices is entered by the bidder shall be considered as non responsive bidders and the Bids will be rejected;
- 14.4** All duties, taxes, compensation, EPF/ETF 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 dead line for submission of bids, shall be included in the rates, prices, and Bid price submitted by the bidder;
- 14.5** All costs related to bidder's overhead and profit shall not be included to the rates and shall separately at to the Bill of Quantities.
- 14.6** All cost of accessories which are required to carry out the work.
- 14.7** VAT component shall not be included in the rates. The amount written in the Form of Bid shall be without VAT. However, VAT component shall be shown separately at the Price Schedule/Bill of Quantities (BOQs).
- 14.8** The Contract is not subjected to any price adjustment.

15. Currency of Bid and Payment

Contract shall be priced entirely in Sri Lanka Rupees (LKR) and contract shall be paid in Sri Lanka Rupees (LKR).

**16. Period of
Validity of Bids**

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

16.2 A bid valid for a shorter period shall be rejected by the Employer.

16.3 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;

16.4 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.

17. 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 the bid validity specified by the bidder on the Form of Bid: or

b) If the bidder does not accept the correction of its bid price pursuant to **ITB Clause 30**

c) If the successful bidder fails within the time to;

i) Sign the contract or

ii) Furnish the required performance security.

**18. 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.

19. 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**.

20. Format and Signing of Bid

20.1 The bidder shall prepare one ORIGINAL of the documents comprising the bid as described in Clause 13 above and clearly marked "ORIGINAL";

20.2 In addition, the bidder shall submit one copy of the bid, clearly marked as "COPY";

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

20.4 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.

20.5 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.

20.6 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

21. Format and Signing of Bid

21.1 Alternative offers shall not be accepted. The bid shall be submitted in duplicate as per **Sub-Clause 21.2** hereof.

21.2 The Bidder shall, for each independent Bid prepare one original and one copy of the document comprising the Bid as described in **Clause 13** hereof by clearly marking each "ORIGINAL" and "COPY" as appropriate. In the event of any discrepancy between them, the original shall prevail.

21.3 The original and the copy of each independent Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized. Proof of authorization shall be furnished to accompany the Bid. All pages of the Bid where entries or amendments have been made shall be initialed by the person or persons signing the Bid

22. Sealing and Marking of Bids

22.1 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".

22.2 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**.

22.3 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.

23. Deadline for Submission of Bids

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**.

24. Late Bids

Any bid received by the Employer after the deadline for submission of bids will be returned unopened to the bidder.

25. Modification & Withdrawal of Bids

- 25.1** 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 23** hereof for submission of Bids.
- 25.2** The Bidder's modification or notice of withdrawal shall be prepared, sealed, marked and delivered in duplicate in accordance with the provisions of **Clause 22** and **Clause 23** hereof for the submission of Bids, with the inner and outer envelopes additionally marked "MODIFICATION" or "WITHDRAWAL" as appropriate.
- 25.3** Subject to **Clause 28** hereof, no Bid may be modified subsequent to the deadline for submission of Bids.
- 25.4** 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 17** hereof.
- 25.5** Bidders may offer discounts but shall specify the items for which discounts are made. In case the Bidder offers discounts without mentioning the items for which discounts are made then the discount will be applicable proportionately to all items except provisional sum(s). Bidders may modify the prices of their Bids by submitting Bid modifications in accordance with this **Clause 25**, or included in the original Bid submission.

Bid Opening and Evaluation

26. Bid Opening

26.1 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;

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

26.3 The bidders' names, the bid prices, the total amount of each bid, any discounts, and such other details as the Employer may consider appropriate, will be announced by the Employer at the opening;

26.4 No bids shall be rejected at the bid opening except for the late bids.

27. 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.

28. Clarification of Bids

28.1 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.

28.2 The bidder shall be able to clearly comprehend that any clarification sought is not only for the aforementioned purpose.

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

29. Examination of Bids and Determination of Responsiveness

29.1 Prior to the detailed evaluation of bids, the Procurement Committee 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 17**.
- (d) 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 Procurement Committee.

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

29.3 If a bid is not substantially responsive;

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

30. Correction of Errors

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

30.2 Errors will be corrected as follows:

- (a) Where there is a discrepancy between the amounts in figures and in words, the amount in words will govern;
- (b) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern, unless in the opinion of the Employer there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern, and the unit rate will be corrected;
- (c) 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;
- (d) If the bidder does not accept the corrected amount of bid, his bid shall be rejected and the bid security may be forfeited or bid-securing declaration executed in accordance with **Clause 17**.

31. Evaluation and Comparison of Bids

31.1 The Procurement Committee will evaluate and compare Bids previously determined to be substantially responsive, pursuant to **Clause 29** hereof.

31.2 In evaluating the Bids the Procurement Committee will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:

- a) Making any correction of errors pursuant to **Clause 30** hereof.
- b) Discounts, if any disclosure in the Bid opening
- c) Evaluation of Acceptable omissions (line items or parts of work)
- d) Delivery periods or completion times
- e) Adjustment for various minor deviations
- f) Assessment of monetary implications on deviations and other matters.
- j) Omissions/Missing items

The bid price should 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

31.3 For the evaluation purposes the rates and prices in the Price Schedule / Bill of Quantities (BOQs) will be considered to be excluding VAT. Any notes or remarks by Bidders contrary to this will be disregarded.

Award of Contract

32. Award of Contract

Subject to **Clause 33** 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 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

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

33. 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).

34. Notification of Award

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

34.2 The notification of award (notice of acceptance) will constitute the formation of the Contract;

34.3 Upon the successful Bidder's furnishing of performance security in accordance with the provisions of **Clause 37** hereof, the Board will promptly notify each of the unsuccessful Bidders and will discharge their Bid Securities, pursuant to Clause 17 hereof.

- 35. Board's Right to vary Quantities at the Time of Award**
- 35.1** The Board reserves the right at the time of Award of Contract to increase or decrease by up to 25 percent the quantity of 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.
- 36. Signing of Agreement**
- 36.1** The Contractor should contact the person stated in **Bidding Data** to get an appointment for signing of the agreement;
- 36.2** The agreement shall be signed within 14 days from the date of the letter of acceptance.
- 37. Performance Security**
- 37.1** Within fourteen (14) days of the receipt of the notification of the acceptance of the bid by the Board, 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 as specified in the **Bidding Data**.
- 37.2** 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.
- 37.3** 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.

37.4 Failure of the successful Bidder to comply with the requirements of **Clause 36** or **Clause 37** hereof shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid security, in which event the Board may make the award to the next lowest evaluated Bidder or call for new Bids.

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

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

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

2. CONDITIONS OF CONTRACT

GENERAL 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) “Price Schedule / Bill of Quantities (BOQs)” is the priced and completed list of items of Services 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) “Personnel” means persons hired by the Service Provider as employees and assigned to the performance of the Services or any part thereof;

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

(i) “Service Provider’s 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 Price Schedule / Bill of Quantities (BOQs) 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 approve.
- 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 7 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 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 Contractor'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 Supplier shall be entirely responsible for all taxes, stamp duties, license fees, etc. including all costs stipulated in Preamble Notes on Pricing incurred until delivery of the contracted Goods to the Purchaser.

3.8.2 The Supplier 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.

3.8.3 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 with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider takes place after the contract, 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 Lump-Sum Remuneration

The Service Provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum and all other costs incurred by the Service Providers in carrying out the Services described in Employer's Requirement. Except as provided in Clause 5.2, the Contract Price may only be increased above the amounts stated in Clause 6.2 if the Parties have agreed to additional payments in accordance with Clauses 2.4 and Clause 6.3.

6.2 Contract Price

The Contract Price is set forth in the Form of Bid.

6.3 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 lump-sum price is provided in Employer's Requirement.

6.4 Terms and Conditions of Payment

Payments will be made to the Service Provider and according to the payment schedule 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.

6.5 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. The Defects liability period shall be extended for as long as Defects remain to be corrected.
- (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 unskilled 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

- 1.2.1 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 accordance with sub clause 8.2.1 above, shall be finally settled by arbitration in accordance with Arbitration Act No 11 of 1995.
- 1.2.2 The arbitral tribunal shall consist of a sole arbitrator, who shall be appointed in the manner provided under sub clause 8.2.3.
- 1.2.3 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.

