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EASTERN UNIVERSITY, SRI LANKA

**ACCELERATING HIGHER EDUCATION EXPANSION AND DEVELOPMENT
OPERATION (AHEAD)**

PROCUREMENT OF GOODS

(NATIONAL COMPETITIVE BIDDING)

**Supply, Delivery, Installation, Maintenance and
Commissioning of Fluorescence Spectrometer with
Accessories**

BIDDING DOCUMENT

Volume 1 of 2 (Sections II, IV, VIII and IX)

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TO BIDDERS

Section II

Instructions to Bidders

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Section II

Instructions to Bidders

| A. Introduction | |
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| 1. Source of Funds | 1.1 GOSL |
| 2. Eligible Bidders | 2.1 This Invitation for Bids is open to all suppliers from eligible source countries as defined in <i>Guidelines</i> : |
| 3. Eligible Goods and Services | 3.1 All goods and related services to be supplied under the contract shall have their origin in eligible source countries, defined in the <i>IBRD Guidelines for Procurement</i> , and all expenditures made under the contract will be limited to such goods and services. |
| 4. Cost of Bidding | 4.1 The Bidder shall bear all costs associated with the preparation and submission of its bid, and the Purchaser named in the Bid Data Sheet, hereinafter referred to as “the Purchaser,” will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process. |

| B. The Bidding Documents | |
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| 5. Content of Bidding Documents | <p>5.1 The goods required, bidding procedures, and contract terms are prescribed in the bidding documents. The bidding documents comprises of two Volumes:</p> <p style="margin-left: 40px;">Volume 1: Section 2: Instructions to Bidders (ITB) Section 4: General Conditions of Contract (GCC) Section 8: Standard Forms Section 9: Eligibility for the Provision of Goods, Works, and Services in Bank-Financed Procurement</p> <p style="margin-left: 40px;">Volume 2: Section 1: Invitation for Bids (IFB) Section 3: Bid Data Sheet Section 5: Special Conditions of Contract (SCC) Section 6: Schedule of Requirements Section 7: Technical Specifications Section 10: Bid Form and Price Schedules</p> <p>5.2 The Bidder is expected to examine all instructions, forms, terms, and specifications in the bidding documents. Failure to furnish all</p> |

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| | information required by the bidding documents or to submit a bid not substantially responsive to the bidding documents in every respect will be at the Bidder's risk and may result in the rejection of its bid. |
| 6. Clarification of Bidding Documents | 6.1 A prospective Bidder requiring any clarification of the bidding documents may notify the Purchaser in writing or by facsimile at the Purchaser's address indicated in the Bid Data Sheet. The Purchaser will respond in writing to any request for clarification of the bidding documents which it receives no later ten (10) days prior to the deadline for the submission of bids prescribed in ITB Clause 19.1. Written copies of the Purchaser's response will be sent to all prospective bidders that have received the bidding documents. |
| 7. Amendment of Bidding Documents | 7.1 At any time prior to the deadline for submission of bids, the Purchaser, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, may modify the bidding documents by issuing amendments. 7.2 All prospective bidders that have received the bidding documents will be notified of the amendment in writing, and will be binding on them. 7.3 In order to allow prospective bidders reasonable time in which to take the amendment into account in preparing their bids, the Purchaser, at its discretion, may extend the deadline for the submission of bids. |

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| C. Preparation of Bids | |
| 8. Language of Bid | 8.1 The bid prepared by the Bidder, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Purchaser shall be written in English language. |
| 9. Documents Constituting the Bid | 9.1 The bid prepared by the Bidder shall comprise the following components: <ul style="list-style-type: none"> (a) bid Form and a Price Schedule completed in accordance with ITB Clauses 10, 11, and 12; (b) documentary evidence established in accordance with ITB Clause 13 that the Bidder is qualified to perform the contract if its bid is accepted; (c) documentary evidence established in accordance with ITB Clause 14 that the goods and ancillary services to be supplied by the Bidder are eligible goods and services and conform to the bidding documents; and |

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| | (d) bid security furnished in accordance with ITB Clause 15. |
| 10. Bid Form | 10.1 The Bidder shall complete the Bid Form and the Price Schedule furnished in the bidding documents, indicating the goods to be supplied, a brief description of the goods, and their country of origin, quantity, and prices. |
| 11. Bid Prices | <p>11.1 The Bidder shall indicate on the Price Schedule the unit prices (where applicable) and total bid price of the goods it proposes to supply under the contract.</p> <p>11.2 The price of the goods quoted Delivered Duty Paid (DDP) at the final destination given in the Schedule of Requirements. (The price shall include the supply, duties and taxes, and all other costs associated with the delivery and install of goods at the final destination. However, VAT shall not be included in the prices but shall be shown separately at the space provided.) The term DDP governed by the rules prescribed in the current edition of In terms published by the International Chamber of Commerce, Paris.</p> <p>11.3 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the contract and not subject to variation on any account. A bid submitted with an adjustable price quotation will be treated as non- responsive and will be rejected, pursuant to ITB Clause 24.</p> |
| 12. Bid Currencies | 12.1 Prices shall be quoted only in Sri Lanka Rupees. |
| 13. Documents Establishing Bidder's Qualification | <p>13.1 Pursuant to ITB Clause 9, the Bidder shall furnish, as part of its bid, documents establishing the Bidder's qualifications to perform the contract if its bid is accepted.</p> <p>13.2 The documentary evidence of the Bidder's qualifications to perform the contract if its bid is accepted shall establish to the Purchaser's satisfaction:</p> <p>(a) that, in the case of a Bidder offering to supply goods under the contract which the Bidder did not manufacture or otherwise produce, the Bidder has been duly authorized by the goods' Manufacturer or producer to supply the goods in the Purchaser's country;</p> <p>(b) that the Bidder has the financial, technical, and production capability necessary to perform the contract;</p> |

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| | <p>(c) that, in the case of a Bidder not doing business within Sri Lanka, the Bidder is or will be (if awarded the contract) represented by an Agent in Sri Lanka equipped and able to carry out the Supplier’s maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications; and</p> <p>(d) That the Bidder meets the qualification criteria, if listed in the Bid Data Sheet.</p> |
| <p>14. Documents Establishing Goods’ Eligibility and Conformity to Bidding Documents</p> | <p>14.1 Pursuant to ITB Clause 9, the Bidder shall furnish, as part of its bid, documents establishing the eligibility and conformity to the bidding documents of all goods and services which the Bidder proposes to supply under the contract.</p> <p>14.2 The documentary evidence of the eligibility of the goods and services shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.</p> <p>14.3 The documentary evidence of conformity of the goods and services to the bidding documents may be in the form of literature, drawings, and data, and shall consist of:</p> <ul style="list-style-type: none"> (a) a detailed description of the essential technical and performance characteristics of the goods; (b) a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period to be specified in the Bid Data Sheet, following commencement of the use of the goods by the Purchaser; and (c) an item-by-item commentary on the Purchaser’s Technical Specifications demonstrating substantial responsiveness of the goods and services to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications. <p>14.4 For purposes of the commentary to be furnished pursuant to ITB Clause 14.3 (c) above, the Bidder shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Purchaser in its Technical Specifications, are intended to be descriptive only and not restrictive. The Bidder may substitute alternative standards, brand names, and/or catalogue numbers in its bid, provided that it demonstrates to the Purchaser’s satisfaction that</p> |

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| | <p>the substitutions ensure substantial equivalence to those designated in the Technical Specifications.</p> |
| <p>15. Bid Security</p> | <p>15.1 Pursuant to ITB Clause 9, the Bidder shall furnish, as part of its bid, a bid security in the amount specified in the Bid Data Sheet.</p> <p>15.2 The bid security is required to protect the Purchaser against the risk of Bidder's conduct which would warrant the security's forfeiture, pursuant to ITB Clause 15.7.</p> <p>15.3 The bid security shall be in Sri Lanka Rupees, and shall be in one of the following forms:</p> <ul style="list-style-type: none"> (a) a guarantee issued by a reputable bank located in Sri Lanka or other organization approved by treasury in the format provided in the bidding documents or another form acceptable to the Purchaser and valid for thirty (30) days beyond the validity of the bid; or (b) a cashier's or certified check. <p>15.4 Any bid not secured in accordance with ITB Clauses 15.1 and 15.3 will be rejected by the Purchaser as non-responsive, pursuant to ITB Clause 24.</p> <p>15.5 Unsuccessful bidders' bid securities will be discharged or returned as promptly as possible but not later than thirty (30) days after the expiration of the period of bid validity prescribed by the Purchaser pursuant to ITB Clause 16.</p> <p>15.6 The successful Bidder's bid security will be discharged upon the Bidder signing the contract, pursuant to ITB Clause 32, and furnishing the performance security, pursuant to ITB Clause 33.</p> <p>15.7 The bid security may be forfeited:</p> <ul style="list-style-type: none"> (a) if a Bidder: <ul style="list-style-type: none"> (i) Withdraws its bid during the period of bid validity specified by the Bidder on the Bid Form; or (ii) does not accept the correction of errors pursuant to ITB Clause 24.2; or (b) in the case of a successful Bidder, if the Bidder fails: <ul style="list-style-type: none"> (i) to sign the contract in accordance with ITB Clause 32; or (ii) to furnish performance security in accordance with ITB Clause 33. |

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| <p>16.Period of Validity of Bids</p> | <p>16.1 Bids shall remain valid for the period specified in the Bid Data Sheet after the date of bid submission prescribed by the Purchaser, pursuant to ITB Clause 19. A bid valid for a shorter period shall be rejected by the Purchaser as non- responsive.</p> <p>16.2 In exceptional circumstances, the Purchaser may solicit the Bidder’s consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The bid security provided under ITB Clause 15 shall also be suitably extended. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request will not be required nor permitted to modify its bid.</p> |
| <p>17. Format and Signing of Bid</p> | <p>17.1 The Bidder shall prepare an original and a copy, clearly marking each “ORIGINAL BID” and “COPY OF BID,” as appropriate. In the event of any discrepancy between them, the original shall govern.</p> <p>17.2 The original and the copy of the bid shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the contract. All pages of the bid, except for not amended printed literature, shall be initialed by the person or persons signing the bid.</p> <p>17.3 Any interlineations, erasures, or overwriting shall be valid only if they are initialed by the person or persons signing the bid.</p> <p>17.4 The Bidder shall furnish information as described in the Form of Bid on commissions or gratuities, if any, paid or to be paid to agents relating to this Bid, and to contract execution if the Bidder is awarded the contract.</p> |

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| <p>D. Submission of Bids</p> | |
| <p>18. Sealing and Marking of Bids</p> | <p>18.1 The Bidder shall seal the original and the copy of the bid in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” The envelopes shall then be sealed in an outer envelope.</p> <p>18.2 The inner and outer envelopes shall:</p> <ul style="list-style-type: none"> (a) be addressed to the Purchaser at the address given in the Bid Data Sheet; and (b) bear the Invitation for Bids (IFB) title and number indicated in the Bid Data Sheet (if any), and a statement: “DO NOT OPEN BEFORE,” to be completed with the time and the date specified in the Bid Data Sheet, pursuant to ITB Clause 22.1. |

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| | <p>18.3 The inner envelopes shall also indicate the name and address of the Bidder to enable the bid to be returned unopened in case it is declared "late."</p> <p>18.4 If the outer envelope is not sealed and marked as required by ITB Clause 18.2, the Purchaser will assume no responsibility for the bid's misplacement or premature opening.</p> |
| <p>19. Deadline for Submission of Bids</p> | <p>19.1 Bids must be received by the Purchaser at the address specified under ITB Clause 18.2 (a) no later than the time and date specified in the Bid Data Sheet.</p> <p>19.2 The Purchaser may, at its discretion, extend this deadline for the submission of bids by amending the bidding documents in accordance with ITB Clause 7, in which case all rights and obligations of the Purchaser and bidders previously subject to the deadline will thereafter be subject to the deadline as extended.</p> |
| <p>20. Late Bids</p> | <p>20.1 Any bid received by the Purchaser after the deadline for submission of bids prescribed by the Purchaser pursuant to ITB Clause 19 will be rejected and returned unopened to the Bidder.</p> |
| <p>21. Modification and Withdrawal of Bids</p> | <p>21.1 The Bidder may modify or withdraw its bid after the bid's submission, provided that written notice of the modification, including substitution or withdrawal of the bids, is received by the Purchaser prior to the deadline prescribed for submission of bids.</p> <p>21.2 The Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of ITB Clause 18. A withdrawal notice may also be sent by facsimile, but followed by a signed confirmation copy, postmarked no later than the deadline for submission of bids.</p> <p>21.3 No bid may be modified after the deadline for submission of bids.</p> <p>21.4 No bid may be withdrawn in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Bid Form. Withdrawal of a bid during this interval may result in the Bidder's forfeiture of its bid security, pursuant to the ITB Clause 15.7.</p> |

| E. Opening and Evaluation of Bids | |
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| 22. Opening of Bids by the Purchaser | <p>22.1 The Purchaser will open all bids in the presence of bidders' representatives who choose to attend, at the time, and date, and at the place specified in the Bid Data Sheet. The bidders' representatives who are present shall sign a register evidencing their attendance.</p> <p>22.2 The bidders' names, bid modifications or withdrawals, bid prices, discounts, and the presence or absence of requisite bid security and such other details as the Purchaser, at its discretion, may consider appropriate, will be announced at the opening. No bid shall be rejected at bid opening, except for late bids, which shall be returned unopened to the Bidder pursuant to ITB Clause 20.</p> <p>22.3 Bids (and modifications sent pursuant to ITB Clause 21.2) that are not opened and read out at bid opening shall not be considered further for evaluation.</p> <p>22.4 The Purchaser will prepare minutes of the bid opening.</p> |
| 23. Clarification of Bids | <p>23.1 During evaluation of the bids, the Purchaser may, at its discretion, ask the Bidder for a clarification of its bid. The request for clarification and the response shall be in writing, and no change in the prices or substance of the bid shall be sought, offered, or permitted.</p> |
| 24. Preliminary Examination | <p>24.1 The Purchaser will examine the bids to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the bids are generally in order.</p> <p>24.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If there is a discrepancy between words and figures, the amount in words will prevail. If the Supplier does not accept the correction of the errors, its bid will be rejected, and its bid security may be forfeited.</p> <p>24.3 The Purchaser may waive any minor informality, nonconformity, or irregularity in a bid which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Bidder.</p> <p>24.4 Prior to the detailed evaluation, pursuant to ITB Clause 25, the Purchaser will determine the substantial responsiveness of each bid to the bidding documents. For purposes of these Clauses, a substantially responsive bid is one which conforms to all the terms and conditions</p> |

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| | <p>of the bidding documents without material deviations. Deviations from, or objections or reservations to critical provisions, such as those concerning Bid Security (ITB Clause 15), Applicable Law (GCC Clause 31), and Taxes and Duties (GCC Clause 31), will be deemed to be a material deviation. The Purchaser’s determination of a bid’s responsiveness is to be based on the contents of the bid itself without recourse to extrinsic evidence.</p> <p>24.5 If a bid is not substantially responsive, it will be rejected by the Purchaser and may not subsequently be made responsive by the Bidder by correction of the nonconformity.</p> |
| <p>25. Evaluation and Comparison of Bids</p> | <p>25.1 The Purchaser will evaluate and compare the bids which have been determined to be substantially responsive, pursuant to ITB Clause 24.</p> <p>25.2 The comparison shall be between the price quoted, such price to include all costs, as well as duties and taxes paid or payable on components and raw material incorporated or to be incorporated in the goods but excluding VAT</p> <p>25.3 The Purchaser’s evaluation of a bid will take into account, in addition to the bid price quoted in accordance with ITB Clause 11.2, one or more of the following factors if specified under Clause 25.3 in the Bid Data Sheet, and quantified in ITB Clause 25.4</p> <ul style="list-style-type: none"> (a) delivery schedule offered in the bid; (b) the cost of components, mandatory spare parts, and service; (c) the availability of spare parts and after-sales services for the equipment offered in the bid; <p>25.4 For factors retained in the Bid Data Sheet pursuant to ITB 25.3, one or more of the following quantification methods will be applied, as detailed in the Bid Data Sheet:</p> <ul style="list-style-type: none"> (a) <i>Delivery schedule.</i> <ul style="list-style-type: none"> (i) The Purchaser requires that the goods under the Invitation for Bids shall be delivered at the time specified in the Schedule of Requirements. Treating the bid resulting in the earliest time of arrival as the base, a delivery “adjustment” will be calculated for other bids by applying a percentage, specified in the Bid Data Sheet, of the price quoted for each week of delay beyond the base, and this will be added to the bid price for evaluation. No credit shall be given to early delivery. or (ii) The goods covered under this invitation are required to be delivered within an acceptable range of weeks specified in the Schedule of Requirement. No credit will be given to earlier deliveries, and bids offering delivery beyond this |

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| | <p>range will be treated as non-responsive. Within this acceptable range, an adjustment per week, as specified in the Bid Data Sheet, will be added for evaluation to the bid price of bids offering deliveries later than the earliest delivery period specified in the Schedule of Requirements.</p> <p>or</p> <p>(iii) The goods covered under this invitation are required to be delivered in partial, as specified in the Schedule of Requirements. Bids offering deliveries earlier or later than the specified deliveries will be adjusted in the evaluation by adding to the bid price a factor equal to a percentage, specified in the Bid Data Sheet, of quoted price per week of variation from the specified delivery schedule.</p> <p>(b) <i>Cost of spare parts.</i></p> <p>(i) The list of items and quantities of major assemblies, components, and selected spare parts, likely to be required during the initial period of operation specified in the Bid Data Sheet, is annexed to the Technical Specifications. The total cost of these items, at the unit prices quoted in each bid, will be added to the bid price.</p> <p>or</p> <p>(ii) The Purchaser will draw up a list of high-usage and high value items of components and spare parts, along with estimated quantities of usage in the initial period of operation specified in the Bid Data Sheet. The total cost of these items and quantities will be computed from spare parts unit prices submitted by the Bidder and added to the bid price.</p> <p>or</p> <p>(iii) The Purchaser will estimate the cost of spare parts usage in the initial period of operation specified in the Bid Data Sheet, based on information furnished by each Bidder, as well as on past experience of the Purchaser or other purchasers in similar situations. Such costs shall be added to the bid price for evaluation.</p> <p>(c) <i>Spare parts and after sales service facilities in Sri Lanka</i> The cost to the Purchaser of establishing the minimum service facilities and parts inventories, as outlined in the Bid Data Sheet or elsewhere in the bidding documents, if quoted separately, shall be added to the bid price.</p> |
| <p>26. Contacting the Purchaser</p> | <p>26.1 From the time of bid opening to the time of contract award, if any biddervishes to contact the Purchaser on any matter related to the bid, it should do so in writing.</p> |

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| | 26.2 Any effort by a Bidder to influence the Purchaser in its decisions on bid evaluation, bid comparison, or contract award may result in the rejection of the Bidder's bid. |
| F. Award of Contract | |
| 27. Post-qualification | <p>27.1 In the absence of prequalification, the Purchaser will determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated responsive bid is qualified to perform the contract satisfactorily, in accordance with the criteria listed in ITB Clause 13.</p> <p>27.2 The determination will take into account the Bidder's financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB Clause 13.2, as well as such other information as the Purchaser deems necessary and appropriate.</p> <p>27.3 An affirmative determination will be a prerequisite for award of the contract to the Bidder. A negative determination will result in rejection of the Bidder's bid, in which event the Purchaser will proceed to the next lowest evaluated bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.</p> |
| 28. Award Criteria | 28.1 Subject to ITB Clause 29, the Purchaser will award the contract to the successful Bidder whose bid has been determined to be substantially responsive and has been determined to be the lowest evaluated bid, provided further that the Bidder is determined to be qualified to perform the contract satisfactorily. |
| 29 Purchaser's Right to Vary Quantities at Time of Award | 29.1 The Purchaser reserves the right at the time of contract award to increase or decrease, by the percentage indicated in the Bid Data Sheet, the quantity of goods and services originally specified in the Schedule of Requirements without any change in unit price or other terms and conditions. |
| 30. Purchaser's Right to Accept Any Bid and to Reject Any or All Bids | 30.1 The Purchaser reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to the affected Bidder or bidders. |
| 31. Notification of Award | <p>31.1 Prior to the expiration of the period of bid validity, the Purchaser will notify the successful Bidder in writing or by facsimile, to be confirmed in writing by registered letter, that its bid has been accepted.</p> <p>31.2 The notification of award will constitute the formation of the Contract.</p> <p>31.3 Upon the successful Bidder's furnishing of the performance security pursuant to ITB Clause 33, the Purchaser will promptly notify the name of the winning Bidder to each unsuccessful Bidder and will discharge its bid security, pursuant to ITB Clause 15.</p> |

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| <p>32. Signing of Contract</p> | <p>32.1 Within fourteen (14) days of receipt of the Notification of award of contract, the successful Bidder shall sign the contract.</p> |
| <p>33. Performance Security</p> | <p>33.1 Within fourteen one (14) days of the receipt of notification of award from the Purchaser, the successful Bidder shall furnish the performance security in the Form provided in the bidding documents, or in another form acceptable to the Purchaser.</p> <p>33.2 Failure of the successful Bidder to comply with the requirement of ITB Clause 32.2 or ITB Clause 33.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security, in which event the Purchaser may make the award to the next lowest evaluated Bidder or call for new bids.</p> |
| <p>34. Corrupt or Fraudulent Practices</p> | <p>34.1 The Bank requires that Borrowers (including beneficiaries of Bank loans), as well as Bidders/Suppliers/Contractors under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Bank:</p> <ul style="list-style-type: none"> (a) defines, for the purposes of this provision, the terms set forth below as follows: <ul style="list-style-type: none"> (i) “corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition; (b) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question; (c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed |

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| | <p>contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a Bank-financed contract.</p> <p>34.2 Furthermore, Bidders shall be aware of the provision stated in Clauses 5.4 and 24.1 of the General Conditions of Contract.</p> |
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SECTION IV

GENERAL CONDITIONS

OF CONTRACT

Section IV General Conditions of Contract List of Clauses

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Section IV

General Conditions of Contract

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| 1. Definitions | <p>1.1 In this Contract, the following terms shall be interpreted as indicated:</p> <ul style="list-style-type: none">(a) “The Contract” means the agreement entered into between the Purchaser and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.(b) “The Contract Price” means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations.(c) “The Goods” means all of the equipment, machinery, and/or other materials which the Supplier is required to supply to the Purchaser under the Contract.(d) “The Services” means those services ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental services, such as installation, commissioning, provision of technical assistance, training, and other such obligations of the Supplier covered under the Contract.(e) “GCC” means the General Conditions of Contract contained in this section.(f) “SCC” means the Special Conditions of Contract.(g) “The Purchaser” means the organization purchasing the Goods, as named in SCC.(h) “The Purchaser’s country” is Democratic Socialist Republic of Sri Lanka.(i) “The Supplier” means the individual or firm supplying the Goods and Services under this Contract and named in SCC.(j) “The Project Site,” where applicable, means the place or places named in SCC.(k) “Day” means calendar day. |
| 2. Application | <p>2.1 These General Conditions shall apply to the extent that they are not superseded by provisions of other parts of the Contract.</p> |

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| <p>3. Country of Origin</p> | <p>3.1 All Goods and Services supplied under the Contract shall have their origin in the countries and territories eligible under the rules of the World Bank, as further elaborated in the SCC.</p> <p>3.2 For purposes of this Clause, “origin” means the place where the Goods were mined, grown, or produced, or from which the Services are supplied. Goods are produced when, through manufacturing,</p> <p style="padding-left: 40px;">processing, or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.</p> <p>3.3 The origin of Goods and Services is distinct from the nationality of the Supplier.</p> |
| <p>4. Standards</p> | <p>4.1 The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications, and, when no applicable standard is mentioned, to the authoritative standards appropriate to the Goods’ country of origin. Such standards shall be the latest issued by the concerned institution.</p> |
| <p>5. Use of Contract Documents and Information; Inspection and Audit by the Bank</p> | <p>5.1 The Supplier shall not, without the Purchaser’s prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Purchaser in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.</p> <p>5.2 The Supplier shall not, without the Purchaser’s prior written consent, make use of any document or information enumerated in GCC Clause 5.1 except for purposes of performing the Contract.</p> <p>5.3 Any document, other than the Contract itself, enumerated in GCC Clause 5.1 shall remain the property of the Purchaser and shall be returned (all copies) to the Purchaser on completion of the Supplier’s performance under the Contract if so required by the Purchaser.</p> <p>5.4 The Supplier shall permit the Bank to inspect the Supplier’s accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by the Bank, if so required by the Bank.</p> |

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| <p>6. Patent Rights</p> | <p>6.1 The Supplier shall indemnify the Purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in the Purchaser's country.</p> |
| <p>7. Performance Security</p> | <p>7.1 Within fourteen (14) days of receipt of the notification of Contract award, the successful Bidder shall furnish to the Purchaser the performance security to the amount 10(ten) percent of the Contract Price.</p> <p>7.2 The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.</p> <p>7.3 The performance security shall be in one of the following forms:</p> <ul style="list-style-type: none"> (a) a bank guarantee issued by a reputable bank in Sri Lanka, acceptable to the Purchaser, in the form provided in the bidding documents or another form acceptable to the Purchaser; or (b) a cashier's or certified check. <p>7.4 The performance security will be discharged by the Purchaser and returned to the Supplier not later than thirty (30) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless otherwise specified in SCC.</p> <p>7.5 After delivery and acceptance of the Goods, the performance security shall be reduced to two (2) percent of the Contract Price to cover the Supplier's warranty obligations in accordance with Clause GCC 15.2</p> |
| <p>8. Inspections and Tests</p> | <p>8.1 The Purchaser or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to the Purchaser. Technical Specifications shall specify what inspections and tests the Purchaser requires and where they are to be conducted. The Purchaser shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.</p> <p>8.2 The inspections and tests may be conducted on the premises of the Supplier or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the Supplier or its subcontractor(s), all reasonable facilities and assistance, including access to</p> |

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| | <p>drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.</p> <p>8.3 Should any inspected or tested Goods fail to conform to the Specifications, the Purchaser may reject the Goods, and the Supplier shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to the Purchaser.</p> <p>8.4 Nothing in GCC Clause 8 shall in any way release the Supplier from any warranty or other obligations under this Contract.</p> |
| 9. Packing | <p>9.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.</p> |
| 10. Delivery and Documents | <p>10.1 Delivery of the Goods shall be made by the Supplier in accordance with the terms specified in the Schedule of Requirements. The details of documents to be furnished by the Supplier are specified in SCC.</p> |
| 11. Free of Damages | <p>11.1 The Goods supplied under the Contract shall be free of damages incidental to manufacture or acquisition, transportation, storage, and delivery.</p> |
| 12. Transportation | <p>12.1 Where the Supplier is required under the Contract to transport the Goods to a specified place of destination including insurance and storage, as shall be specified in the Contract, shall be arranged by the Supplier, and related costs shall be included in the Contract Price.</p> |
| 13. Incidental Services | <p>13.1 The Supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC: 13.2</p> <ul style="list-style-type: none"> (a) performance or supervision of on-site assembly and/or start-up of the supplied Goods; (b) furnishing of tools required for assembly and/or maintenance of the supplied Goods; |

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| | <ul style="list-style-type: none"> (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods; (d) performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and (e) Training of the Purchaser’s personnel, at the Supplier’s plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods. |
| 14. Spare Parts | <p>14.1 As specified in SCC, the Supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the Supplier:</p> <ul style="list-style-type: none"> (a) such spare parts as the Purchaser may elect to purchase from the Supplier, provided that this election shall not relieve the Supplier of any warranty obligations under the Contract; and (b) in the event of termination of production of the spare parts: <ul style="list-style-type: none"> (i) advance notification to the Purchaser of the pending termination, in sufficient time to permit the Purchaser to procure needed requirements; and (ii) following such termination, furnishing at no cost to the Purchaser, the blueprints, drawings, and specifications of the spare parts, if requested. |
| 15. Warranty | <p>15.1 The Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The Supplier further warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the Purchaser’s specifications) or from any act or omission of the Supplier, that may develop under normal use of the supplied Goods in the conditions prevailing in the country of final destination.</p> <p>15.2 This warranty shall remain valid for twelve (12) months after the Goods or any portion thereof as the case may be, have been</p> |

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| | <p>delivered to and accepted at the final destination indicated in the Contract, unless specified otherwise in SCC.</p> <p>15.3 The Purchaser shall promptly notify the Supplier in writing of any claims arising under this warranty.</p> <p>15.4 Upon receipt of such notice, the Supplier shall, within a period of 7 days and with all reasonable speed, repair or replace the defective Goods or parts thereof, without costs to the Purchaser.</p> <p>15.5 If the Supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the Purchaser may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.</p> |
| 16. Payment | <p>16.1 The method and conditions of payment to be made to the Supplier under this Contract shall be specified in SCC.</p> <p>16.2 The Supplier's request(s) for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and Services performed, and by documents submitted pursuant to GCC Clause 10, and upon fulfilment of other obligations stipulated in the Contract.</p> <p>16.3 Payments shall be made promptly by the Purchaser, but in no case later than sixty (60) days after submission of an invoice or claim by the Supplier.</p> |
| 17. Prices | <p>17.1 Prices charged by the Supplier for Goods delivered and Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any price adjustments authorized in SCC or in the Purchaser's request for bid validity extension, as the case may be.</p> |
| 19. Contract Amendments | <p>19.1 Subject to GCC Clause 18, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.</p> |
| 20. Assignment | <p>20.1 The Supplier shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Purchaser's prior written consent.</p> |
| 21. Subcontracts | <p>21.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under this Contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the Supplier from any liability or obligation under the Contract.</p> |

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| | <p>21.2 Subcontracts must comply with the provisions of GCC Clause 3.</p> |
| <p>22. Delays in the Supplier's Performance</p> | <p>22.1 Delivery of the Goods and performance of Services shall be made by the Supplier in accordance with the time schedule prescribed by the Purchaser in the Schedule of Requirements.</p> <p>22.2 If at any time during performance of the Contract, the Supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods and performance of Services, the Supplier shall promptly notify the Purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of Contract.</p> <p>22.3 Except as provided under GCC Clause 25, a delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 23, unless an extension of time is agreed upon pursuant to GCC Clause 22.2 without the application of liquidated damages.</p> |
| <p>23. Liquidated Damages</p> | <p>23.1 Subject to GCC Clause 25, if the Supplier fails to deliver any or all of the Goods or to perform the Services within the period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in SCC of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in SCC. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause 24.</p> |
| <p>24. Termination for Default</p> | <p>24.1 The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate this Contract in whole or in part:</p> <ul style="list-style-type: none"> (a) if the Supplier fails to deliver any or all of the Goods within the period(s) specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 22; or (b) if the Supplier fails to perform any other obligation(s) under the Contract. |

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| | <p>24.2 In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 24.1, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Purchaser for any excess costs for such similar Goods or Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.</p> |
| <p>25. Force Majeure</p> | <p>25.1 Notwithstanding the provisions of GCC Clauses 22, 23, and 24, the Supplier shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.</p> <p>25.2 For purposes of this clause, “Force Majeure” means an event beyond the control of the Supplier and not involving the Supplier’s fault or negligence and not foreseeable. Such events may include, but are not restricted to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.</p> <p>25.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.</p> |
| <p>26. Termination for Insolvency</p> | <p>26.1 The Purchaser may at any time terminate the Contract by giving written notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.</p> |
| <p>27. Termination for Convenience</p> | <p>27.1 The Purchaser, by written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser’s convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.</p> <p>27.2 The Goods that are complete and ready for supply within thirty (30) days after the Supplier’s receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:</p> |

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| | <p>(a) to have any portion completed and delivered at the Contract terms and prices; and/or</p> <p>(b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Services and for materials and parts previously procured by the Supplier.</p> |
| 28. Settlement of Disputes | <p>28.1 If any dispute or difference of any kind whatsoever shall arise between the Purchaser and the Supplier in connection with or arising out of the Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.</p> |
| | <p>28.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Purchaser or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.</p> <p>28.2.1 Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract.</p> <p>28.2.2 Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in Arbitration Act, No 11 of 1995, Sri Lanka.</p> |
| | <p>28.3 Notwithstanding any reference to arbitration herein,</p> <p>(a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and</p> <p>(b) the Purchaser shall pay the Supplier any monies due the Supplier.</p> |
| 29. Limitation of Liability | <p>29.1 Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to Clause 6,</p> <p>(a) the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser and</p> <p>(b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.</p> |
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| 30. Governing Language | 30.1 The Contract shall be written in English language. All correspondence and other documents pertaining to the Contract which are exchanged by the parties shall be written in English language. |
| 31. Applicable Law | 31.1 The Contract shall be interpreted in accordance with the laws of Socialist Democratic Republic of Sri Lanka. |
| 32. Notices | <p>32.1 Any notice given by one party to the other pursuant to this Contract shall be sent to the other party in writing or facsimile and confirmed in writing to the other party's address specified in SCC.</p> <p>32.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.</p> |
| 33. Taxes and Duties | 33.1 The Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser. |