

# **STANDARD BIDDING DOCUMENT**

## **Procurement of Goods**

### **Single-Stage: One-Envelope Bidding Procedure**

**Asian Development Bank**

**December 2016**

CONFIDENTIAL

# **BIDDING DOCUMENT**

## **Procurement of Goods**

**Single-Stage: One-Envelope  
Bidding Procedure**

**FOR PROCUREMENT OF 450 NOS.  
PASSENGER SEATING FACILITY  
FOR**

**RAILWAY STATIONS.**

**Issued on 14.02.2024**

**Invitation for Bids No.: REIP/ADB/NCB/G/22**

**Purchaser: MINISTRY OF TRANSPORT & HIGHWAYS.**

**Country: SRI LANKA**

CONFIDENTIAL

## **Preface**

This Bidding Document for Procurement of Goods has been prepared by Ministry of Transport & Highways and is based on the Standard Bidding Document for the Procurement of Goods issued by the Asian Development Bank dated December 2016

This document reflects the structure and the provisions of the Master Procurement Document for the Procurement of Goods, except where specific considerations within the Asian Development Bank have required a change.

CONFIDENTIAL

CONFIDENTIAL

# Table of Contents

## **PART I – Bidding Procedures**

Section 1.	Instructions to Bidders .....	1-1
Section 2.	Bid Data Sheet .....	2-1
Section 3.	Evaluation and Qualification Criteria .....	3-1
Section 4.	Bidding Forms .....	4-1
Section 5.	Eligible Countries.....	5-1

## **PART II – Supply Requirements**

Section 6.	Schedule of Supply.....	6-1
------------	-------------------------	-----

## **PART III – Conditions of Contract and Contract Forms**

Section 7.	General Conditions of Contract .....	7-1
Section 8.	Special Conditions of Contract .....	8-1
Section 9.	Contract Forms .....	9-1

# Section 1 - Instructions to Bidders

## Table of Contents

<b>A.</b>	<b>General .....</b>	<b>1-3</b>
1.	Scope of Bid .....	1-3
2.	Source of Funds .....	1-3
3.	Fraud and Corruption.....	1-3
4.	Eligible Bidders .....	1-5
5.	Eligible Goods and Related Services .....	1-6
<b>B.</b>	<b>Contents of Bidding Document.....</b>	<b>1-7</b>
6.	Sections of the Bidding Document.....	1-7
7.	Clarification of Bidding Document .....	1-7
8.	Amendment of Bidding Document.....	1-7
<b>C.</b>	<b>Preparation of Bids .....</b>	<b>1-8</b>
9.	Cost of Bidding .....	1-8
10.	Language of Bid.....	1-8
11.	Documents Comprising the Bid .....	1-8
12.	Bid Submission Sheet and Price Schedules .....	1-8
13.	Alternative Bids.....	1-8
14.	Bid Prices and Discounts.....	1-9
15.	Currencies of Bid .....	1-10
16.	Documents Establishing the Eligibility of the Bidder.....	1-11
17.	Documents Establishing the Eligibility of the Goods and Related Services .....	1-11
18.	Documents Establishing the Conformity of the Goods and Related Services to the Bidding Document .....	1-11
19.	Documents Establishing the Qualifications of the Bidder .....	1-11
20.	Period of Validity of Bids.....	1-12
21.	Bid Security/Bid-Securing Declaration .....	1-12
22.	Format and Signing of Bid.....	1-13
<b>D.</b>	<b>Submission and Opening of Bids .....</b>	<b>1-14</b>
23.	Sealing and Marking of Bids.....	1-14
24.	Deadline for Submission of Bids.....	1-14
25.	Late Bids.....	1-14
26.	Withdrawal, Substitution, and Modification of Bids.....	1-15
27.	Bid Opening.....	1-15
<b>E.</b>	<b>Evaluation and Comparison of Bids .....</b>	<b>1-16</b>
28.	Confidentiality .....	1-16
29.	Clarification of Bids.....	1-16
30.	Deviations, Reservations, and Omissions .....	1-16



31.	Determination of Responsiveness.....	1-17
32.	Nonmaterial Nonconformities.....	1-17
33.	Correction of Arithmetical Errors.....	1-18
34.	Conversion to Single Currency.....	1-18
35.	Margin of Preference.....	1-18
36.	Evaluation of Bids.....	1-18
37.	Comparison of Bids.....	1-19
38.	Postqualification of the Bidder.....	1-18
39.	Purchaser's Right to Accept Any Bid, and to Reject Any or All Bids.....	1-19
<b>F.</b>	<b>Award of Contract .....</b>	<b>1-19</b>
40.	Award Criteria.....	1-19
41.	Purchaser's Right to Vary Quantities at Time of Award.....	1-20
42.	Notification of Award.....	1-20
43.	Signing of Contract.....	1-20
44.	Performance Security.....	1-20

## A. General

- 1. Scope of Bid**
- 1.1 In connection with the Invitation for Bids (IFB) indicated in the Bid Data Sheet (BDS), the Purchaser, as indicated in the BDS, issues this Bidding Document for the supply of Goods and Related Services incidental thereto as specified in Section 6 (Schedule of Supply). The name, identification, and number of Lots of the international competitive bidding (ICB) are provided in the BDS.
- 1.2 Throughout this Bidding Document,
- (a) the term "in writing" means communicated in written form and delivered against receipt;
  - (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
  - (c) "day" means calendar day.
- 2. Source of Funds**
- 2.1 The Borrower or Recipient (hereinafter called "Borrower") indicated in the BDS has applied for or received financing (hereinafter called "funds") from the Asian Development Bank (hereinafter called "ADB") toward the cost of the project named in the BDS. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which this Bidding Document is issued.
- 2.2 Payments by ADB will be made only at the request of the Borrower and upon approval by ADB in accordance with the terms and conditions of the Financing Agreement between the Borrower and ADB (hereinafter called the Financing Agreement), and will be subject in all respects to the terms and conditions of that Financing Agreement. No party other than the Borrower shall derive any rights from the Financing Agreement or have any claim to the funds.
- 3. Fraud and Corruption**
- 3.1 ADB's Anticorruption Policy requires Borrowers (including beneficiaries of ADB-financed activity), as well as Bidders, Suppliers, and Contractors under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, ADB
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
    - (ii) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

- (iii) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - (iv) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
  - (v) "obstructive practice" means (a) deliberately destroying, falsifying, altering, or concealing of evidence material to an ADB investigation; (b) making false statements to investigators in order to materially impede an ADB investigation; (c) failing to comply with requests to provide information, documents, or records in connection with an Office of Anticorruption and Integrity (OAI) investigation; (d) threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (e) materially impeding ADBs contractual rights of audit or access to information; and
  - (vi) "integrity violation" is any act which violates ADB's Anticorruption Policy, including (i) to (v) above and the following: abuse, conflict of interest, violations of ADB sanctions, retaliation against whistleblowers or witnesses, and other violations of ADB's Anticorruption Policy, including failure to adhere to the highest ethical standard.
- (b) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;
  - (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation;
  - (d) will impose remedial actions on a firm or an individual, at any time, in accordance with ADB's Anticorruption Policy and Integrity Principles and Guidelines (both as amended from time to time), including declaring ineligible, either indefinitely or for a stated period of time, to participate<sup>1</sup> in ADB-financed, -administered, or -supported activities or to benefit from an ADB- financed, -administered, or -supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations; and

<sup>1</sup> Whether as a Contractor, Subcontractor, Consultant, Manufacturer or Supplier, or Service Provider; or in any other capacity (different names are used depending on the particular Bidding Document).

- (e) will have the right to require that a provision be included in bidding documents and in contracts financed by ADB, requiring Bidders, suppliers and contractors to permit ADB or its representative to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by ADB.

3.2 Furthermore, Bidders shall be aware of the provision stated in Subclause 3.2 and Subclause 35.1 (c) of the General Conditions of Contract.

#### 4. Eligible Bidders

4.1 A Bidder may be a natural person, private entity, or government-owned enterprise subject to ITB 4.5-or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture. In the case of a joint venture,

- (a) all parties to the Joint Venture shall be jointly and severally liable; and
- (b) the Joint Venture shall nominate a representative who shall have the authority to conduct all businesses for and on behalf of any and all the parties of the Joint Venture during the bidding process and, in the event the Joint Venture is awarded the Contract, during contract execution.

4.2 A Bidder, and all parties constituting the Bidder, shall have the nationality of an eligible country, in accordance with Section 5 (Eligible Countries). A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract, including related services.

4.3 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to be in a conflict of interest with one or more parties in this bidding process if any of, including but not limited to, the following apply:

- (a) they have controlling shareholders in common; or
- (b) they receive or have received any direct or indirect subsidy from any of them; or
- (c) they have the same legal representative for purposes of this Bid; or
- (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to material information about or improperly influence the Bid of another Bidder, or influence the decisions of the Purchaser regarding this bidding process; or

- (e) a Bidder participates in more than one bid in this bidding process, either individually or as a partner in a joint venture, except for alternative offers permitted under ITB 13. This will result in the disqualification of all Bids in which it is involved. However, subject to any finding of a conflict of interest in terms of ITB 4.3(a)–(d) above, this does not limit the participation of a Bidder as a subcontractor in another bid or of a firm as a subcontractor in more than one Bid; or
- (f) a Bidder or any affiliated entity, participated as a consultant in the preparation of the design or technical specifications of the goods and services that are the subject of the Bid; or
- (g) a Bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Purchaser or Borrower as Project Manager for the contract.
- 4.4 A firm shall not be eligible to participate in any procurement activities under an ADB-financed, -administered, or -supported project while under temporary suspension or debarment by ADB pursuant to its Anticorruption Policy (see ITB 3), whether such debarment was directly imposed by ADB, or enforced by ADB pursuant to the Agreement for Mutual Enforcement of Debarment Decisions. A bid from a temporary suspended or debarred firm will be rejected.
- 4.5 Government-owned enterprises in the Purchaser's country shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of the Purchaser.
- 4.6 Bidders shall provide such evidence of their continued eligibility satisfactory to the Purchaser, as the Purchaser shall reasonably request.
- 4.7 Firms shall be excluded if by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods or contracting of works or services from that country or any payments to persons or entities in that country.
- 5. Eligible Goods and Related Services**
- 5.1 All Goods and Related Services to be supplied under the Contract and financed by ADB, shall have their country of origin in eligible source countries as defined in ITB 4.2, and all expenditures under the Contract will be limited to such Goods and Related Services.
- 5.2 For purposes of this clause, the term "goods" includes commodities, raw material, machinery, equipment, and industrial plants; and "related services" includes services such as insurance, transportation, installation, commissioning, training, and initial maintenance.
- 5.3 The term "country of origin" means the country where the goods have been mined, grown, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components.
- 5.4 The nationality of the firm that produces, assembles, distributes, or sells the goods shall not determine their origin.

## B. Contents of Bidding Document

- 6. Sections of the Bidding Document**
- 6.1 The Bidding Document consists of Parts I, II, and III, which include all the sections indicated below, and should be read in conjunction with any addenda issued in accordance with ITB 8.
- PART I Bidding Procedures**
- Section 1 Instructions to Bidders (ITB)
  - Section 2 Bid Data Sheet (BDS)
  - Section 3 Evaluation and Qualification Criteria (EQC)
  - Section 4 Bidding Forms (BDF)
  - Section 5 Eligible Countries (ELC)
- PART II Supply Requirements**
- Section 6 Schedule of Supply (SS)
- PART III Conditions of Contract and Contract Forms**
- Section 7 General Conditions of Contract (GCC)
  - Section 8 Special Conditions of Contract (SCC)
  - Section 9 Contract Forms (COF)
- 6.2 The IFB issued by the Purchaser is not part of the Bidding Document.
- 6.3 The Purchaser is not responsible for the completeness of the Bidding Document and its addenda, if they were not obtained directly from the source stated by the Purchaser in the IFB.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document, may result in the rejection of the Bid.
- 7. Clarification of Bidding Document**
- 7.1 A prospective Bidder requiring any clarification on the Bidding Document shall contact the Purchaser in writing at the Purchaser's address indicated in the BDS. The Purchaser will respond in writing to any request for clarification, provided that such request is received no later than 21 days prior to the deadline for submission of Bids. The Purchaser shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3, e. Should the Purchaser deem it necessary to amend the Bidding Document as a result of a clarification, it shall do so following the procedure under ITB 8 and ITB 24.2.
- 8. Amendment of Bidding Document**
- 8.1 At any time prior to the deadline for submission of the Bids, the Purchaser may amend the Bidding Document by issuing addenda.
- 8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document directly from the Purchaser in accordance with ITB 6.3.
- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Purchaser may, at its discretion, extend the deadline for the submission of the Bids, pursuant to ITB 24.2.

## C. Preparation of Bids

- 9. Cost of Bidding** 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Purchaser shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 10. Language of Bid** 10.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Purchaser, shall be written in the language specified in the BDS. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the BDS, in which case, for purposes of interpretation of the Bid, such translation shall govern.
- 11. Documents Comprising the Bid** 11.1 The Bid shall comprise the following:
- (a) Bid Submission Sheet and the applicable Price Schedules, in accordance with ITB 12, ITB 14, and ITB 15;
  - (b) Bid Security or Bid-Securing Declaration, in accordance with ITB 21;
  - (c) alternative Bids, if permissible, in accordance with ITB 13;
  - (d) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 22;
  - (e) documentary evidence in accordance with ITB 16, establishing the Bidder's eligibility to bid;
  - (f) documentary evidence in accordance with ITB 17, that the Goods and Related Services to be supplied by the Bidder are of eligible origin;
  - (g) documentary evidence in accordance with ITB 18 and ITB 31, that the Goods and Related Services conform to the Bidding Document;
  - (h) documentary evidence in accordance with ITB 19, establishing the Bidder's qualifications to perform the contract if its Bid is accepted; and
  - (i) any other document required in the BDS.
- 12. Bid Submission Sheet and Price Schedules** 12.1 The Bidder shall submit the Bid Submission Sheet using the form furnished in Section 4 (Bidding Forms). This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

- 12.2 The Bidder shall submit the Price Schedules for Goods and Related Services, according to their origin as appropriate, using the forms

furnished in Section 4 (Bidding Forms) and as required in the BDS.

**13. Alternative Bids**

13.1 Unless otherwise indicated in the BDS, alternative Bids shall not be considered.

CONFIDENTIAL



**14. Bid Prices and Discounts**

- 14.1 The prices and discounts quoted by the Bidder in the Bid Submission Sheet and in the Price Schedules shall conform to the requirements specified below.
- 14.2 All items in the Schedule of Supply must be listed and priced separately in the Price Schedules. If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. Items not listed in the Price Schedule shall be assumed not to be included in the Bid, and provided that the Bid is substantially responsive, the corresponding adjustment shall be applied in accordance with ITB 32.3
- 14.3 The price to be quoted in the Bid Submission Sheet shall be the total price of the Bid excluding any discounts offered. Absence of the total bid price in the Bid Submission Sheet may result in the rejection of the Bid.
- 14.4 The Bidder shall quote discounts and the methodology for their application in the Bid Submission Sheet.
- 14.5 The terms EXW, CIF, CIP, and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce, at the date of the Invitation for Bids or as specified in the BDS.
- 14.6 Prices shall be quoted as specified in each Price Schedule included in Section 4 (Bidding Forms). The disaggregation of price components is required solely for the purpose of facilitating the comparison of Bids by the Purchaser. This shall not in any way limit the Purchaser's right to contract on any of the terms offered
- (a) for Goods offered from within the Purchaser's country:
- (i) the price of the goods quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of goods quoted ex works or ex factory, or on the previously imported goods of foreign origin quoted ex warehouse, ex showroom, or off-the-shelf;
- (ii) sales tax and all other taxes applicable in the Purchaser's country and payable on the Goods if the Contract is awarded to the Bidder; and
- (iii) the total price for the item.
- (b) for Goods offered from outside the Purchaser's country:
- (i) the price of the goods quoted CIF (named port of destination), or CIP (border point), or CIP (named place of destination), in the Purchaser's country, as specified in the BDS;

- (ii) the price of the goods quoted FOB port of shipment (or FCA, as the case may be), if specified in the BDS; and
  - (iii) the total price for the item.
- (c) for Related Services whenever such are specified in the Schedule of Supply:
- (i) the local currency cost component of each item comprising the Related Services; and
  - (ii) the foreign currency cost component of each item comprising the Related Services, inclusive of all customs duties, sales and other similar taxes applicable in the Purchaser's country, payable on the Related Services, if the Contract is awarded to the Bidder.
- 14.7 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account, unless otherwise specified in the BDS. A Bid submitted with an adjustable price quotation shall be treated as nonresponsive and shall be rejected, pursuant to ITB 31. However, if in accordance with the BDS, prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract, but a Bid submitted with no indexes identified in the Tables of Adjustment Data, price adjustment shall be treated as zero for the purpose of price adjustment during the performance of the contract.
- 14.8 If so indicated pursuant to ITB 1.1, Bids are being invited for individual contracts (lots) or for any combination of contracts (packages). Unless otherwise indicated in the BDS, prices quoted shall correspond to 100% of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Bidders wishing to offer any price discount for the award of more than one Contract shall specify in their bid the price discount applicable to each package, or alternatively, to individual Contracts within the package. Price discounts shall be submitted in accordance with ITB 14.4, provided the bids for all lots are submitted and opened at the same time.

## 15. Currencies of Bid

- 15.1 Bid prices shall be quoted in the following currencies:
- (a) Bidders may express their bid price in any fully convertible currency. If a Bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but shall use no more than three currencies in addition to the currency of the Purchaser's country.
  - (b) If some of the expenditures for the Related Services are to be incurred in the borrowing country, such expenditures should be expressed in the Bid and will be payable in the Purchaser's currency.

- 16. Documents Establishing the Eligibility of the Bidder**
- 16.1 To establish their eligibility in accordance with ITB 4, Bidders shall
- (a) complete the eligibility declarations in the Bid Submission Sheet, included in Section 4 (Bidding Forms); and
  - (b) if the Bidder is an existing or intended Joint Venture in accordance with ITB 4.1, submit a copy of the Joint Venture Agreement, or a letter of intent to enter into such an agreement. The respective document shall be signed by all legally authorized signatories of all the parties to the existing or intended Joint Venture, as appropriate.
- 17. Documents Establishing the Eligibility of the Goods and Related Services**
- 17.1 To establish the eligibility of the Goods and Related Services, in accordance with ITB 5, Bidders shall complete the country of origin declarations in the Price Schedule Forms included in Section 4 (Bidding Forms).
- 18. Documents Establishing the Conformity of the Goods and Related Services to the Bidding Document**
- 18.1 To establish the conformity of the Goods and Related Services to the Bidding Document, the Bidder shall furnish as part of its Bid documentary evidence that the Goods and Related Services conform to the requirements specified in Section 6 (Supply of Supply).
- 18.2 The documentary evidence may be in the form of literature, drawings, or data, and shall consist of a detailed item-by-item description of the essential technical and performance characteristics of the Goods and Related Services, demonstrating substantial responsiveness of the Goods and Related Services to those requirements, and if applicable, a statement of deviations and exceptions to the provisions of Section 6 (Schedule of Supply).
- 18.3 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Purchaser in Section 6 (Schedule of Supply), are intended to be descriptive only and not restrictive. The Bidder may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Purchaser's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in Section 6 (Schedule of Supply).
- 19. Documents Establishing the Qualifications of the Bidder**
- 19.1 The documentary evidence of the Bidder's qualifications to perform the contract, if its bid is accepted, shall establish to the Purchaser's satisfaction that the Bidder meets each of the qualification criterion specified in Section 3 (Evaluation and Qualification Criteria).
- 19.2 If so required in the BDS, a Bidder that does not manufacture or produce the Goods it offers to supply shall submit the Manufacturer's Authorization using the form included in Section 4 (Bidding Forms) to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods in the Purchaser's country.

- 19.3 If so required in the BDS, a Bidder that does not conduct business within the Purchaser's country shall submit evidence that it will be represented by an agent in the country 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.
- 20. Period of Validity of Bids**
- 20.1 Bids shall remain valid for the period specified in the BDS after the bid submission deadline date prescribed by the Purchaser. A Bid valid for a shorter period shall be rejected by the Purchaser as nonresponsive.
- 20.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Purchaser may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB 21, it shall also be extended 28 days beyond the deadline of the extended bid validity period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its Bid.
- 21. Bid Security/ Declaration**
- 21.1 Unless otherwise specified in the BDS, the Bidder shall furnish as **Bid-Securing** part of its Bid, in original form, either a Bid-Securing Declaration or a bid security as specified in the BDS. In the case of a bid security, the amount and currency shall be as specified in the BDS.
- 21.2 If a Bid-Securing Declaration is required pursuant to ITB 21.1, it shall use the form included in Section 4 (Bidding Forms). The Purchaser will declare a Bidder ineligible to be awarded a Contract for a specified period of time, as indicated in the BDS, if a Bid-Securing Declaration is executed.
- 21.3 If a bid security is specified pursuant to ITB 21.1, the bid security shall be, at the Bidder's option, in any of the following forms:
- (a) an unconditional bank guarantee,
  - (b) an irrevocable letter of credit, or
  - (c) a cashier's or certified check,
- all from a reputable source from an eligible country as described in Section 5 (Eligible Countries). In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section 4 (Bidding Forms), or another form acceptable to the Purchaser. The form must include the complete name of the Bidder. The bid security shall be valid for 28 days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 20.2.
- 21.4 Unless otherwise specified in the BDS, any bid not accompanied by a substantially compliant bid security or Bid-Securing Declaration, if one is required in accordance with ITB 21.1, shall be rejected by the Purchaser as nonresponsive.

- 21.5 If a bid security is specified pursuant to ITB 21.1, the bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the performance security pursuant to ITB 44.
- 21.6 If a bid security is specified pursuant to ITB 21.1, the bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract Agreement and furnished the required performance security.
- 21.7 The bid security may be forfeited or the Bid-Securing Declaration executed,
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Sheet, except as provided in ITB 20.2; or
  - (b) if the successful Bidder fails to
    - (i) sign the Contract Agreement in accordance with ITB 43;
    - (ii) furnish a performance security in accordance with ITB 44; or
    - (iii) accept the arithmetical corrections of its bid in accordance with ITB 33.
- 21.8 The bid security or the Bid-Securing Declaration of a Joint Venture shall be in the name of the Joint Venture that submits the bid. If the Joint Venture has not been legally constituted at the time of bidding, the bid security or the Bid-Securing Declaration shall be in the names of all future partners as named in the letter of intent mentioned in ITB 4.1.

## 22. Format and Signing of Bid

- 22.1 The Bidder shall prepare one original set of the documents comprising the Bid as described in ITB 11 and clearly mark it "ORIGINAL." Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked "ALTERNATIVE". In addition, the Bidder shall submit copies of the bid, in the number specified in the BDS and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 22.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Bid, except for unamended printed literature, shall be signed or initialed by the person signing the bid. If a Bidder submits a deficient authorization, the Bid shall not be rejected in the first instance. The Purchaser shall request the Bidder to submit an acceptable authorization within the number of days as specified in the BDS. Failure to provide an acceptable authorization within the prescribed period of receiving such a request shall cause the rejection of the Bid.

- 22.3 Any amendments such as interlineations, erasures, or overwritings shall be valid only if they are signed or initialed by the person signing the bid.

## D. Submission and Opening of Bids

### 23. Sealing and Marking of Bids

- 23.1 Bidders may always submit their bids by mail or by hand. When so specified in the BDS, Bidders have the option of submitting their bids electronically. Procedures for submission, sealing and marking are as follows:

- (a) Bidders submitting Bids by mail or by hand shall enclose the original and each copy of the Bid, including alternative Bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL", "ALTERNATIVE" and "COPY." These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB 23.2 and ITB 23.3.
- (b) Bidders submitting Bids electronically shall follow the electronic bid submission procedures specified in the BDS.

- 23.2 The inner and outer envelopes shall

- (a) bear the name and address of the Bidder;
- (b) be addressed to the Purchaser in accordance with ITB 24.1;
- (c) bear the specific identification of this bidding process pursuant to ITB 1.1 and any additional identification marks as specified in the BDS; and
- (d) bear a warning not to open before the time and date for bid opening, in accordance with ITB 27.1.

- 23.3 If all envelopes are not sealed and marked as required, the Purchaser will assume no responsibility for the misplacement or premature opening of the Bid.

### 24. Deadline for Submission of Bids

- 24.1 Bids must be received by the Purchaser at the address and no later than the date and time indicated in the BDS.

- 24.2 The Purchaser may, at its discretion, extend the deadline for the submission of Bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

### 25. Late Bids

- 25.1 The Purchaser shall not consider any Bid that arrives after the deadline for submission of Bids, in accordance with ITB 24. Any Bid received by the Purchaser after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.

**26. Withdrawal, Substitution, and Modification of Bids**

- 26.1 A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 22.2 (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be
- (a) prepared and submitted in accordance with ITB 22 and ITB 23 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;" and
  - (b) received by the Purchaser prior to the deadline prescribed for submission of bids, in accordance with ITB 24.
- 26.2 Bids requested to be withdrawn in accordance with ITB 26.1 shall be returned unopened to the Bidders.
- 26.3 No Bid may be withdrawn, substituted, or modified 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 Submission Sheet or any extension thereof.

**27. Bid Opening**

- 27.1 The Purchaser shall open the Bids in public at the address, on the date, and time specified in the BDS in the presence of Bidders' designated representatives and anyone who chooses to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 23.1, shall be as specified in the BDS.
- 27.2 First, envelopes marked "WITHDRAWAL" shall be opened, read out, and recorded, and the envelope containing the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked "SUBSTITUTION" shall be opened, read out, recorded, and exchanged for the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned unopened to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out and recorded at bid opening. Envelopes marked "MODIFICATION" shall be opened, read out, and recorded with the corresponding Bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out and recorded at bid opening. Only envelopes that are opened, read out, and recorded at bid opening shall be considered further.
- 27.3 All other envelopes shall be opened one at a time, reading out the name of the Bidder and whether there is a modification; the Bid Prices (per lot if applicable), discounts, and alternative offers; the presence of a bid security or a Bid-Securing Declaration, if required; and any other details as the Purchaser may consider appropriate.

Only discounts and alternative offers read out and recorded at bid opening shall be considered for evaluation. Unless otherwise specified in the BDS, all pages of the Bid Submission Sheet and Price Schedules are to be initialed by at least three representatives of the Purchaser attending the bid opening. No Bid shall be rejected at bid opening except for late bids, in accordance with ITB 25.1.

- 27.4 The Purchaser shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot if applicable, any discounts, and alternative offers if they were permitted; and the presence or absence of a bid security or Bid- Securing Declaration, if one was required. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted bids on time, and posted online if electronic bidding was permitted.

## E. Evaluation and Comparison of Bids

- 28. Confidentiality**
- 28.1 Information relating to the examination, evaluation, comparison, and postqualification of Bids, and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on the Contract award is communicated to all Bidders.
- 28.2 Any attempt by a Bidder to influence the Purchaser in the examination, evaluation, comparison, and postqualification of the Bids or Contract award decisions may result in the rejection of its Bid.
- 28.3 Notwithstanding ITB 28.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Purchaser on any matter related to the bidding process, it should do so in writing.
- 29. Clarification of Bids**
- 29.1 To assist in the examination, evaluation, comparison and post-qualification of the Bids, the Purchaser may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder with regard to its Bid and that is not in response to a request by the Purchaser shall not be considered. The Purchaser's request for clarification and the response shall be in writing. No change in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the evaluation of the Bids, in accordance with ITB 33.
- 29.2 If a Bidder does not provide clarifications on its Bid by the date and time set in the Purchaser's request for clarification, its bid may be rejected.
- 30. Deviations, Reservations, and Omissions**
- 30.1 During the evaluation of Bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Bidding Document;
  - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and



- (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.
- 31. Determination of Responsiveness**
- 31.1 The Purchaser's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB 11.
- 31.2 A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,
- (a) if accepted, would
- (i) affect in any substantial way the scope, quality, or performance of the Goods and Related Services specified in Section 6 (Schedule of Supply); or
- (ii) limits in any substantial way, inconsistent with the Bidding Document, the Purchaser's rights or the Bidder's obligations under the proposed Contract; or
- (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.
- 31.3 The Purchaser shall examine the technical aspects of the Bid in particular, to confirm that all requirements of Section 6 (Schedule of Supply) have been met without any material deviation, reservation, or omission.
- 31.4 If a Bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Purchaser and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 32. Nonmaterial Nonconformities**
- 32.1 Provided that a Bid is substantially responsive, the Purchaser may waive nonconformities in the bid that do not constitute a material deviation, reservation, or omission.
- 32.2 Provided that a Bid is substantially responsive, the Purchaser may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.
- 32.3 Provided that a Bid is substantially responsive, the Purchaser shall rectify quantifiable nonmaterial nonconformities or omissions related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of the missing or nonconforming item or component. The adjustment shall be made using the method indicated in Section 3 (Evaluation and Qualification Criteria).

**33. Correction of Arithmetical Errors**

- 33.1 Provided that the Bid is substantially responsive, the Purchaser shall correct arithmetical errors on the following basis:
- (a) 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, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected.
  - (b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected.
  - (c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.
- 33.2 If the Bidder that submitted the lowest evaluated Bid does not accept the correction of errors, its Bid shall be rejected, and its bid security may be forfeited, or its Bid-Securing Declaration executed.

**34. Conversion to Single Currency**

- 34.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as specified in the BDS.

**35. Margin of Preference**

- 35.1 Unless otherwise specified in the BDS, a margin of preference shall not apply.

**36. Evaluation of Bids**

- 36.1 The Purchaser shall use the criteria and methodologies indicated in this clause. No other criteria or methodologies shall be permitted.
- 36.2 To evaluate a Bid, the Purchaser shall consider the following:
- (a) the bid price as quoted in accordance with ITB 14;
  - (b) price adjustment for correction of arithmetic errors in accordance with ITB 33.1;
  - (c) price adjustment due to discounts offered in accordance with ITB 14.4;
  - (d) price adjustment due to application of the evaluation criteria specified in Section 3 (Evaluation and Qualification Criteria). These criteria may include factors related to the characteristics, performance, and terms and conditions of purchase of the Goods and Related Services which shall be expressed to the extent practicable in monetary terms to facilitate comparison of bids unless otherwise specified in Section 3; and
  - (e) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 34.

- 36.3 The Purchaser's evaluation of a bid will exclude and not take into account,
- (a) in the case of Goods offered from within the Purchaser's country, all sales tax and all other taxes, applicable in the Purchaser's country and payable on the Goods if the Contract is awarded to the Bidder;
  - (b) in the case of Goods offered from outside the Purchaser's country, all customs duties, sales tax, and other taxes, applicable in the Purchaser's country and payable on the Goods if the Contract is awarded to the Bidder; and
  - (c) any allowance for price adjustment during the period of performance of the Contract, if provided in the Bid.
- 36.4 If the Bidding Document allows Bidders to quote separate prices for different lots (contracts), and the award to a single Bidder of multiple lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Bid Submission Sheet, is specified in Section 3 (Evaluation and Qualification Criteria).
- 37. Comparison of Bids** 37.1 The Purchaser shall compare all substantially responsive Bids to determine the lowest evaluated bid, in accordance with ITB 36.
- 38. Post-qualification of Bidder** 38.1 The Purchaser shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and the substantially responsive Bid is qualified to perform the Contract satisfactorily.
- 38.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 19.
- 38.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the Bid, in which event the Purchaser shall proceed to the next lowest evaluated Bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.
- 39. Purchaser's Right to Accept Any Bid, and to Reject Any or** 39.1 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 Bidders. In case of annulment, all Bids submitted and specifically, bid All Bids securities, shall be promptly returned to the Bidders.

## F. Award of Contract

- 40. Award Criteria** 40.1 The Purchaser shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated Bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

- 41. Purchaser's Right to Vary Quantities at Time of Award**
- 41.1 At the time the Contract is awarded, the Purchaser reserves the right to increase or decrease the quantity of Goods and Related Services originally specified in Section 6 (Schedule of Supply), provided this does not exceed the percentages indicated in the BDS, and without any change in the unit prices or other terms and conditions of the Bid and the Bidding Document.
- 42. Notification of Award**
- 42.1 Prior to the expiration of the period of bid validity, the Purchaser shall notify the successful Bidder, in writing, that its Bid has been accepted.
- 42.2 At the same time, the Purchaser shall also notify all other Bidders of the results of the bidding. The Purchaser will publish in an English language newspaper or well-known freely accessible website the results identifying the Bid and lot numbers and the following information: (i) name of each Bidder who submitted a Bid; (ii) bid prices as read out at bid opening; (iii) name and evaluated prices of each Bid that was evaluated; (iv) name of Bidders whose Bids were rejected and the reasons for their rejection; and (v) name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded. After publication of the award, unsuccessful Bidders may request in writing to the Purchaser for a debriefing seeking explanations on the grounds on which their Bids were not selected. The Purchaser shall promptly respond in writing to any unsuccessful Bidder who, after publication of contract award, requests a debriefing.
- 42.3 Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.
- 43. Signing of Contract**
- 43.1 Promptly after notification, the Purchaser shall send to the successful Bidder the Contract Agreement.
- 43.2 Within 28 days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Purchaser.
- 44. Performance Security**
- 44.1 Within 28 days of the receipt of notification of award from the Purchaser, the successful Bidder shall furnish the Performance Security in accordance with the GCC, using for that purpose the Performance Security Form included in Section 9 (Contract Forms), or another form acceptable to the Purchaser.
- 44.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security or execution of the Bid-Securing Declaration. In that event, the Purchaser may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily.



## Section 2 - Bid Data Sheet

<b>A. General</b>	
<b>ITB 1.1</b>	The number of the Invitation for Bids (IFB) is: REIP/ADB/NCB/G/22
<b>ITB 1.1</b>	The Purchaser is: Ministry of Transport and Highways.
<b>ITB 1.1</b>	<p>The name of the national competitive bidding (NCB) is; Procurement of 450 Nos. of Passenger Seating Facility for Railway Stations.</p> <p>The identification number of the NCB is; REIP/ADB/NCB/G/22</p> <p>The number and identification of lots comprising this NCB is; None.</p>
<b>ITB 2.1</b>	The Borrower is: Democratic Socialist Republic of Sri Lanka.
<b>ITB 2.1</b>	The name of the Project is: Railway Efficiency Improvement Project (REIP)
<b>ITB 3.1</b>	<p><b>Obligation To Adhere to The Highest Ethical Standards</b></p> <p>ADB requires Borrowers (including beneficiaries of ADB-financed activity) and their personnel, as well as firms and individuals participating in an ADB- financed activity, including but not limited to, Bidders, Suppliers, and Contractors, agents, subcontractors, subconsultants, service providers, sub suppliers, manufacturers (including their respective officers, directors, employees and personnel) under ADB-financed contracts to observe the highest standard of ethics during the procurement and execution of such</p> <p>contracts in accordance with ADB's Anticorruption Policy (1998, as amended from time to time). In pursuance of this policy, ADB</p>

	<p><b>Definitions Integrity Violations</b></p> <p>a) defines, for the purposes of this provision, the terms set forth below as follows:</p> <ul style="list-style-type: none"> <li>(i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;</li> <li>(ii) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;</li> <li>(iii) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;</li> <li>(iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;</li> <li>(v) “abuse” means theft, waste, or improper use of assets related to ADB-related activity, either committed intentionally or through reckless disregard;</li> <li>(vi) “conflict of interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;</li> <li>(vii) “integrity violation” means any act, as defined under ADB’s Integrity Principles and Guidelines (2015, as amended from time to time), which violates ADB’s Anticorruption Policy, including (i) to (vi) above and the following: obstructive practice, violations of ADB sanctions, retaliation against whistleblowers or witnesses, and other violations of ADB’s Anticorruption Policy, including failure to adhere to the highest ethical standard.</li> </ul>
	<p><b>Right To Reject Proposal for Award</b></p> <p>(b) will reject a proposal for award if it determines that the Bidder recommended for award or any of its officers, directors, employees, personnel, subconsultants, subcontractors, service providers, suppliers or manufacturers has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;</p>
	<p>(c) <b>Right to cancel Loan</b></p> <p>will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of ADB financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation, including by failing to inform ADB in a timely manner at the time they knew of the integrity violations;</p>

	<p><b>Right To Impose Remedial Actions</b>  d) will impose remedial actions on a firm or an individual, at any time, in accordance with ADB's Anticorruption Policy and Integrity Principles and Guidelines, including declaring ineligible, either indefinitely or for a stated period of time, to participate[FN] in ADB-financed, -administered, or - supported activities or to benefit from an ADB financed, -administered, or - supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations; and [FN]: Whether as a Contractor, Subcontractor, Consultant, Manufacturer or Supplier, or Service Provider; or in any other capacity (different names are used depending on the particular Bidding Document).</p>
	<p><b>Right To Insert Inspection Clause</b>  e) will have the right to require that a provision be included in bidding documents and in contracts financed, administered, or supported by ADB, requiring Bidders, suppliers, and contractors, consultants, manufacturers, service providers and other third parties engaged or involved in ADB-related activities, and their respective officers, directors, employees and personnel, to permit ADB or its representative to inspect the site and their assets, accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by ADB.</p>
<b>ITB 3.2</b>	<p><b>Duty to cooperate</b>  3.2 All Bidders, consultants, contractors, suppliers, manufacturers, service providers, and other third parties engaged or involved in ADB-related activities, and their respective officers, directors, employees and personnel, are obliged to cooperate fully in any investigation when requested by ADB to do so. As determined on a case by case basis by ADB, such cooperation includes, but is not limited to, the following:</p> <ul style="list-style-type: none"> <li>(a) being available to be interviewed and replying fully and truthfully to all questions asked;</li> <li>(b) providing ADB with any items requested that are within the party's control including, but not limited to, documents and other physical objects;</li> <li>(c) upon written request by ADB, authorizing other related entities to release directly to ADB such information that is specifically and materially related, directly or indirectly, to the said entities or issues which are the subject of the investigation;</li> <li>(d) cooperating with all reasonable requests to search or physically inspect their person and/or work areas, including files, electronic databases, and personal property used on ADB activities, or that utilizes ADB's Information and Communications Technology (ICT) resources or systems (including mobile phones, personal electronic devices, and electronic storage devices such as external disk drives);</li> <li>(e) cooperating in any testing requested by ADB, including but not limited to, fingerprint identification, handwriting analysis, and physical examination and analysis; and</li> </ul> <p>preserving and protecting confidentiality of all information discussed with, and as required by, ADB.</p>
<b>ITB 3.3</b>	<p><b>Sub-parties' duty to cooperate</b>  3.3 All Bidders, consultants, contractors and suppliers shall require their officers, directors, employees, personnel, agents to ensure that, in its contracts with its sub-consultants, Subcontractors, and other third parties engaged or involved in ADB-related activities, such sub-consultants, Subcontractors, and other third parties similarly are obliged to cooperate fully in any investigation when requested by ADB to do so.</p>



<p><b>ITB 3.4</b></p>	<p>Notice – unable to receive payments  3.4 The Employer hereby puts the Bidder on notice that in case the Bidder or any Joint Venture partner of the Bidder (if any) may not be able to receive any payments under the Contract if the Bidder or any of its Joint Venture partners, as appropriate, is, or is owned (in whole or in part) by a person or entity subject to applicable sanctions.</p>
<p><b>ITB 4.3</b></p>	<p>Conflict of Interest scenarios  4.3 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to be in a conflict of interest with one or more parties in the bidding process if any of, including but not limited to, the following apply:</p> <ul style="list-style-type: none"> <li>(a) they have controlling shareholders in common; or</li> <li>(b) they receive or have received any direct or indirect subsidy from any of them; or</li> <li>(c) they have the same legal representative for purposes of this bid; or</li> <li>(d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to material information about or improperly influence the bid of, another Bidder; or influence the decisions of the Employer regarding this bidding process; or</li> <li>(e) a Bidder participates in more than one bid in this bidding process, either individually or as a partner in a Joint Venture, except for alternative offers permitted under ITB 13 of the Bidding Document. This will result in the disqualification of all Bids in which it is involved. However, subject to any finding of a conflict of interest in terms of ITB 4.3(a)–(d) above, this does not limit the participation of a Bidder as a Subcontractor in another Bid, or a firm as a Subcontractor in more than one Bid<sup>1</sup>; or</li> <li>(f) a Bidder, Joint Venture partner, associates, parent company, or any affiliated entity, participated as a Consultant in the preparation of the design or technical specifications of the works that are the subject of the Bid; or</li> <li>(g) a Bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Employer or Borrower as Engineer for the Contract<sup>2</sup>; or</li> <li>(h) a Bidder would be providing goods, works, or non consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the BDS ITB 2.1 that it provided, or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or</li> <li>(i) A Bidder that has a financial or familial relationship with Employer's personnel including personnel of project implementing/executing agency, or of a recipient of a part of the loan who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to ADB throughout the procurement process and execution of the contract</li> </ul>

<b>ITB 4.4</b>	<p>ADB eligibility 4.4 A firm will not be eligible to participate in any procurement activities under an ADB-financed, -administered, or supported project while under temporary suspension or debarment by ADB pursuant to its Anticorruption Policy (see ITB3), whether such debarment was directly imposed by ADB, or enforced by ADB pursuant to the Agreement for Mutual Enforcement of Debarment Decisions. A bid from a temporarily suspended or debarred firm will be rejected and such bid may be in breach of debarment conditions, thereby subject to further ADB's investigation.</p>
<b>ITB 4.8</b>	<p>UNSC sanctions 4.8 Bidders shall be excluded if, by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods from, or payments to, a particular country, person, or entity in respect of goods or services originating in that country. Where the Borrower's country prohibits payments to a particular person or entity or for particular goods or services by such an act of compliance, that bidder shall be excluded.</p>
<b>B. Contents of Bidding Document</b>	
<b>ITB 7.1</b>	<p>For <b>clarification purposes</b> only, the Purchaser's address is: Attention: Project Director, Colombo Suburban Railway Project Street address: No. 217, Cotta Road, Floor/Room number: City: Colombo 8. ZIP code: 00800 Country: Sri Lanka Telephone: +9411 2056240-41 Fax: 011-2674354 E-mail: : <a href="mailto:pd@csrp.lk">pd@csrp.lk</a> <a href="mailto:lanka.csrp@gmail.com">lanka.csrp@gmail.com</a></p>
<b>C. Preparation of Bids</b>	
<b>ITB 10.1</b>	The language of the Bid is: : English
<b>ITB 11.1 (i)</b>	<p>The Bidder shall submit with its Bid the following additional documents:</p> <ol style="list-style-type: none"> <li>1. Any person who acts as an agent or sub agent, representative or nominee for or on behalf of any bidder shall register himself before submission of bids with Registrar of Public Contracts Sri Lanka, as required by the Public Contract Act No.3 of 1987. The original certificate of registration shall be submitted with the bid.</li> <li>2. The bidders/ tenderers shall also register themselves immediately after</li> </ol>

	<p>the submission of the bids and prior to the award of the tender, in terms of the Public Contract Act. No. 03 of 1987.</p> <p>The tender shall not be awarded to any bidder unless such bidder has submitted the certificate of Registration issued in terms of the Public Contracts Act to the relevant Procurement Committee.</p> <p>3. The successful tenderer shall provide the relevant particulars required by the Public Contracts Act. No. 03 of 1987 to the Registrar of Public Contracts upon the award of the tender.</p> <p>4. Technical Proposal shall also include a Health and Safety COVID-19 Plan, in accordance with the relevant government regulations and guidelines on COVID-19 prevention and control, and shall comply with all applicable national provincial and local laws and regulations in Sri Lanka – quarantine and prevention of diseases ordinance (chapter 222) Extraordinary Gazette No.2197/25, Date 2020.10.15 published by Ministry of Health-Corona Virus Disease 2019(COVID-19) (Preventive Measures) Regulations Available here <a href="http://www.documents.gov.lk/en/exgazette.php">http://www.documents.gov.lk/en/exgazette.php</a></p>
<b>ITB 12.2</b>	The units and rates in figures entered into the Price Schedules should be typewritten or if written by hand, must be in print form. Price Schedules not presented accordingly may be considered nonresponsive.
<b>ITB 13.1</b>	Alternative Bids shall not be <i>permitted</i> .
<b>ITB 14.5</b>	The Incoterms edition is: 2020
<b>ITB 14.7</b>	The prices quoted by the Bidder shall not be adjustable.
<b>ITB 14.8</b>	Prices quoted for each lot shall correspond at least to 100 % of the items specified for each lot.
<b>ITB 19.2</b>	The Bidder shall include with its bid the Manufacturer's Authorization.
<b>ITB 19.3</b>	The Bidder is required to include with its bid, evidence that it will be represented by an Agent in the Purchaser's country.
<b>ITB 20.1</b>	The bid validity period shall be 120 days.

<b>ITB 21.1</b>	The Bidder shall furnish a bid security in the amount LKR. 400,000.
<b>ITB 21.2</b>	The ineligibility period will be Not applicable.
<b>ITB 21.4</b>	Subject to the succeeding sentences, any bid not accompanied by an irrevocable and callable bid security shall be rejected by the Purchaser as nonresponsive. If a Bidder submits a bid security that (i) deviates in form, amount, and/or period of validity, or (ii) does not provide sufficient identification of the Bidder (including, without limitation, failure to indicate the name of the Joint Venture or, where the Joint Venture has not yet been constituted, the names of all future Joint Venture Partners), the Purchaser shall request the Bidder to submit a compliant bid security within 14 days of receiving such a request. Failure to provide a compliant bid security within the prescribed period of receiving such a request shall cause the rejection of the Bid.
<b>ITB 22.1</b>	In addition to the original Bid, the number of copies is: one
<b>ITB 22.2</b>	The written confirmation of Authorization to sign on behalf of the Bidder shall consist of: An organizational document, board resolution or its equivalent, or power of attorney specifying the representative's authority to sign the Bid on behalf of, and to legally bind, the Bidder. If the Bidder is an intended or an existing joint venture, the power of attorney should be signed by all partners and specify the authority of the named representative of the joint venture to sign on behalf of, and legally bind, the intended or existing joint venture. If the joint venture has not yet been formed, also include evidence from all proposed joint venture partners of their intent to enter into a joint venture in the event of a contract award in accordance with ITB 16.1 (b)
<b>ITB 22.2</b>	The Bidder shall submit an acceptable authorization within 14 days.
<b>D. Submission and Opening of Bids</b>	
<b>ITB 23.1</b>	Bidders shall not have the option of submitting their bids electronically.
<b>ITB 23.1 (b)</b>	If Bidders shall have the option of submitting their bids electronically, the electronic bidding submission procedures shall be: Not applicable.
<b>ITB 23.2 (c)</b>	The additional identification marks are: Indicate "Railway Efficiency Improvement Project" at the top left-hand corner of the Inner and Outer envelopes.
<b>ITB 24.1</b>	For <b>bid submission purposes</b> only, the Purchaser's address is: Project Director (Acting), Colombo Suburban Railway Project Ministry of Transport & Highways, No.217, Cotta Road, Colombo 8, Sri Lanka. Floor/Room number: 3 <sup>rd</sup> Floor

<b>ITB 24.1</b>	<p><b>The deadline for bid submission is:</b></p> <p><b>Date: 11.03.2024</b></p> <p><b>Time: 2.00 p.m.</b></p>
<b>ITB 27.1</b>	<p><b>The bid opening shall take place at:</b></p> <p>Colombo Suburban Railway Project, No.217, Cotta Road, Colombo 8</p> <p>Sri Lanka.</p> <p>Floor/Room number: 3<sup>rd</sup> Floor conference room</p> <p><b>Date 11.03.2024</b></p> <p><b>Time: Immediately after the closing of bid submission.</b></p>
<b>ITB 27.1</b>	The electronic bid opening procedure shall be as follows: Not applicable.
<b>ITB 27.3</b>	The Bid Submission Sheet and Price Schedules shall be initialed by three (03) representatives of the Purchaser attending Bid opening.
<b>E. Evaluation, and Comparison of Bids</b>	
<b>ITB 34.1</b>	<p>The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: USD</p> <p>The source of the selling exchange rate shall be: Central Bank of Sri Lanka.</p> <p>The date for the selling exchange rate shall be: 28 Days prior to the stipulated date of Bid Submission.</p>
<b>ITB 35.1</b>	A margin of preference shall not apply.
<b>F. Award of Contract</b>	
<b>ITB 41.1</b>	<p>The maximum percentage by which quantities may be increased is: Not applicable.</p> <p>The maximum percentage by which quantities may be decreased is: 25%</p>

# Section 3 - Evaluation and Qualification Criteria

## Table of Criteria

<b>1.1</b>	<b>Technical Criteria</b> .....	<b>3-2</b>
<b>2.</b>	<b>Qualification Criteria</b> .....	<b>3-3</b>
<b>2.1</b>	<b>Eligibility and Pending Litigation</b> .....	<b>3-4</b>
	2.1.1 Eligibility .....	3-4
	2.1.1.1 Nationality .....	3-4
	2.1.1.2 Conflict of Interest .....	3-4
	2.1.1.3 ADB Eligibility .....	3-4
	2.1.1.4 Government-Owned Enterprise .....	3-4
	2.1.1.5 United Nations Eligibility .....	3-4
	2.1.2 Pending Litigation.....	3-5
	2.1.2.1 Pending Litigation and Arbitration .....	3-6
<b>2.2</b>	<b>Experience and Technical Capacity</b> .....	<b>3-7</b>
	2.2.1 Contractual Experience.....	3-7
	2.2.2 Technical Experience.....	3-8
	2.2.3 Production Capacity .....	3-8
<b>2.3</b>	<b>Financial Situation</b> .....	<b>3-9</b>
	2.3.1 Historical Financial Performance .....	3-9
	2.3.2 Size of Operation (Average Annual Turnover).....	3-9
	2.3.3 Cash Flow Capacity .....	3-10

# 1. Evaluation Criteria

## 1.1 Technical Criteria

The cost of all quantifiable deviations or deficiencies from the technical requirements as specified in Section 6 (Schedule of Supply) shall be evaluated. The Purchaser will make its own assessment of the cost of these deviations or deficiencies for the purpose of ensuring fair comparison of Bids.

## 1.2 Margin of Preference- Not Applicable

The borrower may, with the agreement of ADB, grant a margin of preference in the evaluation of bids under ICB procedure to bids offering certain goods manufactured in the country of the borrower, when compared to bids offering such goods manufactured elsewhere. The nationality of the manufacturer or supplier is not a condition for such eligibility. The method described below, as stipulated in the Financing Agreement, shall be followed in the evaluation and comparison of bids. For land-locked countries requiring multimodal transportation CIP (...point of entry) should be used instead of CIF (...port of destination).

### 1.2.1 Method of Application

1. For comparison, responsive bids shall be classified in one of the following three groups:
  - (a) **Group A:** bids exclusively offering goods manufactured in the country of the borrower if the bidder establishes to the satisfaction of the borrower and ADB that (i) labor, raw material, and components from within the country of the borrower will account for 30% or more of the EXW price of the product offered, and (ii) the production facility in which those goods will be manufactured or assembled has been engaged in manufacturing or assembling such goods at least since the time of bid submission.
  - (b) **Group B:** all other bids offering goods manufactured in the country of the Borrower.
  - (c) **Group C:** bids offering goods manufactured abroad that have been already imported or that will be directly imported.
2. The price quoted for goods in bids of groups A and B shall include all duties and taxes paid or payable on the basic materials or components purchased in the domestic market or imported, but shall exclude the sales and similar taxes on the finished product. The price quoted for goods in bids of group C shall be on CIF or CIP (place of destination), which is exclusive of customs duties and other import taxes already paid or to be paid.
3. In the first step, all evaluated Bids in each group shall be compared to determine the lowest bid in each group. Such lowest evaluated bids shall be compared with each other and if, as a result of this comparison, a bid from group A or group B is the lowest, it shall be selected for the award.
4. If as a result of the comparison under paragraph 3 above, the lowest evaluated Bid is a Bid from group C, the lowest evaluated bid from group C shall be further compared with the lowest evaluated Bid from group A after adding to the evaluated price of goods offered in the Bid from group C, for the purpose of this further comparison only, an amount equal to 15% of the CIF or CIP bid price. The lowest evaluated Bid determined from this last comparison shall be selected.

## 1.3 Economic Criteria

Economic criteria are applied when evaluating a Bid to determine the lowest evaluated Bid. These criteria are the bid price and other factors expressed in monetary terms such as those related to characteristics, performance, and terms and conditions of the purchase of the goods. The monetary values of the factors provide the adjustment of the bid price for comparison purposes.

### **1.3.1 Adjustment for Scope**

#### **1.3.1.1 Local Handling and Inland Transportation - Applicable**

Costs for inland transportation, insurance, and other incidental costs for delivery of the goods from the EXW premises, or port of entry, or border point to Project Site as defined in Section 6 (Schedule of Supply), shall be quoted in the Price Schedule for Related Services to Be Offered from Outside and Within the Purchaser's Country provided In Section 4 (Bidding Forms). These costs will be taken into account during bid evaluation. If a Bidder fails to include such costs in its Bid, then these costs will be estimated by the Purchaser on the basis of published tariffs by the rail or road transport agencies, insurance companies, or other appropriate sources, and added to EXW or CIF or CIP price.

#### **1.3.1.2 Minor Omissions or Missing Items - Not Applicable**

[Insert: "Pursuant to ITB 32.3, the cost of all quantifiable nonmaterial nonconformities or omissions from the contractual and commercial conditions shall be evaluated. The Purchaser will make its own assessment of the cost of any nonmaterial nonconformities and omissions for the purpose of ensuring fair comparison of Bids."]

### **1.3.2 Adjustment for Deviations from the Terms of Payment**

Deviations from the Terms of Payment as specified in SCC 16.1 are not permitted.

### **1.3.3 Adjustment for Deviations in the Delivery and Completion Schedule**

Bidders are required to base their prices on the Delivery and Completion Schedule specified in Section 6 (Schedule of Supply).

Deviations from the Delivery and Completion Schedule specified in Section 6 (Schedule of Supply) are not permitted.

### **1.3.4 Operating and Maintenance (O&M) Costs - Not Applicable**

Typical O&M cost factors for calculation are as follows:

- (a) Number of years for initial period of operation. [... insert the period in years. The period should be usually between 5 and 10 years, and should not exceed the period before a major overhaul of the Goods becomes necessary ...]
- (b) Operating costs such as fuel, electricity, spare parts, labor and/or other inputs required for the operation of the Goods.
- (c) Rate of [... insert rate in words and figures ...], in percentage, to be used to discount to present value, all of the annual future costs calculated under (b) above for the period specified in (a).

[Insert procedures to be used]

### **1.3.5 Spare Parts - Not Applicable**



[Insert: “The list of items and quantities of (. . . specify spare parts, tools, major assemblies, and selected components), likely to be required during the initial period (. . . specify period) of operation is indicated in Section 6 (Schedule of Supply). The total cost of these items at the unit prices quoted in each Bid shall be added to the Bid Price.”]

### 1.3.6 Performance and Productivity of the Goods Not Applicable

The adjustment factor for the performance or productivity of the Goods shall be calculated based on the difference between the reference value or norm (i.e., the efficiency) as specified in Section 6 (Schedule of Supply), and the corresponding value guaranteed by the Bidder in its Bid. The method of calculation shall be the following: \_\_\_\_\_

## 1.4 Multiple Lots (Contracts) - Not Applicable

If Goods and Related Services are grouped in multiple lots, the following provision must be used:

[Insert: “Goods are grouped in lots. The Purchaser will evaluate and compare Bids on the basis of a lot, or a combination of lots, or as a total of lots to arrive at the least cost combination for the Purchaser by taking into account discounts offered by Bidders in case of award of multiple contracts.”]

If a Bidder submits successful Bids for multiple lots (lowest evaluated substantially responsive Bids), the evaluation will also include an assessment of the Bidder’s capacity to meet the aggregated qualifying requirements relating to [Purchaser to list here the qualifying requirements set for individual contracts/lots, i.e., production capacity, size of operation]

## 2. Qualification Criteria

Bidders shall meet the qualification criteria set by the Purchaser on a pass-fail basis. Unless specifically indicated otherwise, it is the legal entity or entities comprising the Bidder and not the Bidder's parent companies, subsidiaries, or affiliates that must satisfy these criteria.

CONFIDENTIAL

## Part 2: Specific Requirements for the Criteria

### 2.1 Eligibility and Pending Litigation

#### 2.1.1 Eligibility

Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	

##### 2.1.1.1 Nationality

Nationality in accordance with ITB Subclause 4.2.	must meet requirement	must meet requirement	must meet requirement	not applicable	Bid Submission Sheet; Forms ELI – 1 and ELI - 2
---	-----------------------	-----------------------	-----------------------	----------------	---

##### 2.1.1.2 Conflict of Interest

No conflicts of interest in accordance with ITB Subclause 4.3.	must meet requirement	must meet requirement	must meet requirement	not applicable	Bid Submission Sheet
--	-----------------------	-----------------------	-----------------------	----------------	----------------------

##### 2.1.1.3 ADB Eligibility

Not having been declared ineligible by ADB, as described in ITB Subclause 4.4.	must meet requirement	must meet requirement	must meet requirement	not applicable	Bid Submission Sheet
--	-----------------------	-----------------------	-----------------------	----------------	----------------------

##### 2.1.1.4 Government-Owned Enterprise

Bidder required to meet conditions of ITB Subclause 4.5.	must meet requirement	must meet requirement	must meet requirement	not applicable	Bid Submission Sheet; Forms ELI – 1 and ELI - 2
--	-----------------------	-----------------------	-----------------------	----------------	---

##### 2.1.1.5 United Nations Eligibility

Not having been excluded by an act of compliance with a United Nations Security Council resolution in accordance with ITB Subclause 4.7.	must meet requirement	must meet requirement	must meet requirement	not applicable	Bid Submission Sheet
--	-----------------------	-----------------------	-----------------------	----------------	----------------------

### 2.1.2. Pending Litigation and Arbitration

Criteria	Compliance Requirements			Documents	
	Single Entity	Joint Venture		Submission Requirements	
		All Partners Combined	Each Partner		One Partner
Requirement					
All pending litigation and arbitration, if any, shall be treated as resolved against the Bidder and so shall in total not represent more than 50% of the Bidder's net worth calculated as the difference between total assets and total liabilities.	must meet requirement by itself or as partner to past or existing Joint Venture	not applicable	must meet requirement by itself or as partner to past or existing Joint Venture	not applicable	Form LIT - 1

### 2.1.3 Note for ADB Eligibility

It is the obligation of the Employer to confirm an entity's eligibility by checking ADB's complete Sanctions List (for all bidders) at various stages of bidding process including bid evaluation, prior to contract award, as well as during processing of contract variations, extensions or modifications and withdrawal applications. ADB has the right to monitor the Employer's compliance to this obligation.

ADB's Complete Sanctions List is available at <https://www.adb.org/who-we-are/integrity/sanctions> and the guide on how to get its access is available at <https://www.adb.org/publications/faqs-adb-sanctions>.

**2.2 Experience and Technical Capacity****2.2.1 Contractual Experience**

Criteria		Compliance Requirements			Documents	
Requirement		Single Entity	Joint Venture		Submission Requirements	
			All Partners Combined	Each Partner		One Partner
i) Successful completion as main supplier within the last 05 years at least 300 numbers of passenger benches similar to the scope of supply. The value of such supply should not be less than Sri Lankan Rupees Ten Millin.  (Documentary evidence to be attached) Ex. Purchase orders, contract agreements, payment receipts.		must meet requirement	must meet requirement	not applicable	not applicable	Form EXP - 1

**2.2.2 Technical Experience**

Criteria		Compliance Requirements			Documents	
Requirement		Single Entity	Joint Venture		Submission Requirements	
			All Partners Combined	Each Partner		One Partner
The Bidder shall demonstrate that the goods offered have (i) been in production/supply of similar items for at least five (05) years  (Documentary evidence to be attached) None submission of the documentary evidence will cause for rejection.		must meet requirement	must meet requirement	not applicable	not applicable	Form EXP - 2

### 2.2.3 Production Capacity

Criteria  Requirement	Compliance Requirements				Documents  Submission Requirements
	Single Entity	Joint Venture			
		All Partners Combined	Each Partner	One Partner	
The Bidder or manufacturer shall demonstrate that it can supply the type, size, and quantity of the goods as required by Purchaser in accordance with the Delivery and Completion Schedule in Section 6 (Schedule of Supply).	must meet requirement	must meet requirement	not applicable	not applicable	Form EXP - 3

**- Note -**

<sup>a</sup> Bidder or Manufacturer shall provide evidence of production output.

## 2.3 Financial Situation

### 2.3.1 Historical Financial Performance

Criteria Requirement	Compliance Requirements				Documents Submission Requirements
	Single Entity	Joint Venture			
		All Partners Combined	Each Partner	One Partner	
Submission of audited financial statements or, if not required by the law of the Bidder's country, other financial statements acceptable to the Purchaser, for the last three (03) years to demonstrate the current soundness of the Bidder's financial position. As a minimum, the Bidder's net worth for the last year calculated as the difference between total assets and total liabilities should be positive.	must meet requirement	not applicable	must meet requirement	not applicable	Form FIN - 1

### 2.3.2 Size of Operation (Average Annual Turnover)

Criteria Requirement	Compliance Requirements				Documents Submission Requirements
	Single Entity	Joint Venture			
		All Partners Combined	Each Partner	One Partner	
Minimum average annual turnover of LKR Ten Million calculated as total payments received by the Bidder for contracts completed or under execution over the last 05 years.	must meet requirement	must meet requirement	must meet 25% of the requirement	must meet 40% of the requirement	Form FIN - 2

### 2.3.3 Cash Flow Capacity (Optional)

Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Availability of or access to liquid assets, lines of credit, and other finances sufficient to meet cash flow requirement which is LKR 6,000,000.00	must meet requirement	must meet requirement	must meet 25% of the requirement	must meet 40% of the requirement	Form FIN - 3



CONFIDENTIAL

# Section 4 - Bidding Forms

## Table of Forms

Bid Submission Sheet.....	4-2
Price Schedule for Goods to Be Offered from Within the Purchaser's Country.....	4-7
Price Schedule for Goods to Be Offered from outside the Purchaser's Country.....	4-8
Price Schedule for Related Services to Be Offered from Outside and Within the Purchaser's Country.....	4-8
Bid Security.....	4-10
Manufacturer's Authorization.....	4-11
Bidder's Qualification.....	4-12
Form ELI - 1: Bidder's Information Sheet.....	4-13
Form ELI - 2: Bidder's Information Sheet-More Information required.....	4-14
Form ELI - 1: Joint Venture Information Sheet.....	4-15
Joint Venture Local Agent Information Sheet.....	4-16
Form LIT - 1: Pending Litigation and Arbitration.....	4-17
Form EXP - 1: Contractual Experience.....	4-19
Form EXP - 2: Technical Experience.....	4-21
Form EXP - 3: Production Capacity.....	4-22
Form FIN - 1: Historical Financial Performance.....	4-23
Form FIN - 2: Size of Operation (Average Annual Turnover).....	4-24
Form FIN - 3: Cash Flow Capacity.....	4-25

# Bid Submission Sheet

## - Note -

The bidder must accomplish the Bid Submission Sheet on its letterhead clearly showing the bidder's complete name and address.

Date: \_\_\_\_\_  
 International Competitive Bidding (NCB) No.: \_\_\_\_\_  
 Invitation for Bid (IFB) No.: \_\_\_\_\_  
 Alternative No.: \_\_\_\_\_

To: *[insert complete name of the purchaser]*

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Document, including Addenda issued in accordance with Instructions to Bidders (ITB) 8.
- (b) We offer to supply in conformity with the Bidding Document and in accordance with the delivery schedule specified in Section 6 (Schedule of Supply), the following Goods and Related Services:  
 . . . *[insert a brief description of the goods and related services]* . . .
- (c) The total price of our Bid, excluding any discounts offered in item (d) below, is

*[amount of local currency in words], [amount in figures]*

*The total bid price from the price schedules should be entered by the bidder inside this box. Absence of the total bid price in the Bid Submission Sheet may result in the rejection of the bid.*

- (d) The discounts offered and the methodology for their application are as follows:

Discounts: If our Bid is accepted, the following discounts shall apply ..... *[specify in detail each discount offered and the specific item of the Schedule of Supply to which it applies]* . . . .

Methodology of Application of the Discounts: The discounts shall be applied using the following method: . . . . *[specify in detail the method that shall be used to apply the discounts]* . . . .

- (e) Our Bid shall be valid for a period of . . . . *[insert validity period as specified in ITB 20.1 of the BDS]* . . . . days from the date fixed for the bid submission deadline in accordance with the Bidding Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

- (f) If our Bid is accepted, we commit to obtain a Performance Security in the amount of .....[specify a figure between 5% and 10%, which should be consistent with that of SCC 18.1] . percent of the Contract Price for the due performance of the Contract

CONFIDENTIAL

- (g) Our firm, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries in accordance with ITB 4.2.
- (h) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest in accordance with ITB 4.3.
- (i) We are not participating, as a Bidder in more than one Bid in this bidding process in accordance with ITB 4.3(e), other than alternative offers in accordance with the Bidding Document.
- (j) Our firm, its affiliates or subsidiaries, including any subcontractors or suppliers for any part of the Contract, has not been declared ineligible by the ADB, under the Purchaser's country laws or official regulations or by an act of compliance with a decision of the United Nations Security Council.
- (k) [We are not a government-owned enterprise] / [We are a government-owned enterprise but meet the requirements of ITB 4.5].<sup>1</sup>
- (l) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the bidding process or execution of the Contract: <sup>2</sup>

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____

We understand that this Bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal Contract is prepared and executed.

- (m) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.
- (n) We agree to permit ADB or its representative to inspect our accounts and records and other documents relating to the bid submission and to have them audited by auditors appointed by ADB.

- (o) Acknowledge AP and IPG  
We acknowledge that we have read and understand ADB's Anticorruption Policy (1998) and Integrity Principles and Guidelines (2015), both as amended from time to time.

<sup>1</sup> Use one of the two options as appropriate.

<sup>2</sup> If none has been paid or is to be paid, indicate "None."

## (p) Conflict of Interest disclosure

We, our directors, key officers, key personnel, including any Subcontractor, consultants, subconsultants, manufacturers, service providers or Supplier for any part of the contract, do not have any conflict of interest in accordance with ITB 4.3.

If there is any conflict of interest, please state details:

- (i) Parties involved in the conflict of interest: \_\_\_\_\_
- (ii) Details about the conflict of interest: \_\_\_\_\_

(q) ADB eligibility - Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the contract, are not subject to, or not controlled by any entity or individual that is subject to a temporary suspension or a debarment imposed by the Asian Development Bank; or a debarment imposed by the Asian Development Bank in accordance with the Agreement for Mutual Enforcement of Debarment Decisions between the Asian Development Bank and other development banks. [FN]

[FN] These institutions include African Development Bank, European Bank for Reconstruction and Development (EBRD), InterAmerican Development Bank (IADB), and the World Bank Group. According to para. 9 of the Agreement, other international financial institutions may join, upon the consent of all Participating Institutions and signature of a Letter of Adherence by the international financial institution substantially in the form provided (Annex B to the Agreement). Upon adherence, such international financial institution shall become a Participating Institution for purposes of the Agreement. Bidders are advised to check [www.adb.org/integrity](http://www.adb.org/integrity) for updates.

(r) ADB published sanctions list self-check - We have checked all the parties mentioned in the declaration above against ADB's published sanctions list accessed via <https://www.adb.org/who-we-are/integrity/sanctions>

(s) Ongoing investigation/sanction proceedings by MDB - Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the contract, are not under ongoing investigation and/or sanctions proceedings by the Asian Development Bank.

If under ongoing investigation and/or sanctions proceedings by the Asian Development Bank or any multilateral development bank, please state details:

- (i) Name of the multilateral development bank: \_\_\_\_\_
- (ii) Reason for the ongoing investigation / allegations: \_\_\_\_\_

(t) National and international sanctions - Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the Contract, are not temporarily suspended, debarred, declared ineligible, or subject to any national and/or international sanctions by any country, any international organization, any multilateral development bank and other donor agency.

If so temporarily suspended, debarred, declared ineligible, or subject to any national and/or international sanctions by any country, any international organization, any multilateral

development bank and other donor agency, please state details (as applicable to each Joint Venture partner, their respective direct or indirect shareholders, directors, key officers, key personnel, associate, parent company, affiliate, subsidiaries, Subcontractors, consultants, subconsultants, manufacturers, service providers and/or Suppliers):

- (i) Name of Institution: \_\_\_\_\_
- (ii) Period of the temporary suspension, debarment, ineligibility, or national or international sanction [*start and end date*]: \_\_\_\_\_
- (iii) Reason for the temporary suspension, debarment, ineligibility, or national or international sanction: \_\_\_\_\_

(u) Criminal/civil/ad min proceedings disclosure - Our firm, Joint Venture partners, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers, Suppliers, key officers, directors, and key personnel have never been charged or convicted with any criminal offense (including felonies but excluding misdemeanors) or infractions and/or violations of ordinance; nor charged or found liable in any civil or administrative proceedings in the last 10 years; or undergoing investigation for such, or subject to any criminal, civil or administrative orders, monitorship or enforcement actions.

If so charged, convicted/found liable, under ongoing investigation, or subject to orders, monitorship or enforcement actions, please state details:

- (i) Nature of the offense, violation, proceedings, investigation, and/or monitor ship or enforcement actions: \_\_\_\_\_
  - (ii) Court, area of jurisdiction and/or the enforcement agency: \_\_\_\_\_
  - (iii) Resolution [*i.e., dismissed, settled, or convicted; duration of penalty*]: \_\_\_\_\_
- Other relevant details [*please specify*]: \_\_\_\_\_

(v) Payment restrictions - Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers, can make and receive payments through the international banking system or otherwise discharge the Employer's obligation upon initiation of wire transfer.

If unable to make or receive funds through the international banking system or otherwise discharge the Employer's obligation upon initiation of wire transfer, please state the details:

- (i) Nature of the restriction: \_\_\_\_\_
- (ii) Jurisdiction of the restriction: \_\_\_\_\_
- (iii) Other relevant details: \_\_\_\_\_

(w) UNSC sanctions - Our firm, Joint Venture partners, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers, key officers, directors and key personnel are not from a country which is prohibited to export goods or services to, or receive any payments from the Employer's country

and/or are not prohibited to receive payments for particular goods or services by the Employer's country by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

(x) Bribery disclosure - We have paid, or intend to pay, either directly or indirectly, the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:[FN]

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____

[FN]: If none has been paid or is to be paid, indicate "None."

(y) Ongoing duty to notify all of the above - We understand that it is our obligation to notify the Employer of any changes in connection with the matters described in this Letter of Bid.

(z) Duty to cooperate in inspection - At any time following submission of our Bid, we shall permit, and shall cause our Joint Venture partners, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the contract to permit ADB or its representative to inspect our site, assets, accounts and records and other documents relating to the Bid submission and to have them audited by auditors appointed by ADB. We understand that failure of this obligation may constitute obstructive practice that may result in debarment and/or contract termination.

(aa) Record keeping obligation – bidders - Regardless of whether the contract will be awarded to us, we shall preserve all accounts, records and other documents related to bid submission for at least 3 years from the date of submission of the bid or the period prescribed in applicable law, whichever is longer.

(bb) Record keeping obligation -contract awardees - If we are awarded the contract, we shall preserve all accounts, records and other documents related to the procurement and execution of the contract for at least 5 years after completing the works contemplated in the relevant contracts or the period prescribed in applicable law, whichever is longer.

(cc) Good faith representation - We certify on behalf of the Bidder, that the information provided in the bid has been fully reviewed, given in good faith, and to the best of our knowledge is true and complete. We understand that it is our obligation to inform the Employer of any changes to the information as and when it becomes known to us. We understand that any misrepresentation that knowingly or recklessly misleads, or attempts to mislead may lead to the automatic rejection of the Bid or cancellation of the contract, if awarded; and may result in remedial actions, in accordance with ADB's Anticorruption Policy (1998, as amended to date) and Integrity Principles and Guidelines (2015, as amended from time to time).

Name \_\_\_\_\_

In the capacity of \_\_\_\_\_

Signed \_\_\_\_\_

Duly authorized to sign the Bid for and on behalf of \_\_\_\_\_

Date \_\_\_\_\_



**Schedule No. 1**

## Price Schedule for Goods to be offered from within the Purchaser's Country

Name of Bidder \_\_\_\_\_ IFB Number \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

Item	Description	Country of Origin	Domestic Value Added in Percent	Quantity and Unit of Measurement	Unit Price EXW	Total EXW Price per item	Sales and Other Taxes Per Item	Total Price per Item including Taxes
1	2	3	4	5	6	7 = 5 x 6	8	9 = 7 + 8
	Passenger seating facility for Railway stations		Not applicable	450 Nos				
<b>Total Amount</b>								

**Notes:**

Column 4: In accordance with margin of preference ITB 35, if applicable.  
Domestic Value Added comprises domestic labor, the domestic content of materials, domestic overheads and profits from the stage of mining the raw material until final assembly.

Column 6: Incoterm in accordance with ITB 14.6 (i)  
Currency in accordance with ITB 15  
Price shall include all customs duties and sales and other taxes already paid or payable on the components and raw materials used in the manufacture or assembly of the item or the customs duties and sales and other taxes already paid on previously imported items.

Column 8: Payable in the Purchaser's country if Contract is awarded

Name \_\_\_\_\_

In the capacity of \_\_\_\_\_

Signed \_\_\_\_\_

Duly authorized to sign the Bid for and on behalf of \_\_\_\_\_

Dat \_\_\_\_\_

Schedule No.2

## Price Schedule for Related Services to be offered from outside and within the Purchaser's Country

Name of Bidder \_\_\_\_\_ IFB Number \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

Item No.	Description	Country of Origin	Quantity and Unit of Measurement	Unit Price		Total Price per Item	
				(a)	(b)	(a)	(b)
				Foreign Currency	Local Currency	Foreign Currency	Local Currency
1	2	3	4	5(a)	5(b)	6(a) = 4 x 5(a)	6(b) = 4 x 5(b)
<b>Total Amount</b>							

**Notes:**  
 Columns 5 and 6: Currencies in accordance with ITB 15  
 Prices are to be quoted inclusive of all customs duties, sales and other similar taxes applicable in the Purchaser's country and payable on the Related Services, if the Contract is awarded to the Bidder

Name \_\_\_\_\_

In the capacity of \_\_\_\_\_

Signed \_\_\_\_\_

Duly authorized to sign the Bid for and on behalf of \_\_\_\_\_

Date \_\_\_\_\_

**- Note -**

*The base date shall be the date 28 days prior to the deadline for submission of the bid.*

**Schedule No. : 3**  
**Grand Summary**

Lot No. : [if applicable]				
Lot Name : [if applicable]				
Item No.	Name of Goods or -- Related Services	Quantity	Unit Price	Total Price
01	Passenger seating facility for Railway Stations.	450 Nos.		
	Total item value			
	Cost of Related services			
	Total contract value			

**Notes:**

**The bid price is inclusive of all Environmental, Health and Safety management and compliance cost.**

Name \_\_\_\_\_

In the capacity of \_\_\_\_\_

Signed \_\_\_\_\_

Duly authorized to sign the Bid for and on behalf of \_\_\_\_\_

Date \_\_\_\_\_

Schedule No. 4

Experience and Capacity of Local Agent.

CONFIDENTIAL

**Schedule No.6****Compliance with Specifications**

	<b>Description</b>	<b>Yes/No</b>	<b>Remarks</b>	<b>Signature</b>
<b>1</b>	We agree to comply all the requirements of clause 1 – Top View in the Technical Specifications (Section 6)			
<b>2</b>	We agree to comply all the requirements of clause 1 – Side View in the Technical Specifications (Section 6)			
<b>3</b>	We agree to comply all the requirements of clause 1 – 3 D view in the of Technical Specifications (Section 6)			
<b>4</b>	We agree to comply all the requirements of clause 2 ©_ in the Technical Specifications (Section 6)			

# Bid Security Bank Guarantee

*[insert bank's name, and address of issuing branch or office]*<sup>1</sup>

**Beneficiary:** *The Secretary, Ministry of Transport & Highways.*

**Date:** *[insert date (as day, month, and year)]*

**Bid Security No.:** *[insert number]*

We have been informed that . . . . *[insert name of the bidder]*.....(hereinafter called "the Bidder") has submitted to you its bid dated . . . . *[insert date (as day, month, and year)]*.....(hereinafter called "the Bid") for the execution of . . . . *[insert name of contract]*. . . . under Invitation for Bids No .....*[insert IFB number]*..... ("the IFB").

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

At the request of the Bidder, we . . . . *[insert name of bank]*..... hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of ..... *[insert amount in words]**[insert amount in figures]*..... upon receipt by us of your first demand in writing accompanied by a written statement, stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Bid Submission Sheet; or
- (b) does not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter "the ITB"); or
- (c) having been notified of the acceptance of its Bid by the Purchaser during the period of bid validity, (i) fails or refuses to execute the Contract Agreement; or (ii) fails or refuses to furnish the Performance Security, in accordance with the ITB.

This guarantee will expire (a) if the Bidder is the successful Bidder, upon our receipt of copies of the Contract Agreement signed by the Bidder and the Performance Security issued to you upon the instruction of the Bidder; or (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder of the name of the successful Bidder, or (ii) 28 days after the expiration of the Bidder's bid.

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.<sup>2</sup>

..... *Authorized signature(s) and bank's seal (where appropriate)* .....

**-- Note --**

*In case of a joint venture, the bid security must be in the name of all partners to the joint venture that submits the bid.*

<sup>1</sup> All italicized text is for use in preparing this form and shall be deleted from the final document.

<sup>2</sup> Or 758 as applicable.

## Manufacturer's Authorization

Date: ..... *[insert date (as day, month, and year) of bid submission]* .....

ICB No.: ..... *[insert number of bidding process]* .....

To: ..... *[insert complete name of the purchaser]* .....

### WHEREAS

We ..... *[insert complete name of the manufacturer]* ....., who are official manufacturers of ..... *[insert type of goods manufactured]* ....., having factories at..... *[insert full address of manufacturer's factories]* ....., do hereby authorize ..... *[insert complete name of the bidder]*.....to submit a bid the purpose of which is to provide the following goods, manufactured by us ..... *[insert name and/or brief description of the goods]*....., and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 28 of the General Conditions, with respect to the goods offered by the above firm.

Signed: *[insert signature(s) of authorized representative(s) of the manufacturer]*

Name: *[insert complete name(s) of authorized representative(s) of the manufacturer]*

Title: *[insert title]*

Duly authorized to sign this Authorization on behalf of *[insert complete name of the manufacturer]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

#### -- Note --

*All italicized text is for use in preparing this form and shall be deleted from the final document.*

*The bidder shall require the manufacturer to fill out this form in accordance with the instructions indicated. This letter of authorization should be signed by a person with the proper authority to sign documents that are binding on the manufacturer. The bidder shall include it in its bid, if so indicated in the Bid Data Sheet (BDS).*

## Bidder's Qualification

To establish its qualifications to perform the contract in accordance with Section 3 (Evaluation and Qualification Criteria), the Bidder shall provide the information requested in the corresponding Information Sheets included hereunder.

CONFIDENTIAL



**Form ELI - 1: Bidders Information Sheet**

<b>Bidder's Information</b>	
<b>bidder's legal name</b>	
<b>In case of a Joint Venture, legal name of each partner</b>	
<b>bidder's country of constitution</b>	
<b>bidder's year of constitution</b>	
<b>bidder's legal address in country of constitution</b>	
<b>bidder's authorized representative</b> (Name, address, telephone number(s), fax number(s) and e-mail address)	
<p><b>Attached are copies of the following documents:</b></p> <p><input type="checkbox"/> 1. In case of a single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and ITB 4.2</p> <p><input type="checkbox"/> 2. Authorization to represent the firm or Joint Venture named above, in accordance with ITB 22.2</p> <p><input type="checkbox"/> 3. In case of a Joint Venture, a letter of intent to form a Joint Venture or Joint Venture agreement, in accordance with ITB 4.1</p> <p><input type="checkbox"/> 4. In case of a government-owned enterprise, any additional documents not covered under 1 above required to comply with ITB 4.5</p>	

**ELI 2 – Bidders Information Sheet – More information required.**

		Information of the Bidder	If the Bidder is a subsidiary or branch, information of any parent company/companies
	Full legal name(s)		
	Full trading name(s) (if any)		
	Registered address(es)		
	Trading address(es)		
	Postal address(es) (if different from trading address)		
Type of organization			
Country of constitution/incorporation/registration			
Year of constitution/incorporation/ registration			
Corporate or registration number			
In case of a Joint Venture, legal name of each partner			
Bidder's authorized representative (name, address, telephone number(s),			
fax number(s), e-mail address)			
<p>Attached are copies of the following documents:</p> <ol style="list-style-type: none"> <li>1. In case of a single entity, articles of incorporation or constitution and company incorporation/registration of the legal entity named above, in accordance with ITB 4.1 and ITB 4.2.</li> <li>2. Authorization to represent the firm or Joint Venture named above, in accordance with ITB 20.2.</li> <li>3. In case of a Joint Venture, a letter of intent to form a Joint Venture or Joint Venture agreement, in accordance with ITB 4.1.</li> <li>4. In case of a government-owned enterprise, any additional documents not covered under 1 above required to comply with ITB 4.5.</li> </ol>			

**Form ELI - 1: Joint Venture Information Sheet**

Each member of the Joint Venture must fill out this form separately.

<b>Joint Venture Information</b>	
<b>bidder's legal name</b>	
<b>Joint Venture Partner's legal name</b>	
<b>Joint Venture Partner's country of constitution</b>	
<b>Joint Venture Partner's year of constitution</b>	
<b>Joint Venture Partner's legal address in country of constitution</b>	
<b>Joint Venture Partner's authorized representative information</b> (Name, address, telephone number(s), fax number(s) and e-mail address)	
<b>Attached are copies of the following documents:</b>	
<input type="checkbox"/> 1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and ITB 4.2	
<input type="checkbox"/> 2. Authorization to represent the firm named above, in accordance with ITB 22.2	
<input type="checkbox"/> 3. In the case of a government-owned enterprise, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.5	

<b>Joint Venture/Local Agent Information</b>		
Bidder's legal name		
		Information of Joint Venture Partner or Local Agent
		If any Joint Venture Partner or local agent is a subsidiary or branch, information of any parent company/companies
	Full legal name(s)	
	Full trading name(s) (if any)	
	Registered address(es)	
	Trading address(es)	
	Postal address(es) (if different from trading address)	
Type of organization		
Country of constitution/incorporation/registration		
Year of constitution/incorporation/ registration		
Corporate or registration number		
Joint venture Partner's or local agent's authorized representative (Name, address, telephone number(s), fax number(s), e-mail address)		
<p>Attached are copies of the following documents:</p> <ol style="list-style-type: none"> <li>1. Articles of incorporation or constitution and company incorporation/registration of the legal entity named above, in accordance with ITB 4.1 and ITB 4.2.</li> <li>2. Authorization to represent the firm named above, in accordance with ITB 20.2. covered under 1 above required to comply with ITB 20.2.</li> <li>3. In the case of a government-owned enterprise, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.5.</li> </ol>		

**Form LIT – 1: Pending Litigation and Arbitration**

Each Bidder must fill out this form if so required under Criterion 2.1.2 of Section 3 (Evaluation and Qualification Criteria) to describe any pending litigation or arbitration formally commenced against it.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner’s name below:

Joint Venture Partner: \_\_\_\_\_

Table 1 - Pending Litigation and Arbitration			
<p><b>Choose one of the following:</b></p> <p><input type="checkbox"/> No pending litigation and arbitration.</p> <p><input type="checkbox"/> Below is a description of all pending litigation and arbitration against the Bidder (or each Joint Venture member if Bidder is a Joint Venture).</p>			
Year	Matter in Dispute	Value of Pending Claim in \$ Equivalent	Value of Pending Claim as a Percentage of Net Worth

**- Note -**  
*This form shall only be included if Criterion 2.1.2 of Section 3 (Evaluation and Qualification Criteria) is applicable.*

## Form EXP - 1: Contractual Experience

Contractual Experience		
Contract No ..... of .....	Contract Identification	
Award Date	Completion Date	
Role in Contract	<input type="checkbox"/> Manufacturer	<input type="checkbox"/> Supplier <input type="checkbox"/> Subcontractor
Total Contract Amount		
	\$	
If partner in a joint venture or subcontractor, specify participation of total contract amount	Percent of Total	Amount
Purchaser's name Address Telephone/Fax Number E-mail		
Description of the Similarity in Accordance with Criterion 2.2.1 of Section 3 (Evaluation and Qualification Criteria)		
(1) Successful completion as main supplier within the last 05 years at least 300 numbers of passenger benches similar to the scope of supply. The value of such supply should not be less than Sri Lankan Rupees Ten Millin.		

**- Note -**

*This form shall only be included if Criterion 2.2.1 of Section 3 (Evaluation and Qualification Criteria) is applicable.*

**Form EXP - 2: Technical Experience**

Fill out one (1) form per contract.

Technical Experience	
<b>Name of Product</b>	
<b>Manufacturer:</b>	<b>Address and Nationality:</b>
Requirements in Accordance with Criterion 2.2.2 of Section 3 (Evaluation and Qualification Criteria)	
<b>(i) Product has been in production/Supply for at least five (05) years.</b>	

**- Note -**

*This form shall only be included if Criterion 2.2.2 of Section 3 (Evaluation and Qualification Criteria) is applicable. Add pages as necessary. The Purchaser reserves the right to verify authenticity of Bidder submissions.*

**Form EXP - 3: Production Capacity**

Fill out one (1) form per product and manufacturer.

Production Capacity	
<b>Name of Product</b>	
<b>Manufacturer:</b>	<b>Address and Nationality:</b>
Requirements in Accordance with Criterion 2.2.3 of Section 3 (Evaluation and Qualification Criteria)	
<b>Production facility 1 (include location):</b>	
<b>Production facility 2 (include location):</b>	
<b>Production facility 3 (include location):</b>	

**- Note -**

*This form shall only be included if Criterion 2.2.3 of Section 3 (Evaluation and Qualification Criteria) is applicable. The Purchaser reserves the right to verify authenticity of Bidder submissions.*



**Form FIN - 1: Historical Financial Performance**

Each Bidder must fill out this form.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name below:

Joint Venture Partner: \_\_\_\_\_

Financial Data for Previous ___ Years [\$ Equivalent]		
Year 1:	Year 2:	Year ___:

**Information from Balance Sheet**

Total Assets (TA)			
Total Liabilities (TL)			
Net Worth = TA-TL			
Current Assets (CA)			
Current Liabilities (CL)			
Working Capital = CA - CL			

Most Recent Working Capital	To be obtained for most recent year and carried forward to FIN - 3 Line 1; in case of joint ventures, to the corresponding Joint Venture Partner's FIN - 3.
-----------------------------	---

**Information from Income Statement**

Total Revenues			
Profits Before Taxes			
Profits After Taxes			

- Attached are copies of financial statements (balance sheets including all related notes, and income statements) for the last \_\_\_ years, as indicated above, complying with the following conditions:
- Unless otherwise required by Section 3 of the Bidding Documents, all such documents reflect the financial situation of the legal entity or entities comprising the Bidder and not the Bidder's parent companies, subsidiaries, or affiliates.
  - Historical financial statements must be audited by a certified accountant.
  - Historical financial statements must be complete, including all notes to the financial statements.
  - Historical financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

**- Note -**

*This form shall only be included if Criterion 2.3.1 of Section 3 (Evaluation and Qualification Criteria) is applicable.*

**Form FIN - 2: Size of Operation (Average Annual Turnover)**

Each Bidder must fill out this form.

The information supplied should be the Annual Turnover of the Bidder or each member of a Joint Venture in terms of the amounts billed to clients for each year for work in progress or completed, converted to US dollars at the rate of exchange at the end of the period reported.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name below:

Joint Venture Partner: \_\_\_\_\_

<b>Annual Turnover Data for the Last three (03) Years</b>			
<b>Year</b>	<b>Amount Currency</b>	<b>Exchange Rate</b>	<b>\$ Equivalent</b>
1			
2			
3			
<b>Average Annual Turnover</b>			

**- Note -**

*This form shall only be included if Criterion 2.3.2 of Section 3 (Evaluation and Qualification Criteria) is applicable.*

**Form FIN - 3: Cash Flow Capacity**

Specify proposed sources of financing, such as working capital, liquid assets,<sup>1</sup> lines of credit, and other financial resources (other than any contractual advance payments) available to meet the cash flow requirements indicated under Criterion 2.3.3 of Section 3 (Evaluation and Qualification Criteria).

Financial Resources		
No.	Source of financing	Amount (\$ equivalent)
1		
2		
3		

**- Note -**

*This form shall only be included if Criterion 2.3.3 of Section 3 (Evaluation and Qualification Criteria) is applicable.*

<sup>1</sup> Liquid assets mean cash and cash equivalents, short-term financial instruments, short-term available-for-sale-securities, marketable securities, trade receivables, short-term financing receivables, and other assets that can be converted into cash within one (1) year.

## Section 5 - Eligible Countries

This Section contains the list of eligible countries. (Reference [www.adb.org/about/members](http://www.adb.org/about/members) as of 26<sup>th</sup> Feb 2018))

### Members

- |    |                                  |    |                                 |
|----|----------------------------------|----|---------------------------------|
| 1  | Afghanistan                      | 25 | Micronesia, Federated States of |
| 2  | Armenia                          | 26 | Mongolia                        |
| 3  | Australia                        | 27 | Myanmar                         |
| 4  | Azerbaijan                       | 28 | Nauru                           |
| 5  | Bangladesh                       | 29 | Nepal                           |
| 6  | Bhutan                           | 30 | New Zealand                     |
| 7  | Brunei Darussalam                | 31 | Niue                            |
| 8  | Cambodia                         | 32 | Pakistan                        |
| 9  | China, People's Republic of      | 33 | Palau                           |
| 10 | Cook Islands                     | 34 | Papua New Guinea                |
| 11 | Fiji                             | 35 | Philippines                     |
| 12 | Georgia                          | 36 | Samoa                           |
| 13 | Hong Kong, China                 | 37 | Singapore                       |
| 14 | India                            | 38 | Solomon Islands                 |
| 15 | Indonesia                        | 39 | Sri Lanka                       |
| 16 | Japan                            | 40 | Taipei, China                   |
| 17 | Kazakhstan                       | 41 | Tajikistan                      |
| 18 | Kiribati                         | 42 | Thailand                        |
| 19 | Korea, Republic of               | 43 | Timor-Leste                     |
| 20 | Kyrgyz Republic                  | 44 | Tonga                           |
| 21 | Lao People's Democratic Republic | 45 | Turkmenistan                    |
| 22 | Malaysia                         | 46 | Tuvalu                          |
| 23 | Maldives                         | 47 | Uzbekistan                      |
| 24 | Marshall Islands                 | 48 | Vanuatu                         |
|    |                                  | 49 | Viet Nam                        |

### Nonregional members

- |   |         |    |                 |
|---|---------|----|-----------------|
| 1 | Austria | 10 | Luxembourg      |
| 2 | Belgium | 11 | The Netherlands |
| 3 | Canada  | 12 | Norway          |
| 4 | Denmark | 13 | Portugal        |
| 5 | Finland | 14 | Spain           |
| 6 | France  | 15 | Sweden          |
| 7 | Germany | 16 | Switzerland     |
| 8 | Ireland | 17 | Turkey          |
| 9 | Italy   | 18 | United Kingdom  |
|   |         | 19 | United States   |

CONFIDENTIAL

# Section 6 - Schedule of Supply

## Contents

1. List of Goods and Related Services .....	6-2
2. Delivery and Completion Schedule .....	6-3
3. Technical Specifications .....	6-5
4. Drawings .....	6-5

## 1. List of Goods and Related Services

Lot No. : <i>[if applicable]</i>				
Lot Name : <i>[if applicable]</i>				
Item No.	Name of Goods or -- Related Services	Description	Unit of Measurement	Quantity
01	Supply and handing over of 450 Nos. Passenger seating facility for the Railway Stations	Supply and handing over of 450 Nos. Passenger seating facility for the Railway Stations	Nos.	450 Nos.

## 2. Delivery and Completion Schedule

The delivery period shall commence from the date of opening of the Letter of Credit.

Item No.	Description of Goods or Related Services	Delivery Schedule (Qty)	Location	Required Arrival Date of Goods
01	Supply and handing over of 450 Nos. Passenger seating facility for the Railway Stations	90 Nos.	Railway Stores Department, Olcott Mawatha, Colombo 10	04 weeks of letter of award
		90 Nos.		04 weeks after 1 <sup>st</sup> Delivery
		90 Nos.		04 weeks after 2 <sup>nd</sup> Delivery
		90 Nos.		04 weeks after 3 <sup>rd</sup> Delivery
		90 Nos.		04 weeks after 4 <sup>th</sup> Delivery
		450 Nos.		



CONFIDENTIAL

### 3. Technical Specifications

Item No.	Description of Goods	Sub Component	Detail
01	450 Nos. passenger seating facility for Railway Stations	Top View	70" inches long & 20" wide bench back support which should be comfortable for passengers. Consist with 2 no of steel flat arms rest. 16 Nos. of 2" x 1" 3 coated water-based Teak timber strips are fixed to 03 Nos. of metal primer coater marine mat black color painted steel supportive frames using Galvanized steel Nuts & Bolts. These 03 supportive frames should be connected with 03 Nos. of 15 mm galvanized pipes, apply above paint.
		Side View	Height – 3' – 2" Flat iron should be painted 2 coatings of epoxy metal primer and matt black rust preventive quality anticorrosive oil resistance and whether resistance paint (zinc phosphate)  Should be fixed Rubber bust for 06 legs.
		3D View	1.5" x 3/8" flat iron frame. (Matt black color)  1.5" x 3/8" flat iron supportive bar (matt black)  Teak timber planks.  Should be apply water base 3 coat system wood paint. (Jat/CIC or equivalent)

Warranty - the warranty shall remain valid for twelve months after the goods have been delivered and accepted at the final destination.

## Drawings

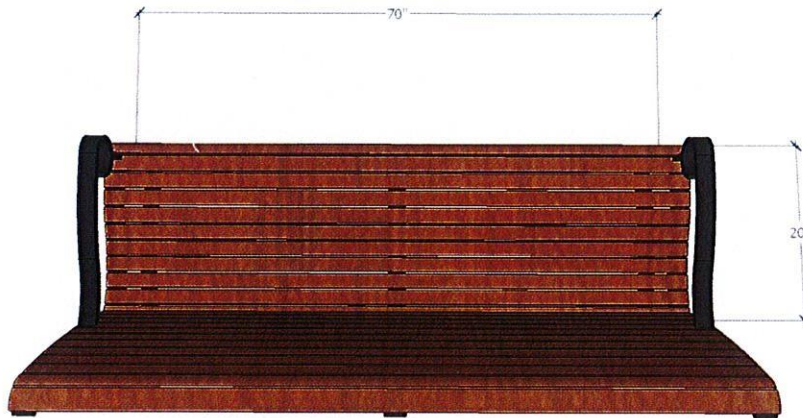
**Drawings attached.**

CONFIDENTIAL

---

## Railway Station Passenger Bench

---

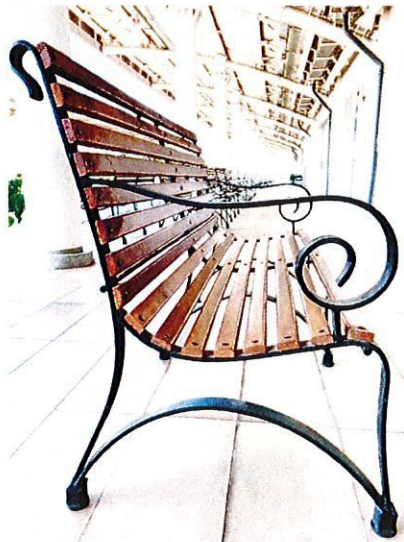


---

### Top view

70" long & 20" wide bench with back support which should be comfortable for passengers. It should be Consisting with 2 no. of steel flat arms rests. 3 coated water-based 16 Nos. of 2"x1" Teak timber strips are fixed to 03 Nos. of steel supportive frames using Galvanized steel Nuts & Bolts. These steel supportive frames are coated with metal primer & painted with marine matt black color. These 3 supportive frames should be interconnected with 03 Nos. of 15mm dia galvanized pipes, painted with marine matt black color.

---



---

### Side view

Height- 3'-2"

Flat iron should be painted 2 coatings of epoxy metal primer and matt black rust preventive quality anticorrosive oil resistance and whether resistance paint (zinc phosphate)  
Should be fixed Rubber bush for 6 legs.

---



---

### 3D view

1.5" x 3/8" flat iron frame coated with metal primer & painted with marine matt black color.

1.5" x 3/8" flat iron supportive bar coated with metal primer & painted with marine matt black color.

Teak timber planks  
Should be apply water base 3 coat system wood paint. (Jat / CIC or equivalent)

---



**Note:**

Specification for wood:

*Treated and seasoning teak timber (super luxury class according to the timber classification of Sri Lanka timber cooperation) to be use for the benches.*

GI pipes as part of the bench:

*3mm gage and 15mm diameter GI pipes are to be fixed for horizontal bars.*

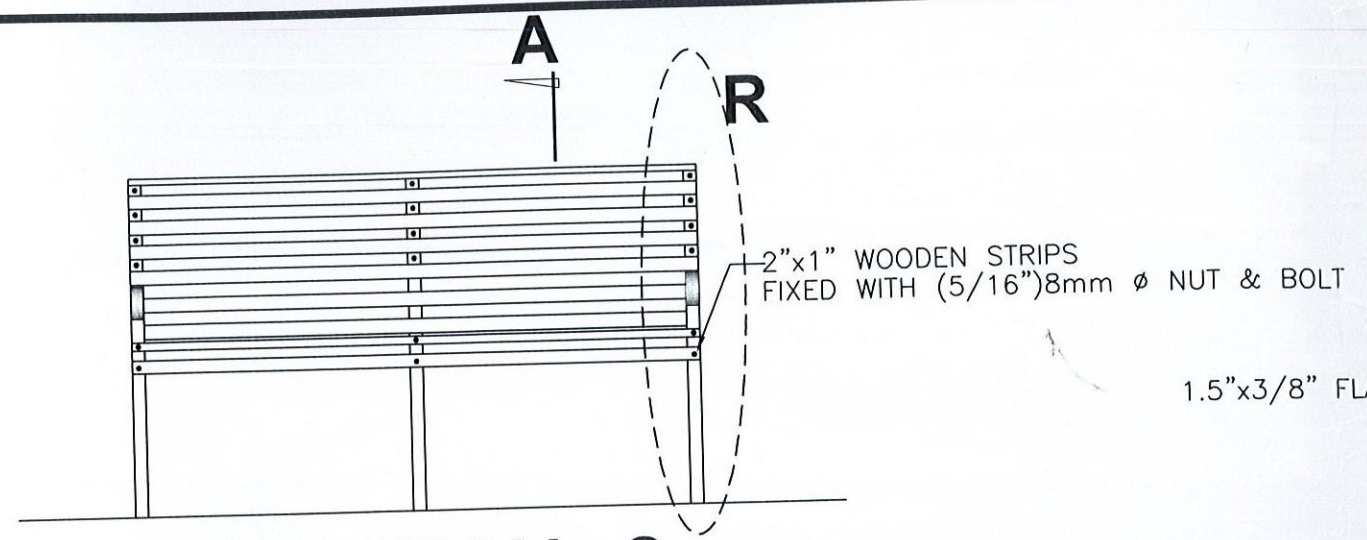
Steel Flat bars:

*Steel grade – S275*

*All of steel bars should not used butt welding joints.*

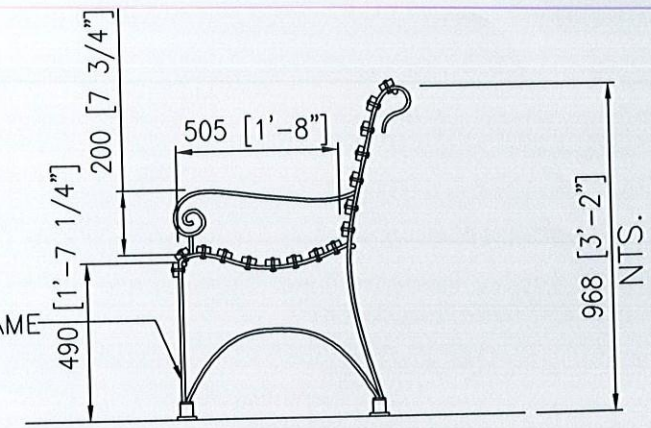


CONCEPTUAL DRAWING  
 REV-3  
 Nov./22/2023  
 PREPARED BY PMU-CSR.P.

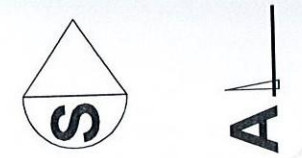
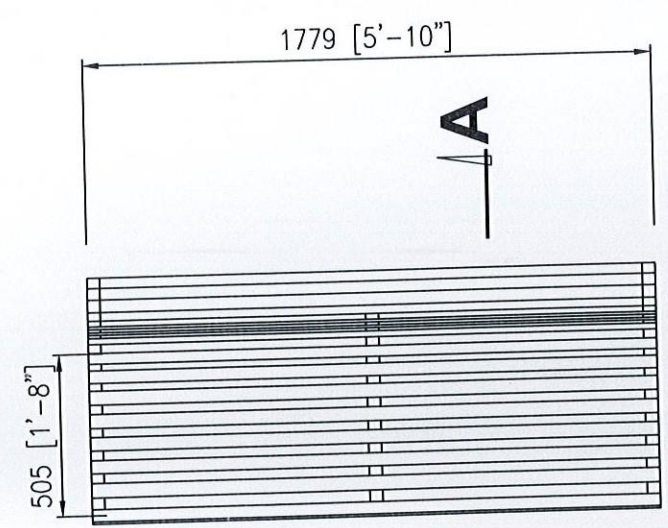


VIEW FROM - S

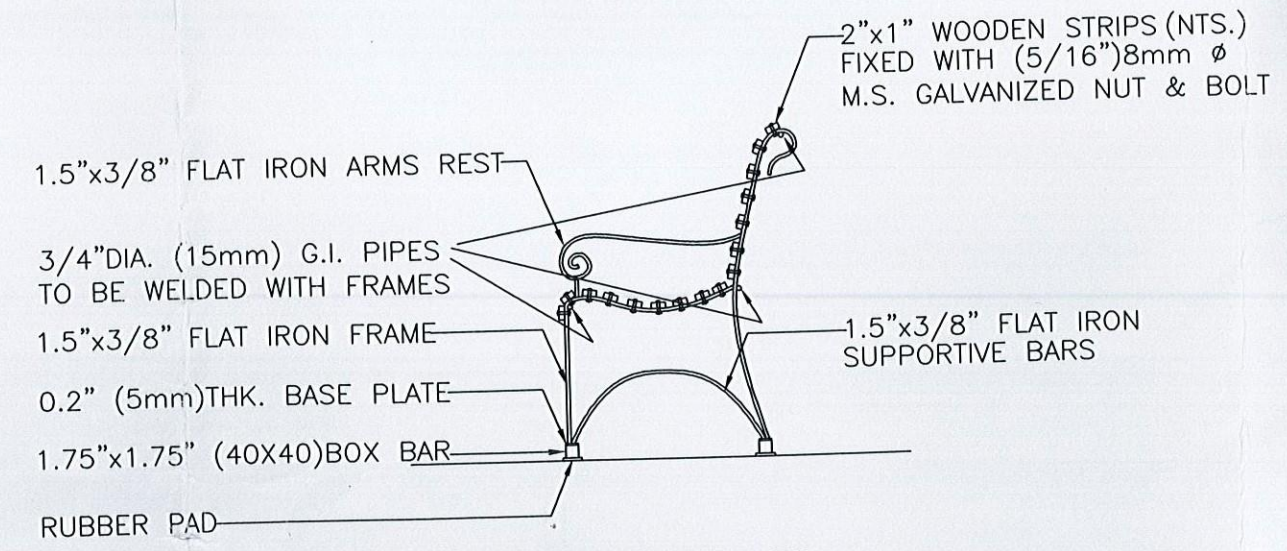
1.5"x3/8" FLAT IRON FRAME



SECTION A-A



PLAN



DETAIL-R

NOTE:  
 THIS DRAWING SHALL NOT BE MESURED BY A SCALE.

*Handwritten signature/initials*





# Section 7 - General Conditions of Contract

## Table of Clauses

1.	Definitions .....	7-2
2.	Contract Documents .....	7-3
3.	Fraud and Corruption.....	7-3
4.	Interpretation.....	7-4
5.	Language.....	7-5
6.	Joint Venture.....	7-5
7.	Eligibility.....	7-5
8.	Notices.....	7-6
9.	Governing Law.....	7-6
10.	Settlement of Disputes .....	7-6
11.	Scope of Supply .....	7-6
12.	Delivery.....	7-6
13.	Supplier's Responsibilities.....	7-6
14.	Purchaser's Responsibilities.....	7-6
15.	Contract Price.....	7-7
16.	Terms of Payment .....	7-7
17.	Taxes and Duties.....	7-7
18.	Performance Security .....	7-7
19.	Copyright .....	7-8
20.	Confidential Information.....	7-8
21.	Subcontracting.....	7-9
22.	Specifications and Standards.....	7-9
23.	Packing and Documents.....	7-9
24.	Insurance.....	7-10
25.	Transportation.....	7-10
26.	Inspections and Tests.....	7-10
27.	Liquidated Damages.....	7-11
28.	Warranty .....	7-11
29.	Patent Indemnity.....	7-12
30.	Limitation of Liability .....	7-13
31.	Change in Laws and Regulations.....	7-13
32.	Force Majeure.....	7-13
33.	Change Orders and Contract Amendments .....	7-14
34.	Extensions of Time .....	7-14
35.	Termination.....	7-14
36.	Assignment .....	7-15
37.	Respectful Work Environment.....	7-15



**1. Definitions**

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- (a) "Contract" means the Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendixes, and all documents incorporated by reference therein.
- (b) "Contract Documents" means the documents listed in the Agreement, including any amendments thereto.
- (c) "Contract Price" means the price payable to the Supplier as specified in the Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- (d) "Day" means calendar day.
- (e) "Delivery" means the transfer of the Goods from the Supplier to the Purchaser in accordance with the terms and conditions set forth in the Contract.
- (f) "Completion" means the fulfillment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
- (g) "Eligible Countries" means the countries and territories eligible as listed in Section 5.
- (h) "GCC" means the General Conditions of Contract.
- (i) "Goods" means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.
- (j) "Purchaser's Country" is the country specified in the Special Conditions of Contract (SCC).
- (k) "Purchaser" means the entity purchasing the Goods and Related Services, as specified in the SCC.
- (l) "Related Services" means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other similar obligations of the Supplier under the Contract.
- (m) "SCC" means the Special Conditions of Contract.
- (n) "Subcontractor" means any natural person, private or government entity, or a combination of the above, including its legal successors or permitted assigns, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.
- (o) "Supplier" means the natural person, private or government entity, or a combination of the above, whose bid to perform

the Contract has been accepted by the Purchaser and is named as such in the Agreement, and includes the legal successors or permitted assigns of the Supplier.

- (p) "ADB" is the Asian Development Bank.
- (q) "The Site," where applicable, means the place named in the SCC.

**2. Contract Documents**

2.1 Subject to the order of precedence set forth in the Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory.

**3. Fraud and Corruption**

3.1 ADB's Anticorruption Policy requires Borrowers (including beneficiaries of ADB-financed activity), as well as Bidders, Suppliers, and Contractors under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, ADB

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
  - (ii) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
  - (iii) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - (iv) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
  - (v) "obstructive practice" means (a) deliberately destroying, falsifying, altering, or concealing of evidence material to an ADB investigation; (b) making false statements to investigators in order to materially impede an ADB investigation; (c) failing to comply with requests to provide information, documents, or records in connection with an Office of Anticorruption and Integrity (OAI) investigation; (d) threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (e) materially impeding ADB's contractual rights of audit or access to information; and
  - (vi) "Integrity violation" is any act which violates ADB's Anticorruption Policy, including (i) to (v) above and the following: abuse, conflict of interest, violations of ADB sanctions, retaliation against whistleblowers or witnesses, and other violations of ADB's Anticorruption Policy,

including failure to adhere to the highest ethical standard.

- (b) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;
- (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation; and
- (d) will impose remedial actions on a firm or an individual, at any time, in accordance with ADB's Anticorruption Policy and Integrity Principles and Guidelines (both as amended from time to time), including declaring ineligible, either indefinitely or for a stated period of time, to participate<sup>1</sup> in ADB-financed, -administered, or -supported activities or to benefit from an ADB-financed, -administered, or -supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations.

3.2 The Supplier shall permit ADB to inspect the Supplier's accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by ADB, if so required by ADB.

#### 4. Interpretation

4.1 If the context so requires it, singular means plural and vice versa.

4.2 Incoterms

- (a) The meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.
- (b) EXW, CIF, CIP, and other similar terms, shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce at the date of the Invitation for Bids or as specified in the SCC.

4.3 Entire Agreement

The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations, and agreements (whether written or oral) of parties with respect

<sup>1</sup> Whether as a Contractor, Subcontractor, Consultant, Manufacturer or Supplier, or Service Provider; or in any other capacity (different names are used depending on the particular Bidding Document).

thereto made prior to the date of Contract.

#### 4.4 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

#### 4.5 Nonwaiver

(a) Subject to GCC Subclause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

(b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

#### 4.6 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity, or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

### 5. Language

5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in the language specified in the SCC. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation

which case, for purposes of interpretation of the Contract, this translation shall govern.

5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.

### 6. Joint Venture

6.1 If the Supplier is a Joint Venture all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the Joint Venture. The composition or the constitution of the Joint Venture shall not be altered without the prior consent of the Purchaser.

### 7. Eligibility

7.1 The Supplier and its Subcontractors shall have the nationality of an eligible country. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.

- 7.2 All Goods and Related Services to be supplied under the Contract and financed by ADB shall have their origin in Eligible Countries. For the purpose of this clause, "country of origin" means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components.
- 8. Notices**
- 8.1 Any Notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the SCC. The term "in writing" means communicated in written form with proof of receipt.
- 8.2 A Notice shall be effective when delivered or on the Notice's effective date, whichever is later.
- 9. Governing Law**
- 9.1 The Contract shall be governed by and interpreted in accordance with the laws of the Purchaser's country, unless otherwise specified in the SCC.
- 10. Settlement of Disputes**
- 10.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 10.2 If the parties fail to resolve such a dispute or difference by mutual consultation within 28 days from the commencement of such consultation, either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.
- 11. Scope of Supply**
- 11.1 Subject to the SCC, the Goods and Related Services to be supplied shall be as specified in Section 6 (Schedule of Supply).
- 11.2 Unless otherwise stipulated in the Contract, the Scope of Supply shall include all such items not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Delivery and Completion of the Goods and Related Services as if such items were expressly mentioned in the Contract.
- 12. Delivery**
- 12.1 Subject to GCC Subclause 33.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Section 6 (Schedule of Supply). The details of shipping and other documents to be furnished by the Supplier are specified in the SCC.
- 13. Supplier's Responsibilities**
- 13.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 11, and the Delivery and Completion Schedule, as per GCC Clause 12.
- 14. Purchaser's Responsibilities**
- 14.1 Whenever the supply of Goods and Related Services requires that the Supplier obtain permits, approvals, and import and other licenses from local public authorities, the Purchaser shall, if so required by the Supplier, make its best effort to assist the Supplier in complying with such requirements in a timely and expeditious manner.

14.2 The Purchaser shall pay all costs involved in the performance of its responsibilities, in accordance with GCC Subclause 14.1.

#### **15. Contract Price**

15.1 The Contract Price shall be as specified in the Agreement subject to any additions and adjustments thereto, or deductions therefrom, as may be made pursuant to the Contract.

15.2 Prices charged by the Supplier for the Goods delivered and the Related 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 the SCC.

#### **16. Terms of Payment**

16.1 The Contract Price shall be paid as specified in the SCC.

16.2 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 12 and upon fulfillment of all the obligations stipulated in the Contract.

16.3 Payments shall be made promptly by the Purchaser, no later than 60 days after submission of an invoice or request for payment by the Supplier, and the Purchaser has accepted it.

16.4 The currency or currencies in which payments shall be made to the Supplier under this Contract shall be specified in the SCC.

#### **17. Taxes and Duties**

17.1 For goods supplied from outside the Purchaser's country, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Purchaser's country.

17.2 For goods supplied from within the Purchaser's country, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.

17.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the Purchaser's Country, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

#### **18. Performance Security**

18.1 The Supplier shall, within 28 days of the notification of Contract award, provide a Performance Security for the due performance of the Contract in the amounts and currencies specified in the SCC.

18.2 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.

18.3 The Performance Security shall be denominated in the currencies of the Contract, or in a freely convertible currency acceptable to the Purchaser, and shall be in one of the forms stipulated by the Purchaser in the SCC, or in another form acceptable to the Purchaser.

18.4 The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than 28 days following the date of

completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.

## 19. Copyright

19.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

## 20. Confidential Information

20.1 The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 20.

20.2 The Purchaser shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the Contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Purchaser for any purpose other than the design, procurement, or other work and services required for the performance of the Contract.

20.3 The obligation of a party under GCC Subclauses 20.1 and 20.2 above, however, shall not apply to information that

- (a) the Purchaser or Supplier needs to share with ADB or other institutions participating in the financing of the Contract;

now or hereafter enters the public domain through no fault of that party;

- (b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or

- (c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

- 21. Subcontracting**
- 21.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the Bid. Subcontracting shall in no event relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.
- 21.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.
- 22. Specifications and Standards**
- 22.1 Technical Specifications and Drawings
- (a) The Supplier shall ensure that the Goods and Related Services comply with the technical specifications and other provisions of the Contract.
- (b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.
- (c) The Goods and Related Services supplied under this Contract shall conform to the standards mentioned in Section 6 (Schedule of Supply) and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the country of origin of the Goods.
- 22.2 Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Section 6 (Schedule of Supply). During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GCC Clause 33.
- 23. Packing and Documents**
- 23.1 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. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the final destination of the Goods and the absence of heavy handling facilities at all points in transit.
- 23.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the SCC, and in any other instructions ordered by the Purchaser.
- 24. Insurance**
- 24.1 Unless otherwise specified in the SCC, the Goods supplied under the Contract shall be fully insured, in a freely convertible currency from an eligible country, against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the SCC.



- 25. Transportation** 25.1 Unless otherwise specified in the SCC, obligations for transportation of the Goods shall be in accordance with the Incoterms specified in Section 6 (Schedule of Supply).
- 26. Inspections and Tests**
- 26.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as are specified in Section 6 (Schedule of Supply).
- 26.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the final destination of the Goods, or in another place in the Purchaser's country as specified in the SCC. Subject to GCC Subclause 26.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.
- 26.3 The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Subclause 26.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 26.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.
- 26.5 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications, codes, and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 26.6 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.
- 26.7 The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Subclause 26.4.
- 26.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to

GCC Subclause 26.6, shall release the Supplier from any warranties or other obligations under the Contract.

**27. Liquidated Damages**

27.1 Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the Goods or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the Contract Price for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the SCC. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause 35.

**28. Warranty**

28.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

28.2 Subject to GCC Subclause 22.1, the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.

28.3 Unless otherwise specified in the SCC, the warranty shall remain valid for 12 months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the SCC, or for 18 months after the date of shipment or loading in the country of origin, whichever period concludes earlier.

28.4 The Purchaser shall give Notice to the Supplier, stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.

28.5 Upon receipt of such Notice, the Supplier shall, within the period specified in the SCC, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.

28.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the SCC, the Purchaser may proceed to take within a reasonable period 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.

**29. Patent Indemnity**

29.1 The Supplier shall, subject to the Purchaser's compliance with GCC Subclause 29.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise

existing at the date of the Contract by reason of

- (a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and
- (b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

29.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Subclause 29.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

29.3 If the Supplier fails to notify the Purchaser within 28 days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.

The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

29.4 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

### **30. Limitation of Liability**

30.1 Except in cases of gross negligence or willful misconduct,

- (a) neither party shall be liable to the other party 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
- (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort, or otherwise, shall not exceed the

amount specified in the SCC, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the Purchaser with respect to patent infringement.

**31. Change in  
Laws and  
Regulations**

31.1 Unless otherwise specified in the Contract, if after the date of the Invitation for Bids, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Purchaser's country where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.

**32. Force Majeure**

32.1 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.

32.2 For purposes of this clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

32.3 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.

**33. Change Orders  
and Contract  
Amendments**

33.1 The Purchaser may at any time order the Supplier through Notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:

- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
- (b) the method of shipment or packing;
- (c) the place of delivery; and
- (d) the Related Services to be provided by the Supplier.

33.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery and Completion Schedule, or both,

and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within 28 days from the date of the Supplier's receipt of the Purchaser's change order.

33.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

#### **34. Extensions of Time**

34.1 If at any time during performance of the Contract, the Supplier or its Subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 12, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. 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, in which case the extension shall be ratified by the parties by amendment of the Contract.

34.2 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 27, unless an extension of time is agreed upon, pursuant to GCC Subclause 34.1.

#### **35. Termination**

##### **35.1 Termination for Default**

(a) The Purchaser, without prejudice to any other remedy for breach of Contract, by Notice of default sent to the Supplier, may terminate the Contract in whole or in part,

(i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 34; or

(ii) if the Supplier fails to perform any other obligation under the Contract.

(iii) if the Supplier, in the judgment of the Purchaser has engaged in fraud and corruption, as defined in GCC Clause 3, in competing for or in executing the Contract.

(b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue

performance of the Contract to the extent not terminated.

### 35.2 Termination for Insolvency

The Purchaser may at any time terminate the Contract by giving Notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser.

### 35.3 Termination for Convenience

(a) The Purchaser, by 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.

(b) The Goods that are complete and ready for shipment within 28 days after the Supplier's receipt of the Notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect

(i) to have any portion completed and delivered at the Contract terms and prices; and/or

(ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

**36. Assignment** 36.1 Neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

**37. Respectful Work Environment** 37.1 The Contractor shall ensure that its employees and sub-contractors observe the highest ethical standards and refrain from any form of bullying, discrimination, misconduct and harassment, including sexual harassment and shall, at all times, behave in a manner that creates an environment free of unethical behavior, bullying, misconduct and harassment, including sexual harassment. The Contractor shall take appropriate action against any employees or sub-contractors, including suspension or termination of employment or sub-contract, if any form of unethical or inappropriate behavior is identified.

37.2 The Contractor shall conduct training programs for its employees and sub-contractors to raise awareness on and prevent any form of bullying, discrimination, misconduct and harassment including sexual harassment, and to promote a respectful work environment. The

Contractor shall keep an up to date record of its employees and subcontractors who have attended and completed such training programs and provide such records to the Purchaser at their first written request.

CONFIDENTIAL

## Section 8 - Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

<b>GCC 1.1(j)</b>	The Purchaser's country is: Democratic Socialist Republic of Sri Lanka
<b>GCC 1.1(k)</b>	The Purchaser is: Ministry of Transport & Highways.
<b>GCC 1.1 (q)</b>	The Site is: Railway Stores Department, Sri Lanka Railways, Olcott Mawatha, Colombo 10
<b>GCC 3.1</b>	<p>ADB requires Borrowers (including beneficiaries of ADB-financed activity) and their personnel, as well as firms and individuals participating in an ADB financed activity, including but not limited to, Bidders, Suppliers and Contractors, agents, subcontractors, subconsultants, service providers, subsuppliers, manufacturers (including their respective officers, directors, employees and personnel) under ADB-financed contracts to observe the highest standard of ethics during the procurement and execution of such contracts in accordance with ADB's Anticorruption Policy (1998, as amended from time to time) Inpursuance of this policy ADB.</p>
	<p>(a) defines, for the purposes of this provision, the terms set forth below as follows:</p> <p>(i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;</p> <p>(ii) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;</p> <p>(iii) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;</p> <p>(iv) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;</p> <p>(v) "abuse" means theft, waste, or improper use of assets related to ADB related activity, either committed intentionally or through reckless disregard;</p> <p>(vi) "conflict of interest" means any situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;</p> <p>(vii) "integrity violation" means any act, as defined under ADB's Integrity Principles and Guidelines (2015, as amended from time to time), which violates ADB's Anticorruption Policy, including (i) to (vi) above and the following: obstructive practice, violations of ADB sanctions, retaliation against whistleblowers or witnesses, and other violations of ADB's Anticorruption Policy, including failure to adhere to the highest ethical standard.</p>



	<p>(b) will reject a proposal for award if it determines that the Bidder recommended for award or any of its officers, directors, employees, personnel, subconsultants, subcontractors, service providers, suppliers or manufacturers has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;</p>
	<p>(c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation, including by failing to inform ADB in a timely manner at the time they knew of the integrity violations.</p>
	<p>(d) will impose remedial actions on a firm or an individual at any time, in accordance with ADB's Anticorruption Policy and Integrity Principles and Guidelines, including declaring ineligible, either indefinitely or for a stated period of time, to participate[FN] in ADB- financed, -administered, or - supported activities, or to benefit from an ADB-financed, -administered, or - supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations; and</p> <p>[FN]: Whether as a Contractor, Subcontractor, Consultant, Manufacturer or Supplier, or Service Provider; or in any other capacity (different names are used depending on the particular Bidding Document).</p>
	<p>(e) will have the right to require that a provision be included in bidding documents and in contracts financed, administered, or supported by ADB, requiring Bidders, suppliers and contractors, consultants, manufacturers, service providers and other third parties engaged or involved in ADB-related activities, and their respective officers, directors, employees and personnel, to permit ADB or its representative to inspect the site and their assets, accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by ADB.</p>

<b>GCC 3.2</b>	<p>All Bidders, consultants, contractors, suppliers, manufacturers, service providers, and other third parties engaged or involved in ADB-related activities and their respective officers, directors, employees and personnel are obliged to cooperate fully in any investigation when requested by ADB to do so. As determined on a case by case basis by ADB, such cooperation includes, but is not limited to, the following:</p> <p>(a) being available to be interviewed and replying fully and truthfully to all questions asked;</p> <p>(b) providing ADB with any items requested that are within the party's control including, but not limited to, documents and other physical objects;</p> <p>(c) upon written request by ADB, authorizing other related entities to release directly to ADB such information that is specifically and materially related, directly or indirectly, to the said entities or issues which are the subject of the investigation;</p> <p>(d) cooperating with all reasonable requests to search or physically inspect their person and/or work areas, including files, electronic databases, and personal property used on ADB activities, or that utilizes ADB's Information and Communications Technology (ICT) resources or systems (including mobile phones, personal electronic devices, and electronic storage devices such as external disk drives);</p> <p>(e) cooperating in any testing requested by ADB, including but not limited to, fingerprint identification, handwriting analysis, and physical examination and analysis; and</p> <p>(f) preserving and protecting confidentiality of all information discussed with, and as required by, ADB.</p>
<b>GCC 3.3</b>	<p>All Bidders, consultants, contractors and suppliers shall require their officers, directors, employees, personnel, agents to ensure that, in its contracts with its sub-consultants, Subcontractors, and other third parties engaged or involved in ADB-related activities, such sub-consultants, Subcontractors, and other third parties similarly are obliged to cooperate fully in any investigation when requested by ADB to do so.</p>
	<p>The Supplier undertakes that no fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the bid, have been given or received in connection with the procurement process or in the contract execution. [FN] [FN]The undertaking also applies during the period of performance of the contract.</p>
<b>GCC 4.2 (b)</b>	<p>The version of Incoterms shall be: <u>2020</u></p>
<b>GCC 5.1</b>	<p>The language shall be: <u>English</u></p> <p>The language for translation of supporting documents and printed literature is: English</p>

<b>GCC 8.1</b>	<p>For <b><u>notices</u></b>, the Purchaser's address shall be:</p> <p>Attention: : <u>Project Director, Colombo Suburban Railway Project</u></p> <p>Street address: <u>No. 217, Cotta Road,</u></p> <p>City: Colombo 8</p> <p>ZIP code: 00800</p> <p>Country: Sri Lanka</p> <p>Telephone: 011-2674354</p> <p>Fax: 011-2674354</p> <p>E-mail: pd@csrplk</p>
<b>GCC 9.1</b>	The governing law shall be: The Law of Democratic Socialist Republic of Sri Lanka
<b>GCC 10.2</b>	<p>The formal mechanism for the resolution of disputes shall be:</p> <p><b><u>For a contract with a Local Supplier:</u></b></p> <p>In the case of a dispute between the Purchaser and a Local Supplier, the dispute shall be settled by recourse to the relevant Court of Sri Lanka Having jurisdiction over the dispute.</p> <p>Place of arbitration: Sri Lanka.</p>
<b>GCC 11.1</b>	<p>The Scope of Supply shall be defined in: <u>Section 6 -Schedule of Supply</u></p> <p>[Note: At the time of awarding the contract, the Purchaser shall specify any change in the scope of supply with respect to Section 6 (Schedule of Supply) included in the Bidding Document. Such changes may be due, for instance, if the quantities of Goods and Related Services are increased or decreased at the time of award .]"</p>
<b>GCC 12.1</b>	<p>Document should be furnished by the Supplier during the delivery of goods and completion of the related services: -</p> <p>Purchase order/ Sales Order.</p> <p>Packing List:</p> <p>Delivery Receipt</p>

<b>GCC 13.2</b>	<p>The Supplier shall submit a Plan for the health and safety measures it will put in place on site in relation to COVID-19 prevention and controls, including but not limited to, Personal Protective Equipment (PPE) requirements, site set up, training, induction and mobilization of new personnel, equipment and plants cleaning and other hazard management measures while undertaking site work activities, site visitors health and safety protocols, as well as the approach to the monitoring and reporting of the Plan. The Plan should be fit for purpose for the particular goods and related services of this contract and be aligned with any relevant government regulations and guidelines on COVID-19 prevention and controls, as well as workplace safety requirements.</p> <p>The Supplier shall be responsible for establishment of preventive and emergency preparedness and response measures to avoid, and where avoidance is not possible, to minimize, adverse impacts and risks of the site work to the health and safety of local communities.</p> <p>The Supplier shall provide site workers with safe and healthy working conditions and establish an operating system to prevent accidents, injuries, and disease.</p> <p>The Supplier shall bear the costs and expenses for the above to ensure that the measures, requirements and actions are carried out in compliance with the Contract</p>
<b>GCC 15.2</b>	The price adjustment shall be: Not applicable.
<b>GCC 16.1</b>	<p>Payment of the Contract Price shall be made in the following manner:</p> <p>(a) Advance Payment: 10% of the Contract Price within 28 days of signing of the Contract. Payment shall be made provided the Supplier presents a request for payment accompanied by an Advance Payment Security in the form of a bank guarantee from a local bank or internationally reputed bank counter guaranteed by a bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka, for an amount equal to the amount of the payment, and that shall be valid until the Goods are delivered. The security shall be in the form as specified in Section 9 (Contract Forms).</p> <p>(b) On acceptance: On acceptance of the delivery of goods at each of the 5 scheduled deliveries, the purchaser shall pay the supplier 85% of the price of the specific delivery upon acceptance by the inspection committee appointed by the Project Director of the Railway Efficiency Improvement Project..</p> <p>(c) On completion of the one-year Warranty Period: 05% of the Contract Price or balance amount of the Contract price upon submission of a claim supported by the acceptance certificate issued by the purchaser.</p>
<b>GCC 16.4</b>	The currencies for payments shall be- LKR

<b>GCC 18.1</b>	The Supplier shall provide a Performance Security of 5% percent of the Contract Price. The Performance Security shall be denominated in the amount and currencies to be specified at the time of awarding of the contract.
<b>GCC 18.3</b>	The forms of acceptable Performance Security is: The performance security shall be in the form of a bank guarantee, issued by a reputable bank, as per form included in section 9, Contract Forms in the amount of 5% of the Contract price in the currency/ies stated in the bid of the successful bidder.
<b>GCC 18.4</b>	Discharge of the Performance Security shall take place:  28 days following the date of completion of the Supplier's performance obligation under the Contract, including warranty obligations
<b>GCC 23.2</b>	The requirements of the EA relating to the packing of the Goods should be detailed enough to ensure quality of the Goods when shipped and at the same time, still be reasonable per industry practice and standards. If industry standards require different packing for different types of Goods procured, it may be best to identify the required packing for each type separately. If sea transport is an option, consideration should be given to whether the goods should be transported under deck, as provided under the User Guide for Procurement of Goods (see p. 99).  The required markings and documentation within and outside the packing cases should also be provided in detail. We recommend identifying the documents required under the laws of Sri Lanka in this clause, if the same is possible, for proper guidance to the bidders and avoidance of delay during the actual delivery of the Goods.
<b>GCC 25.1</b>	Obligations for transportation of the Goods shall be in accordance with: Delivered to the Railway Stores , Maradana
<b>GCC 26</b>	The Inspections and tests shall be conducted while manufacturing at the Bidders premises and the delivery point ( Railway Stores Maradana) after receipt of the goods. All reasonable facilities and assistance, including access to drawing and production data, shall be furnish to the inspectors at no charge to the purchaser.  Should any inspected or tested goods failed to conform to the specification, the purchaser may reject the goods, and the supplier shall either replace the rejected goods make alteration, necessary to meet specification requirement free of cost tothe Purchaser.  The Purchaser's right to inspect, test and where necessary, reject the goods after arrival of the goods to the delivery point shall in no way be limited or waved by reason of the goods having previously been inspected, tested and passed by the Purchase or his representative prior to the goods were transported from the manufacturers yard.

<b>GCC 27.1</b>	The applicable rate for liquidated damages for delay shall be: 0.5 % per week or part thereof.
<b>GCC 27.1</b>	The maximum amount of the liquidated damages shall be 10% of the Contract price.
<b>GCC 28.3</b>	The period of validity of the Warranty shall be: one year The place of final destination shall be: Railway Stores, Maradana.
<b>GCC 28.5</b>	The Supplier shall correct any defects covered by the Warranty within 14 days of being notified by the Purchaser of the occurrence of such defects, at no cost to the Purchaser.
<b>GCC 37</b>	All references to "Contractor" is replaced with "Supplier"

CONFIDENTIAL

# Section 9 - Contract Forms

## Table of Forms

Notification of Award.....	9-3
Contract Agreement .....	9-3
Performance Security .....	9-4
Advance Payment Security .....	9-5



# Notification of Award

---- on letterhead of the purchaser ----

## Letter of Acceptance

..... date.....

To: ..... name and address of the supplier .....

Subject: ..... Notification of Award Contract No. ....

This is to notify you that your Bid dated . . . . date . . . . for execution of the ..... name of the contract and identification number, as given in the Bid Data Sheet.....for the Accepted Contract Amount of the equivalent of . . . . . amount in words and figures and name of currency....., as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section 9 (Contract Forms) of the Bidding Document.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Agency: .....

Attachment: Contract Agreement

# Contract Agreement

THIS AGREEMENT made on the *[insert date]* day of *[insert month]*, *[insert year]*, between *[insert complete name of the purchaser]* of *[insert complete address of the purchaser]* (hereinafter "the Purchaser"), of the one part, and *[insert complete name of the supplier]* of *[insert complete address of the supplier]* (hereinafter "the Supplier"), of the other part:

WHEREAS the Purchaser invited Bids for certain Goods and Related Services, viz., *[insert brief description of the goods and related services]* and has accepted a Bid by the Supplier for the supply of those Goods and Related Services in the sum of *[insert currency or currencies and amount of contract price in words and figures]* (hereinafter "the Contract Price").

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:
  - (a) the Letter of Acceptance;
  - (b) the Bid Submission Sheet and the Price Schedules submitted by the Supplier;
  - (c) the Special Conditions of Contract;
  - (d) the List of Eligible Countries that was specified in Section 5 of the Bidding Document;
  - (e) the General Conditions of Contract;
  - (f) the Schedule of Supply; and
  - (g) any other documents shall be added here.<sup>1</sup>

This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.

3. In consideration of the payments to be made by the Purchaser to the Supplier as indicated in this Agreement, the Supplier hereby covenants with the Purchaser to provide the Goods and Related Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and Related Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of *[indicated name of country]* on the day, month, and year indicated above.

Signed by *[insert authorized signature for the purchaser]* (for the Purchaser)

Signed by *[insert authorized signature for the supplier]* (for the Supplier)

---

<sup>1</sup> Tables of Adjustment Data may be added if the contract provides for price adjustment (see GCC 15).

# Performance Security

*Bank's name, and address of issuing branch or office<sup>1</sup>*

**Beneficiary:** ..... *Name and address of the purchaser* .....

**Date:** ..... *Insert date (as day, month, and year)* .....

**Performance Guarantee No.:** .....

We have been informed that . . . . *name of the supplier*..... (hereinafter called "the Supplier") has entered into Contract No. . . . . *reference number of the contract*. . . . dated..... with you, for the execution of . . . . . *name of contract and brief description of goods and related services*. . . . . (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Supplier, we . . . . *name of the bank*..... hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of ..... *name of the currency and amount in words*<sup>2</sup>. . . . (. . . . *amount in figures*.....) such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Supplier is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the . . . . day of . . . . . ,.....<sup>3</sup> and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458 , except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.<sup>4</sup>

.....  
*Signature(s) and seal of bank (where appropriate)*

## -- Note to Bidder --

*If the institution issuing the performance security is located outside the country of the purchaser, it shall have a correspondent financial institution located in the country of the purchaser to make it enforceable.*

- <sup>1</sup> All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.
- <sup>2</sup> The guarantor shall insert an amount representing the percentage of the contract price specified in the contract and denominated either in the currency(ies) of the contract or a freely convertible currency acceptable to the purchaser.
- <sup>3</sup> Insert the date 28 days after the expected completion date. The purchaser should note that in the event of an extension of the time for completion of the contract, the purchaser would need to request an extension of this guarantee from the guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the purchaser might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Purchaser's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."
- <sup>4</sup> Or the same or similar to this clause specified in the Uniform Rules for Demand Guarantees, ICC Publication No. 758 where applicable.

## Advance Payment Security

[insert complete name and number of contract]

To: [insert complete name of the purchaser]

In accordance with the payment provision included in the Contract, in relation to advance payments, [insert complete name of the supplier] (hereinafter called "the Supplier") shall deposit with the Purchaser a security consisting of [indicate type of security], to guarantee its proper and faithful performance of the obligations imposed by said Clause of the Contract, in the amount of [insert currency and amount of guarantee in words and figures].

We, the undersigned [insert complete name of the guarantor], legally domiciled in [insert full address of the guarantor] (hereinafter "the Guarantor"), as instructed by the Supplier, agree unconditionally and irrevocably to guarantee as primary obligor and not as surety merely, the payment to the Purchaser on its first demand without whatsoever right of objection on our part and without its first claim to the Supplier, in the amount not exceeding [insert currency and amount of guarantee in words and figures].

This security shall remain valid and in full effect from the date of the advance payment being received by the Supplier under the Contract until [insert date (as day, month, year)].

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458 [or ICC Publication No. 758 as applicable].

Name: [insert complete name of person signing the Security]

In the capacity of [insert legal capacity of person signing the Security]

Signed: [insert signature of person whose name and capacity are shown above]

Duly authorized to sign the security for and on behalf of [insert seal (where appropriate) and complete name of the guarantor]

Date: [insert date of signing]

### **-- Note to Bidder --**

If the institution issuing the advance payment security is located outside the country of the purchaser, it shall have a correspondent financial institution located in the country of the purchaser to make it enforceable.