



**DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA  
MINISTRY OF TRANSPORT**

**SRI LANKA RAILWAYS**

**RAILWAY EFFICIENCY IMPROVEMENT PROJECT**

**FUNDED BY  
ASIAN DEVELOPMENT BANK  
ADB LOAN NOSRI P49111-005**

**BIDDING DOCUMENTS**

**Design, Manufacture, Supply, Commissioning and Handing  
Over of  
Ballast Profiling Machine- 1 No.  
for Sri Lanka Railways**

**CONTRACT PACKAGE: REIP/ADB/ICB/G/02**

**August 2021**



# **BIDDING DOCUMENT**

## **Procurement of Goods**

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

#### **Design, Manufacture, Supply, Commissioning and Handing Over of Ballast Profiling Machine- 1 No. for Sri Lanka Railways**

**Issued on: 11<sup>th</sup> August, 2021**

**Invitation for Bids No.: REIP/ADB/ICB/G/02**

**ICB No.: REIP/ADB/ICB/G/02**

**Purchaser: Ministry of Transport**

**Country: Sri Lanka**



## **Preface**

This Bidding Document for Procurement of Goods has been prepared by Ministry of Transport 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.

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# Section 1 - Instructions to Bidders

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## 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 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;
  - (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
  - (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

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<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).

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 a dependent agency 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, including a description of the inquiry but without identifying its source. 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 two envelopes submitted simultaneously, one containing the Technical Bid and the other the Price Bid, both envelopes enclosed together in an outer single envelope.
- 11.2 The Technical Bid submitted by the Bidder shall comprise the following:
- (a) Technical Bid Submission Sheet;
  - (b) Bid Security or Bid-Securing Declaration, in accordance with ITB 21;
  - (c) alternative Technical Bid, 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 32, 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.

- 11.3 The Price Bid submitted by the Bidder shall comprise the following:
- (a) Price Bid Submission Sheet and the applicable Price Schedules, in accordance with ITB 12, ITB 14, and ITB 15;
  - (b) alternative Price Bid corresponding to the alternative Technical Bid, if permissible, in accordance with ITB 13; and
  - (c) any other document required in the BDS.
- 12. Bid Submission Sheets and Price Schedules**
- 12.1 The Bidder shall submit the Technical Bid Submission Sheet and the Price Bid Submission Sheet using the form furnished in Section 4 (Bidding Forms). These forms must be completed without any alterations to their format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.
- 12.2 The Bidder shall submit, as part of the Price Bid, 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.
- 14. Bid Prices and Discounts**
- 14.1 The prices and discounts quoted by the Bidder in the Price 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 33.3.
- 14.3 The price to be quoted in the Price Bid Submission Sheet shall be the total price of the Bid excluding any discounts offered. Absence of the total bid price in the Price 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 Price 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 proposed in the Price Schedule Forms for Goods and Related Services, shall be disaggregated, when appropriate, as indicated in this sub-clause. This disaggregation shall be 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 32. 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 in 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 Price Bids 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 Price 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 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 Technical Bid documentary evidence that the Goods and Related Services conform to the requirements specified in Section 6 (Schedule 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).

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| <b>19. Documents Establishing the Qualifications of the Bidder</b> | 19.1 | To establish its qualifications to perform the Contract, the Bidder shall submit as part of its Technical Proposal the evidence indicated for each qualification criteria 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.  |
| <b>20. Period of Validity of Bids</b>                              | 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. |
| <b>21. Bid Security/ Bid-Securing Declaration</b>                  | 21.1 | Unless otherwise specified in the BDS, the Bidder shall furnish as 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: <ul style="list-style-type: none"> <li>(a) an unconditional bank guarantee,</li> <li>(b) an irrevocable letter of credit, or</li> </ul>  |

- (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 46.
- 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 as specified by the Bidder on the Technical 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 45;
    - (ii) furnish a performance security in accordance with ITB 46; or
    - (iii) accept the arithmetical corrections of its bid in accordance with ITB 36.
- 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 Technical Bid and one original set of the Price Bid as described in ITB 11 and clearly mark each "ORIGINAL - TECHNICAL BID" and "ORIGINAL - PRICE BID". In addition, the Bidder shall submit copies of the Technical Bid and the Price Bid, in the number specified in the BDS and clearly mark them "COPY NO... - TECHNICAL BID" and "COPY NO.... - PRICE BID". 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 overwriting 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 submit their bids by mail or by hand. When so specified in the BDS, Bidders shall 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 of the Technical Bid, the original of the Price Bid, and each copy of the Technical Bid and each copy of the Price Bid, including alternative Bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL - TECHNICAL BID", "ORIGINAL - PRICE BID" and "COPY NO... - TECHNICAL BID" and "COPY NO.... - PRICE BID", as appropriate. 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 to ITB 23.6.
  - (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; and
  - (c) bear the specific identification of this bidding process indicated in the BDS.
- 23.3 The outer envelopes and the inner envelopes containing the Technical Bids shall bear a warning not to open before the time and date for the opening of Technical Bids, in accordance with ITB 27.1.

- 23.4 The inner envelopes containing the Price Bids shall bear a warning not to open until advised by the Purchaser in accordance with ITB 27.2.
- 23.5 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.
- 23.6 Alternative Bids, if permissible in accordance with ITB 13, shall be prepared, sealed, marked, and delivered in accordance with the provisions of ITB 22 and ITB 23, with the inner envelopes marked in addition "ALTERNATIVE NO...." as appropriate
- 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 inner and outer 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 Technical Bid Submission Sheet or any extension thereof.

**27. Bid Opening**

- 27.1 The Purchaser shall open the Technical Bids in public at the address, on the date, and time specified in the BDS in the presence of Bidder's designated representatives and anyone who choose 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 The Price Bids will remain unopened and will be held in custody of the Purchaser until the time of opening of the Price Bids. The date, time, and location of the opening of Price Bids will be advised in writing by the Purchaser. If the Technical Bid and the Price Bid are submitted together in one envelope, the Purchaser may reject the Bid. Alternatively, the Price Bid may be immediately resealed for later evaluation.
- 27.3 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 and recorded at bid opening.
- 27.4 Next, outer envelopes marked "SUBSTITUTION" shall be opened. The inner envelopes containing the Substitution Technical Bid and/or Substitution Price Bid shall be exchanged for the corresponding envelopes being substituted, which are to be returned to the Bidder unopened. Only the Substitution Technical Bid, if any, shall be opened, read out, and recorded. Substitution Price Bid will remain unopened in accordance with ITB 27.2. No envelope shall be substituted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out and recorded at bid opening.
- 27.5 Next, outer envelopes marked "MODIFICATION" shall be opened. No Technical Bid and/or Price Bid shall be modified unless the corresponding modification notice contains a valid authorization to request the modification and is read out and recorded at the opening of Technical Bids. Only the Technical Bids, both Original as well as Modification, are to be opened, read out, and recorded at the opening. Price Bids, both Original as well as Modification, will remain unopened in accordance with ITB 27.2.
- 27.6 All other envelopes holding the Technical Bids shall be opened one at a time, and the following read out and recorded
- (a) the name of the Bidder;
  - (b) whether there is a modification or substitution;
  - (c) the presence of a bid security or a Bid-Securing Declaration, if required; and
  - (d) any other details as the Purchaser may consider appropriate.

Only Technical Bids and alternative Technical Bids read out and recorded at bid opening shall be considered for evaluation. Unless otherwise specified in the BDS, all pages of the Technical Bid

Submission Sheet are to be initialed by at least three representatives of the Purchaser attending the bid opening. No Bid shall be rejected at the opening of Technical Bids except for late bids, in accordance with ITB 25.1.

- 27.7 The Purchaser shall prepare a record of the opening of Technical Bids that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, modification, or alternative offer; and the presence or absence of a bid security or a 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.
- 27.8 At the end of the evaluation of the Technical Bids, the Purchaser will invite bidders who have submitted substantially responsive Technical Bids and who have been determined as being qualified for award to attend the opening of the Price Bids. The date, time, and location of the opening of Price Bids will be advised in writing by the Purchaser. Bidders shall be given reasonable notice of the opening of Price Bids.
- 27.9 The Purchaser will notify Bidders in writing who have been rejected on the grounds of being substantially nonresponsive to the requirements of the Bidding Document and return their Price Bids unopened.
- 27.10 The Purchaser shall conduct the opening of Price Bids of all Bidders who submitted substantially responsive Technical Bids, in the presence of Bidders' representatives who choose to attend at the address, on the date, and time specified by the Purchaser. The Bidder's representatives who are present shall be requested to sign a register evidencing their attendance.
- 27.11 All envelopes containing Price Bids shall be opened one at a time and the following read out and recorded
- (a) the name of the Bidder;
  - (b) whether there is a modification or substitution;
  - (c) the Bid Prices, including any discounts and alternative offers; and
  - (d) any other details as the Purchaser may consider appropriate.

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

- 27.12 The Purchaser shall prepare a record of the opening of Price Bids that shall include, as a minimum: the name of the Bidder, the Bid Price (per lot if applicable), any discounts, and alternative offers. 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 when electronic bidding is permitted.

## **E. Evaluation and Comparison of Bids**

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| <b>28. Confidentiality</b>                         | <p>28.1 Information relating to the examination, evaluation, comparison, and qualification 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.</p> <p>28.2 Any attempt by a Bidder to influence the Purchaser in the examination, evaluation, comparison, and post qualification of the Bids or Contract award decisions may result in the rejection of its Bid.</p> <p>28.3 Notwithstanding ITB 28.2, from the time of opening the Technical Bids 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.</p>   |
| <b>29. Clarification of Bids</b>                   | <p>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 Price Bids, in accordance with ITB 36.</p> <p>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.</p> |
| <b>30. Deviations, Reservations, and Omissions</b> | <p>30.1 During the evaluation of Bids, the following definitions apply:</p> <ul style="list-style-type: none"> <li>(a) "Deviation" is a departure from the requirements specified in the Bidding Document;</li> <li>(b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and</li> <li>(c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.</li> </ul>   |
| <b>31. Examination of Technical Bids</b>           | <p>31.1 The Purchaser shall examine the Technical Bid to confirm that all documents and technical documentation requested in ITB 11.2 have been provided, and to determine the completeness of each document submitted.</p>  |

- 31.2 The Purchaser shall confirm that the following documents and information have been provided in the Technical Bid. If any of these documents or information is missing, the offer shall be rejected:
- (a) Technical Bid Submission Sheet in accordance with ITB 12.1;
  - (b) written confirmation of authorization to commit the Bidder;
  - (c) bid security or Bid-Securing Declaration, if applicable; and
  - (d) Manufacturer's Authorization, if applicable.
- 32. Responsiveness of Technical Bid**
- 32.1 The Purchaser's determination of a Technical Bid's responsiveness is to be based on the contents of the Technical Bid itself, as defined in ITB 11.
- 32.2 A substantially responsive Technical 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 Contract; or
  - (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Technical Bids.
- 32.3 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.
- 32.4 If a Technical Bid is not substantially responsive to the Bidding Document, it shall be rejected by the Purchaser and may not subsequently be made responsive by the Bidder by correction of the material deviation, reservation, or omission.
- 33. Nonmaterial Nonconformities**
- 33.1 Provided that a Technical Bid is substantially responsive, the Purchaser may waive nonconformities in the Bid that does not constitute a material deviation, reservation, or omission.
- 33.2 Provided that a Technical 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 Technical Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the Price Bid of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

- 33.3 Provided that a Technical Bid is substantially responsive, the Purchaser shall rectify quantifiable nonmaterial nonconformities or omissions. To this effect, the Bid Price shall be adjusted during evaluation of Price Bids, for comparison purposes only, to reflect the price of the missing or non-conforming item or component. The adjustment shall be made using the method indicated in Section 3 (Evaluation and Qualification Criteria).
- 34. Qualification of the Bidder**
- 34.1 The Purchaser shall determine to its satisfaction during the evaluation of Technical Bids whether Bidders meets the qualifying criteria specified in Section 3 (Evaluation and Qualification Criteria).
- 34.2 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.
- 34.3 An affirmative determination shall be a prerequisite for the opening and evaluation of a Bidder's Price Bid. A negative determination shall result into the disqualification of the Bid, in which event the Purchaser shall return the unopened Price Bid to the Bidder.
- 35. Examination of Price Bids**
- 35.1 Following the opening of Price Bids, the Purchaser shall examine the Price Bids to confirm that all documents and financial documentation requested in ITB 11.3 have been provided, and to determine the completeness of each document submitted.
- 35.2 The Purchaser shall confirm that the following documents and information have been provided in the Price Bid. If any of these documents or information is missing, the offer shall be rejected:
- (a) Price Bid Submission Sheet in accordance with ITB 12.1; and
  - (b) Price Schedules, in accordance with ITB 12, ITB 14, and ITB 15.
- 36. Correction of Arithmetical Errors**
- 36.1 During the evaluation of Price Bids, 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.
- 36.2 If the Bidder that submitted the lowest evaluated Bid does not accept the correction of errors, its Bid shall be disqualified and its bid

security may be forfeited, or its Bid-Securing Declaration executed.

- 37. Conversion to Single Currency** 37.1 For evaluation and comparison of Price Bids, the Purchaser shall convert all bid prices expressed in the amounts in various currencies into a single currency, using the selling exchange rates established by the source and on the date specified in the BDS.
- 38. Margin of Preference** 38.1 Unless otherwise specified in the BDS, a margin of preference shall not apply.
- 39. Evaluation of Price Bids** 39.1 The Purchaser shall use the criteria and methodologies indicated in this clause. No other criteria or methodology shall be permitted.
- 39.2 To evaluate a Price 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 36.1;
  - (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 37.
- 39.3 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.
- 39.4 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 Price Bid Submission Sheet, is as specified in Section 3 (Evaluation and Qualification Criteria).

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| <b>40. Comparison of Bids</b>   | 40.1 | The Purchaser shall compare all substantially responsive Bids to determine the lowest evaluated bid, in accordance with ITB 39.   |
| <b>41. Purchaser's Right to Accept Any Bid, and to Reject Any or All Bids</b> | 41.1 | 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 securities, shall be promptly returned to the Bidders. |

## F. Award of Contract

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| <b>42. Award Criteria</b>  | 42.1 | 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 has remained qualified to perform the Contract satisfactorily.  |
|  | 42.2 | A Bid shall be rejected if the qualification criteria as specified in Section 3 (Evaluation and Qualification Criteria) are no longer met by the Bidder whose offer has been determined to be the lowest evaluated Bid. In this event the Purchaser shall proceed to the next lowest evaluated Bid to make a similar reassessment of that Bidder's capabilities to perform satisfactorily.  |
| <b>43. Purchaser's Right to Vary Quantities at Time of Award</b> | 43.1 | 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.   |
| <b>44. Notification of Award</b>                                 | 44.1 | 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.  |
|  | 44.2 | 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. |
|  | 44.3 | Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.  |

- 45. Signing of Contract**
- 45.1 Promptly after notification, the Purchaser shall send to the successful Bidder the Agreement.
- 45.2 Within 28 days of receipt of the Agreement, the successful Bidder shall sign, date, and return it to the Purchaser.
- 46. Performance Security**
- 46.1 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.
- 46.2 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/ICB/G /02
<b>ITB 1.1</b>	The Purchaser is: Ministry of Transport
<b>ITB 1.1</b>	The name of the international competitive bidding (ICB) is: Design, Manufacture, Supply, Commissioning and Handing Over of Ballast Profiling Machine for Sri Lanka Railways'  The identification number of the ICB is: REIP/ADB/ICB/G /02  The number and identification of lots comprising this ICB is: None
<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
<b>B. Contents of Bidding Document</b>	
<b>ITB 7.1</b>	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 08 ZIP code: 00800 Country: Sri Lanka Telephone: 011-2674354 Fax: 011-2674354 E-mail: pd@csrp.lk
<b>C. Preparation of Bids</b>	
<b>ITB 10.1</b>	The language of the Bid is: English
<b>ITB 11.2 (i)</b>	The Bidder shall submit with its Technical Bid the following additional documents  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. The bids of those bidders who fail to submit such original certificate shall be rejected.  2. The bidders/ tenderers shall also register themselves immediately after the submission of the bids and prior to the award of the tender, in terms of the

	<p>Public Contract Act. No. 03 of 1987. 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, 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> <p><b><u>Absence of or incomplete submission may result in rejection of bid</u></b></p>
ITB 12.2	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.
ITB 13.1	Alternative Bids Shall not be <i>permitted</i> .
ITB 14.5	The Incoterms edition is: 2010
ITB 14.6 (b) (i)	For Goods offered from outside the Purchaser's country, the Bidder shall quote prices using the following Incoterms: DDP (Colombo, Sri Lanka)
ITB 14.6 (b) (ii)	In addition to the above, the Bidder shall quote prices for Goods offered from outside the Purchaser's country using the following Incoterms: CIP (Maradana, Sri Lanka)
ITB 14.7	The prices quoted by the Bidder shall not be adjustable.
ITB 14.8	Prices quoted for each lot shall correspond at least to 100 % of the items specified for each lot.  Prices quoted for each item of a lot shall correspond at least to 100 % of the quantities specified for this item of a lot.
ITB 19.2	The Bidder shall include with its bid the Manufacturer's Authorization in the form given in section 4- bidding forms.
ITB 19.3	The Bidder is required to include with its bid, evidence that it will be represented by an Agent in the Purchaser's country.
ITB 20.1	The bid validity period shall be 120 days.
ITB 21.1	The Bid Security Declaration shall be not applicable



<b>ITB 21.1</b>	The Bidder shall furnish a bid security in the amount of <b>USD 50,000</b> or equivalent in Sri Lanka rupees.
<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: <i>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)</i>
<b>ITB 22.2</b>	The Bidder shall submit an acceptable authorization within 21 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 identification of this bidding process is: Indicate "Railway Efficiency Improvement Project" at the top left hand corner of the Inner and Outer envelopes.
<b>ITB 24.1</b>	For <b><u>bid submission purposes</u></b> only, the Purchaser's address is :  Attention: Director (Procurement), Ministry of Transport  Street address: "Sethsiripaya", Stage II  Floor/Room number: 7 <sup>th</sup> Floor  City: Battaramulla

	ZIP code: 10120 Country: Sri Lanka
<b>ITB 24.1</b>	<b>The deadline for bid submission is:</b> Date: 28 <sup>th</sup> September, 2021 Time: 2:00 P.M. (Sri Lanka Time)
<b>ITB 27.1</b>	<b>The technical bid opening shall take place at:</b> Street address: Ministry of Transport, "Sethsiripaya", Stage II Floor/Room number: 7 <sup>th</sup> Floor City: Battaramulla Country: Sri Lanka Date: 28 <sup>th</sup> September, 2021 Time: 2.00 P.M. (Sri Lanka Time)
<b>ITB 27.1</b>	The electronic bid opening procedure shall be as follows: Not Applicable
<b>ITB 27.6</b>	The Technical Bid Submission Sheet shall be initialed by three (3) representatives of the Purchaser attending Technical Bid opening.
<b>ITB 27.11</b>	The Price Bid Submission Sheet and Price Schedules shall be initialed by three (3) representatives of the Purchaser attending Price Bid opening.
<b>E. Evaluation and Comparison of Bids</b>	
<b>ITB 37.1</b>	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 The source of the selling exchange rate shall be: Central Bank of Sri Lanka The date for the selling exchange rate shall be: 28 Days Prior to the Closing date of Bid The evaluation will be based on CIP value shall be stated
<b>ITB 38.1</b>	A margin of preference shall not apply.
<b>F. Award of Contract</b>	
<b>ITB 43.1</b>	The maximum percentage by which quantities may be increased is: Not applicable The maximum percentage by which quantities may be decreased is: Not applicable

# Section 3 - Evaluation and Qualification Criteria

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DO NOT COPY

# 1. Technical Evaluation

## 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.

During manufacturing of the machine quality assurance shall be according to ISO standard 9001. Valid ISO 9001 certificate of the machine manufacturer shall be attached to the offer.

Wherever applicable the construction of the machine shall be according to ISO (International Organization for Standardization, UIC (Unions of Railways) and EN (European Standard) regulations

## 1.2 Health and Safety COVID -19 Plan

The Purchaser will take into account the quality of the Health and Safety COVID -19 Plan ('the Plan') attached to the Technical Proposal in its evaluation of the Adequacy of the Technical Proposal.

The bidder should demonstrate in the Plan the health and safety measures they will put in place on site in relation to COVID-19 prevention and controls, including but not limited to, 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 visitor's 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.

## 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.

DO NOT COPY

## 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	Technical Bid Submission Sheet; Forms ELI – 1 and ELI - 2
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##### 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	Technical Bid Submission Sheet
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##### 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	Technical 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	Technical 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	Technical Bid Submission Sheet
--	-----------------------	-----------------------	-----------------------	----------------	--------------------------------

## 2.1.2 Pending Litigation

### 2.1.2.1 Pending Litigation and Arbitration

Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture		Submission Requirements	
		All Partners Combined	Each Partner		One Partner
All pending litigation and arbitration, if any, shall be treated as resolved against the Bidder and so shall in total not represent more than fifty (50) percent 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



## 2.2 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 five (5) years, of at least three (3) contracts, out of which at least one (1) should be outside of the Bidder's own country, each valued at USD 2,000,000.00 with nature, and complexity similar to the scope of supply described in Section 6 (Schedule of Supply).-(Proof documents to be submitted)	must meet requirement	must meet requirement	not applicable	not applicable	Form EXP - 1
(ii) Reputed local agent having at least three (3) years of experience in handling, installation and maintenance of locomotives, Rolling Stock, maintenance equipment or similar type of heavy machineries for other industries. (Proof documents to be submitted)					Schedule No.5

### 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 for at least fifteen (15) years, and  (ii) been sold a minimum of ten (10) units of similar type over the last seven (7) years, out of which at least	must meet requirement	must meet requirement	not applicable	not applicable	Form EXP - 2

<p>five (5) unit should have been sold outside of Bidder's own country.</p> <p>(iii) been in operation for a minimum of three (03) years.</p> <p>(iv) At least Two (2) units of 2.2.2 (ii) shall be for broad gauge (1676mm) track for which client certification for successful operation shall be submitted by the bidder.</p> <p>(Proof documents to be submitted for activity I &amp; ii, end user certificates for 2.2.2 clause iii &amp; iv to be submitted.)</p>					
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**2.2.3 Production Capacity**

Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture		Submission Requirements	
		All Partners Combined	Each Partner		One Partner
<p>The Bidder or manufacturer shall demonstrate<sup>a</sup> 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).</p>	<p>must meet requirement</p>	<p>must meet requirement</p>	<p>not applicable</p>	<p>not applicable</p>	<p>Form EXP - 3</p>

**- Note -**

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

## 2.3 Financial Situation

### 2.3.1 Historical Financial Performance

Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture			Submission Requirements
		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 five (5) 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	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Minimum average annual turnover of USD 3.0 Million calculated as total payments received by the Bidder for contracts completed or under execution over the last five (5) 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**

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 USD <b>Two (02) Million.</b>	must meet requirement	must meet requirement	must meet 25% of the requirement	must meet 40% of the requirement	Form FIN - 3

## **3. Economic Evaluation**

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.

### **3.1 Adjustment for Scope**

#### **3.1.1 Local Handling and Inland Transportation**

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.

#### **3.1.2 Minor Omissions or Missing Items**

Pursuant to ITB 33.3, 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.

### **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.

### **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.

### **3.4 Operating and Maintenance (O&M) Costs**

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

- (a) Number of years for initial period of operation - 5 years
- (b) Operating costs such as spare parts, labour and/or other inputs required for the operation of the Goods. Refer Section 4 and Section 6.

### **3.5 Spare Parts**

“The list of items and quantities required for maintenance of Ballast Profiling Machine, likely to be required during the initial period of 2 years 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.”

### **3.6 Performance and Productivity of the Goods Not applicable**

### **3.7 Multiple Lots (Contracts) Not applicable**

### **3.8 Margin of Preference Not applicable**

## Section 4 - Bidding Forms

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## Technical Bid Submission Sheet

**-- Note --**

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

Date: \_\_\_\_\_  
 International Competitive Bidding (ICB) 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 the 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) Our Bid consisting of the Technical Bid and the Price 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.
- (d) Our firm, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries in accordance with ITB 4.2.
- (e) 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.
- (f) 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.
- (g) 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.



- (h) [We are not a government-owned enterprise] / [We are a government-owned enterprise but meet the requirements of ITB 4.5].<sup>1</sup>
- (i) 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.

Name \_\_\_\_\_

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

Signed \_\_\_\_\_

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

Date \_\_\_\_\_

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

## Price Bid Submission Sheet

### **Note**

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

Date: \_\_\_\_\_  
 International Competitive Bidding (ICB) 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 the 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 foreign currency in words], [amount in figures], and [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 Price 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 submission deadline in accordance with the Bidding Documents, 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.

- (g) 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>1</sup>

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

- (h) 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.
- (i) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.
- (j) 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.

Name \_\_\_\_\_

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

Signed \_\_\_\_\_

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

Date \_\_\_\_\_

<sup>1</sup> If none has been paid or is to be paid, indicate "None."

**Schedule No. 1:**

**Price Schedule for Goods to be offered from Outside the Purchaser's Country**

**Bid Name: Design, Manufacture, Supply, Commissioning and Handing over a Ballast Profiling Machine for Sri Lanka Railways**

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

Item	Description	Country of Origin	Quantity and unit of Measurement	Unit Price CIP (Colombo, Sri Lanka)	Total Price CIP (Colombo, Sri Lanka)	Unit Price DDP (Colombo, Sri Lanka)	Total Price DDP (Colombo, Sri Lanka)	Total cost of cleaning, Handling and delivery charges to the places of delivery stated with all taxes and duties	
								9	
1	2	3	4	5	6=4 x 5	7	8=4 x 7	Foreign currency	SL Rupees
1	Design, Manufacture, Supply, Commissioning and Handing over of a Ballast Profiling Machine with required tools for maintenance								
2	Training								
3	Consumable Spare parts								

Columns 5 and 6: Incoterm in accordance with ITB 14  
 Currency in accordance with ITB 15  
 Columns 7 and 8: **Prices to be quoted inclusive of all customs duties, sales and other similar taxes applicable in the Purchaser's country. All the taxes shall be filled up as per the current tax structure. Attach separate list of prices with break downs for each item. The evaluation will be made based on the CIP value of the contract.**

Name \_\_\_\_\_

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

Signed \_\_\_\_\_

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

Date \_\_\_\_\_

**Schedule No. 2:**

<b>Schedule of Prices</b>									
<b>Related Services to Be Offered from Outside and Within the purchaser's Country</b>									
Name of Bidder _____ IFB Number _____ Page ____ of ____									
Item No.	Description	Country of Origin	Quantity & Unit of measurement	Unit price CIP (Colombo, Sri Lanka)	Total price CIP (Colombo, Sri Lanka)	Unit Price DDP (Colombo, Sri Lanka)	Total Price DDP (Colombo, Sri Lanka)	Total DDP price (delivered Duty Paid)	
1	2	3	4	5	6=4 x 5	7	8	9	
								Foreign currency	SL Rupees
	Maintenance including periodical/Scheduled services for 3 years (within warranty period 2 years and additional 01 year)								

**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 \_\_\_\_\_

**Schedule No. 3:**

**Price Schedule for Spare Parts**

(Optional spare parts for 5 years)

Item	Description	Quantity	Unit Price		Total Price	
			EXW Local Parts Local Currency	CIP Imported Parts Foreign Currency	Local Currency Portion	Foreign Currency Portion
1	2	3	4	5	6 = 3 x 4	7 = 3 x 5
1						
2						
3						
4						
5						
<b>TOTAL</b>						

**Notes:**

Columns 4 and 7: Currencies in accordance with ITB 15

Prices of the spare parts will not consider for evaluation and it is only for future reference.

Name \_\_\_\_\_

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

Signed \_\_\_\_\_

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

Date \_\_\_\_\_

## Schedule No. 4: Grand Summary

Schedule No.	Title	Total Price	
		Foreign	Local
1	1. Design, Manufacture, Supply, Commissioning and Handing over of a Ballast Profiling Machine with required tools for maintenance		
	2. Training		
	3. Consumable Spare parts		
2	4. Maintenance including periodical/Scheduled services within the warranty period (02 years.)		
	5. Maintenance including periodical/Scheduled services after the warranty period (01 year)		
<b>Grand Total to be carried forward to Letter of Price Bid</b>			

**Notes:**

Columns 3 and 4: Currencies in accordance with ITB 15

A list of tools to be provided should be submitted with the offer. Total Bid price excluding all taxes and duties at import point.

**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. 5:**

**Experience and Capacity of the Local Agent**



**Schedule No. 6:**

## Compliance with Specifications

	Description	Yes/ No	Remarks	Signature
1	We agree to comply all the requirements in the Paragraph 1.i of Technical Specifications (Section 6)			
2	We agree to comply all the requirements in the Paragraph 1.ii of Technical Specifications (Section 6)			
3	We agree to comply all the requirements in the Paragraph 1.iii of Technical Specifications (Section 6)			
4	We agree to comply all the requirements in the Paragraph 1.iv of Technical Specifications (Section 6)			
5	We agree to comply all the requirements in the Paragraph 1.v of Technical Specifications (Section 6)			
6	We agree to comply all the requirements in the Paragraph 1.vi of Technical Specifications (Section 6)			
7	We agree to comply all the requirements in the Paragraph 2 (i) of Technical Specifications (Section 6)			
8	We agree to comply all the requirements in the Paragraph 2 (ii) of Technical Specifications (Section 6)			
9	We agree to comply all the requirements in the Paragraph 2 (ii) of Technical Specifications (Section 6)			
10	We agree to comply all the requirements in the Paragraph 2 (iv) of Technical Specifications (Section 6)			
11	We agree to comply all the requirements in the Paragraph 3 (i)of Technical Specifications (Section 6)			
12	We agree to comply all the requirements in the Paragraph 3 (ii) of Technical Specifications (Section 6)			
13	We agree to comply all the requirements in the Paragraph 3 (iii) of Technical Specifications (Section 6)			
14	We agree to comply all the requirements in the Paragraph 3 (iv) of Technical Specifications (Section 6)			
15	We agree to comply all the requirements in the Paragraph 3 (v) of Technical Specifications (Section 6)			
16	We agree to comply all the requirements in the Paragraph 3 (vi) of Technical Specifications (Section 6)			
17	We agree to comply all the requirements in the Paragraph 3 (vii) of Technical Specifications (Section 6)			
18	We agree to comply all the requirements in the Paragraph 3 (viii) of Technical Specifications (Section 6)			
19	We agree to comply all the requirements in the Paragraph 3 (ix) of Technical Specifications (Section 6)			
20	We agree to comply all the requirements in the Paragraph 3 (x) a of Technical Specifications (Section 6)			

21	We agree to comply all the requirements in the Paragraph 3 (xi) b of Technical Specifications (Section 6)			
22	We agree to comply all the requirements in the Paragraph 3 (xii) c of Technical Specifications (Section 6)			
23	We agree to comply all the requirements in the Paragraph 3 (xiii) d of Technical Specifications (Section 6)			
24	We agree to comply all the requirements in the Paragraph 3 (xiv) e of Technical Specifications (Section 6)			
25	We agree to comply all the requirements in the Paragraph 3 (xv) of Technical Specifications (Section 6)			
26	We agree to comply all the requirements in the Paragraph 4.1 of Technical Specifications (Section 6)			
27	We agree to comply all the requirements in the Paragraph 4.2 of Technical Specifications (Section 6)			
28	We agree to comply all the requirements in the Paragraph 4.3 (a) of Technical Specifications (Section 6)			
29	We agree to comply all the requirements in the Paragraph 4.3 (b) of Technical Specifications (Section 6)			
30	We agree to comply all the requirements in the Paragraph 4.3 (c) of Technical Specifications (Section 6)			
31	We agree to comply all the requirements in the Paragraph 4.4 of Technical Specifications (Section 6)			
32	We agree to comply all the requirements in the Paragraph 4.5 (i) of Technical Specifications (Section 6)			
33	We agree to comply all the requirements in the Paragraph 4.5 (ii) of Technical Specifications (Section 6)			
34	We agree to comply all the requirements in the Paragraph 4.6 (a) of Technical Specifications (Section 6)			
35	We agree to comply all the requirements in the Paragraph 4.6 (b) of Technical Specifications (Section 6)			
36	We agree to comply all the requirements in the Paragraph 4.6 (c) of Technical Specifications (Section 6)			
37	We agree to comply all the requirements in the Paragraph 4.6 (d) of Technical Specifications (Section 6)			
38	We agree to comply all the requirements in the Paragraph 4.7 of Technical Specifications (Section 6)			
39	We agree to comply all the requirements in the Paragraph 4.8 of Technical Specifications (Section 6)			
40	We agree to comply all the requirements in the Paragraph 5 of Technical Specifications (Section 6)			
41	We agree to comply all the requirements in the Paragraph 6 of Technical Specifications (Section 6)			
42	We agree to comply all the requirements in the Paragraph 7 of Technical Specifications (Section 6)			
43	We agree to comply all the requirements in the Paragraph 8 of Technical Specifications (Section 6)			
44	We agree to comply all the requirements in the Paragraph 9 of Technical Specifications (Section 6)			
45	We agree to comply all the requirements in the Paragraph 10 of Technical Specifications (Section 6)			
46	We agree to comply all the requirements in the Paragraph 11 of Technical Specifications (Section 6)			
47	We agree to comply all the requirements in the Paragraph 12 of Technical Specifications (Section 6)			

48	We agree to comply all the requirements in the Paragraph 13 of Technical Specifications (Section 6)			
49	We agree to comply all the requirements in the Paragraph 14 of Technical Specifications (Section 6)			
50	We agree to comply all the requirements in the Paragraph 15 of Technical Specifications (Section 6)			
51	We agree to comply all the requirements in the Paragraph 16 of Technical Specifications (Section 6)			
52	We agree to comply all the requirements in the Paragraph 17 of Technical Specifications (Section 6)			
53	We agree to comply all the requirements in the Paragraph 18 of Technical Specifications (Section 6)			
54	We agree to comply all the requirements in the Paragraph 19 of Technical Specifications (Section 6)			
55	We agree to comply all the requirements in the Paragraph 20 of Technical Specifications (Section 6)			
56	We agree to comply all the requirements in the Paragraph 21 of Technical Specifications (Section 6)			
57	We agree to comply all the requirements in the Paragraph 22 of Technical Specifications (Section 6)			
58	We agree to comply all the requirements in the Paragraph 23 of Technical Specifications (Section 6)			
59	We agree to comply all the requirements in the Paragraph 24 of Technical Specifications (Section 6)			
60	We agree to comply all the requirements in the Paragraph 25 of Technical Specifications (Section 6)			
61	We agree to comply all the requirements in the Paragraph 26 of Technical Specifications (Section 6)			
62	We agree to comply all the requirements in the Paragraph 27 of Technical Specifications (Section 6)			
63	We agree to comply all the requirements in the Paragraph 28 of Technical Specifications (Section 6)			
64	We agree to comply all the requirements in the Paragraph 29 of Technical Specifications (Section 6)			
65	We agree to comply all the requirements in the Paragraph 30 of Technical Specifications (Section 6)			
66	We agree to comply all the requirements in the Paragraph 31.1 of Technical Specifications (Section 6)			
67	We agree to comply all the requirements in the Paragraph 31.2 of Technical Specifications (Section 6)			
68	We agree to comply all the requirements in the Paragraph 31.3 of Technical Specifications (Section 6)			
69	We agree to comply all the requirements in the Paragraph 31.4 of Technical Specifications (Section 6)			
70	We agree to comply all the requirements in the Paragraph 31.5 of Technical Specifications (Section 6)			
71	We agree to comply all the requirements in the Paragraph 31.6 of Technical Specifications (Section 6)			
72	We agree to comply all the requirements in the Paragraph 31.7 of Technical Specifications (Section 6)			
73	We agree to comply all the requirements in the Paragraph 31.8 of Technical Specifications (Section 6)			
74	We agree to comply all the requirements in the Paragraph 31.9 of Technical Specifications (Section 6)			

<b>75</b>	We agree to comply all the requirements in the Paragraph 31.10 of Technical Specifications (Section 6)			
<b>76</b>	We agree to comply all the requirements in the Paragraph 31.11 of Technical Specifications (Section 6)			
<b>77</b>	We agree to comply all the requirements in the Paragraph 31.12 of Technical Specifications (Section 6)			
<b>78</b>	We agree to comply all the requirements in the Paragraph 31.13 of Technical Specifications (Section 6)			
<b>79</b>	We agree to comply all the requirements in the Paragraph 31.14 of Technical Specifications (Section 6)			
<b>80</b>	We agree to comply all the requirements in the Paragraph 31.15 of Technical Specifications (Section 6)			
<b>81</b>	We agree to comply all the requirements in the Paragraph 31.16 of Technical Specifications (Section 6)			
<b>82</b>	We agree to comply all the requirements in the Paragraph 32.1 of Technical Specifications (Section 6)			
<b>83</b>	We agree to comply all the requirements in the Paragraph 32.3 of Technical Specifications (Section 6)			
<b>84</b>	We agree to comply all the requirements in the Paragraph 32.4 of Technical Specifications (Section 6)			
<b>85</b>	We agree to comply all the requirements in the Paragraph 32.5 of Technical Specifications (Section 6)			
<b>86</b>	We agree to comply all the requirements in the Paragraph 32.6 of Technical Specifications (Section 6)			
<b>87</b>	We agree to comply all the requirements in the Paragraph 32.7 of Technical Specifications (Section 6)			
<b>88</b>	We agree to comply all the requirements in the Paragraph 32.8 of Technical Specifications (Section 6)			
<b>89</b>	We agree to comply all the requirements in the Paragraph 33.1 of Technical Specifications (Section 6)			
<b>90</b>	We agree to comply all the requirements in the Paragraph 33.2 of Technical Specifications (Section 6)			
<b>91</b>	We agree to comply all the requirements in the Paragraph 34.1 of Technical Specifications (Section 6)			
<b>92</b>	We agree to comply all the requirements in the Paragraph 34.2 of Technical Specifications (Section 6)			
<b>93</b>	We agree to comply all the requirements in the Paragraph 34.3 of Technical Specifications (Section 6)			

## Bid Security Bank Guarantee

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

**Beneficiary:** *[insert name and address of the purchaser]*

**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 Technical Bid Submission Sheet and Price 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.

DO NOT COPY

**Form ELI - 1: Bidder's 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>	



**Form ELI - 2: Joint Venture Information Sheet**

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

Joint Venture Information	
<b>Bidder's legal name</b>	
<b>Joint Venture Partners 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)	
<p><b>Attached are copies of the following documents:</b></p> <p><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</p> <p><input type="checkbox"/> 2. Authorization to represent the firm named above, in accordance with ITB 22.2</p> <p><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</p>	

**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: \_\_\_\_\_

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**

Fill out one (1) form per contract.

DO NOT COPY

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 NumberE-mail		
Description of the Similarity in Accordance with Criterion 2.2.1 of Section 3 (Evaluation and Qualification Criteria)		
<p>(j) Successful completion as Main supplier within the last five (05) years, of at least three (03) contracts, out which at least one (01) should be outside of the Bidder's own country. Each valued at USD2,000,000.00 with nature and complexity similar to the scope of supply described in section 6. (Proof documents to be submitted)</p> <p>(ii) Reputed local agent having at least three (3) years of experience in handling, installation and maintenance of Locomotives, Rolling Stock, Maintenance equipment or similar type of heavy machineries for other industries. (Proof documents to be submitted)</p>		

**- 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)</b> been in production for at least fifteen (15) years,	
<b>(ii)</b> been sold a minimum of ten (10) units of similar type over the last seven (7) years, out of which at least five (5) unit should have been sold outside of Bidder's own country.	
<b>(iii)</b> been in operation for a minimum of three (03) years.	
<b>(iv)</b> At least two (02) units of 2.2.2 (ii) shall be for broad gauge (1676 mm) track for which client certification for successful operation shall be submitted by the bidder.  <b>(proof documents to be submitted for activity I &amp; ii, end user certificate for 2.2.2 clause iii &amp; iv to be submitted.)</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.

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

<b>Financial Data for previous 5 years (\$ Equivalent)</b>					
<b>Years</b>	<b>Year 1:</b>	<b>Year 2:</b>	<b>Year 3:</b>	<b>Year 4:</b>	<b>Year 5:</b>
<b>Information from Balance Sheet</b>					
<b>Total Assets (TA)</b>					
<b>Total Liabilities (TL)</b>					
<b>Net Worth = TA-TL</b>					
<b>Current Assets (CA)</b>					
<b>Current Liabilities (CL)</b>					
<b>Working Capital = CA - CL</b>					

<b>Most Recent Working Capital</b>	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**

<b>Total Revenues</b>			
<b>Profits Before Taxes</b>			
<b>Profits After Taxes</b>			

- 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: \_\_\_\_\_

Annual Turnover Data for the Last five (5) Years			
Year	Amount Currency	Exchange Rate	\$ Equivalent
<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).

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

**- Note -**

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

**COVID-19 specific Site Health and Safety Management Plan-**

(The Bidder to provide the Plan, as required under Section 3, EQC 1.2 )

<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 | Niue                            |
| 7  | Brunei Darussalam                | 31 | New Zealand                     |
| 8  | Cambodia                         | 32 | Pakistan                        |
| 9  | China, People's Republic of      | 33 | Palau                           |
| 10 | Cook Islands                     | 34 | Papua New Genia                 |
| 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   |

# Section 6 - Schedule of Supply

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2. Delivery and Completion Schedule .....	6-3
3. Technical Specifications .....	6-4
4. Drawings .....	6-13

## 1. List of Goods and Related Services

Lot No. : [Not applicable]				
Lot Name : [Not applicable]				
Item No.	Name of Goods or Related Services	Description	Unit of Measurement	Quantity
1	Ballast Profiling Machine	Design, Manufacture, Supply, Commissioning and Handing Over with required tools for maintenance	Sum	1
2		Local Training		
3	Consumable Spare Parts	List of spare parts	Unit wise	As per list
4	Maintenance including /periodical/Scheduled Services	Within the warranty period (2 Yrs)	Year	2
5	Maintenance including /periodical/Scheduled Services	After the warranty period (1 Yr.)	Year	1

## 2. Delivery and Completion Schedule

The delivery period shall start as of \_\_\_\_\_.

Item No.	Description of Goods or Related Services	Delivery Schedule (Duration)	Location	Required Arrival Date of Goods or Completion Date for Related Services
1	Ballast Profiling Machine	18 Months	Project Site at Maradana,, Sri Lanka Railway	

### 3. Technical Specifications for Ballast Profiling Machine

This technical specification is for a Ballast Profiling machine which is to be used for track maintenance in Sri Lanka Railways. All goods and material to be incorporated in the Goods shall be new, unused and of the most recent or current models, and that they incorporate all recent improvements, unless otherwise provided for in the contract.

#### 1. Scope of Supply

- Total weight - not more than 30 tons
- Engine rated power - not less than 200kW
- Maximum Travelling speed (when towed & under own power) - 80 km/h
- Length over buffers - 12000 mm approximately
- Axle wheel base - not more than 6500mm
- Track gauge - 1676mm

An alternative wheel base profile and overall length will be considered if minimum curvature negotiability can be substantiated, relevant technical proof should be submitted with the bid.

#### 2. Working Area

- i. Climatic zone. Very high humidity and salty environment
- ii. Altitude above sea level – 0m to 2000m
- iii. Ambient temperature lowest: 5 °C, highest: 35°C, average: 30 °C
- iv. Atmospheric moisture lowest: 50 %, highest: 100 %, average: 90% 2.5. Other - Tropical climate

#### 3. Properties of the SLR track

- i. Track: single and double line
- ii. Gauge: 1676mm
- iii. Min. radius of curves: for traveling 100 m for working 100 m
- iv. Max. Admissible loading gauge according to drawing No. 21028.
- v. Profile of track according to drawing no.16121 (b) wooden sleepers, profile of track for concrete sleepers. Drawing No.19990
- vi. Type of rail fastenings -Elastic fastenings with concrete sleeper. Elastic fastenings with steel sleepers Elastic fastenings with timber sleepers Dog spikes with timber sleepers
- vii. Length of sleepers 9 feet. Width of sleepers 200mm -250mm

- 
- viii. Height of sleepers 125mm - 250mm
  - ix. Type of rail joints: parallel for straights and staggered for curves. Type of rails -BS 90A, BS 80, BS 88
  - x. Fish plated joints, type of fishplates according to drawing nos.
    - a) 19937 Fish Plate 90A
    - b) 19994 Fish Bolt 90A
    - c) 19773 (A) Fish plate section - 80'-0'
    - d) 19773 (B) holing section - 80'-0'
    - e) 19774 (A) Fish plate & - 88 lbs. 6) 19774 (B) holing position - 88 lbs.
  - xi. Sleeper spacing - 650mm
  - xii. Type of ballast- Granite, Size 40mm to 60mm
  - xiii. Max. gradient 2.3 % (1 in 44)
  - xiv. Max. super elevation 140mm
  - xv. Max. allowed axle load: 20 tons

#### 4. General Requirements

##### 4.1. Technical Support

###### Catalogues, Drawings and Manuals

Detailed and dimensioned working drawings must be supplied in A2 size paper, A3 size album and in a CD using PDF format. (If there is any missing document, clarifications will be called from the bidder). All dimensions must be given in millimeters. All lettering and markings on drawings shall be in English language and internationally accepted symbols. Electrical circuit/wiring diagrams should be provided along with component descriptions mentioned. Detailed Mechanical and Electrical parts catalogues, maintenance manual and operation manual must be provided in the form of a A4 size book, giving explored views of all assemblies, part numbers and dimensions or generalized specification (where applicable), and all these information to be given in a CD in PDF format in addition. Five Copies must be provided from each of the catalogues, drawings and CD.

###### Maintenance Tools

All the necessary tools for the maintenance and major overhauls must be supplied along with this machine. A general tool kit for diesel engine and hydraulic system shall be provided. The list of the tool kits to be supplied shall be provided with the offer.

##### 4.2 Spare Parts-Only for future reference

A list of required tools for maintenance shall be provided with the offer.

The bidder shall submit an itemized list of recommended spare parts with individual prices and numbers required for 5 years operation. (Non-submission of documents will be ground for disqualification or rejection).

Manufacturer shall guarantee to undertake to supply the spare parts necessary for maintenance of machines for 25 years.

The manufacturer shall provide detailed illustrative drawings of the parts necessary for normal maintenance, part numbers and names and addresses of the component manufacturers of the spare parts necessary for the maintenance of these machines so that the Sri Lanka Railways could source those spare parts through worldwide tenders.

The bidder shall be responsible for fulfilling all the requirements stipulated in this document, even for those parts sourced from other companies, by the bidder in order to manufacture these machines.

#### 4.3 Training

a) Bidder shall provide 20 days training to SLR staff for trouble free operation and maintenance of supplied equipment. The training shall include class room training and also on-the-job training at SLR facilities. SLR may depute up to 20 personnel for this training. The staff to be trained will include the operators, electrical and mechanical maintenance staff and officers. Training of maintenance staff shall include a guide on fault identification – rectification and as well as schedule maintenance.

Suitable training modules should be provided to suite the job specifications of the personnel to be trained.

b) This training duration shall be in addition to the supervision period of 30 days.

c) Bidder shall depute qualified personnel / engineer(s) for this purpose and all costs related to travel, boarding and lodging, local conveyance etc. for the trainer will be borne by the bidder. SLR will not pay any per day charges or allowances towards such services.

#### 4.4 Warranty

The Ballast Profiling machine shall be designed and manufactured to have minimum 25 years service life. These machines shall carry a warranty, issued by the Supplier, for 2 Years, from the day they are commissioned in Sri Lanka, against any manufacturing defects, material failure and design faults of mechanical or electrical items.



Any replacing part during warranty shall also be under effect of warranty throughout the remaining warranty period of the ballast profiling machine.

The supplier shall compensate the Sri Lanka Railways, by paying US \$ 714 for a day lost due to manufacturing defects or design fault occurred within the first 2 years of service, according to the following protocol.

The compensation will be applicable as follows.

When these machines breakdown, representative of the Supplier and SLR shall jointly investigate and establish the course of the breakdown, and whether it is due to any manufacturing defect or design fault.

The supplier will be given a period of 1 month from the day that these machines are commissioned in Sri Lanka, to rectify any teething problems encountered. The aforesaid payment of compensation is applicable for those manufacturing defects or design fault encountered after this 1-month period.

The supplier will be given a grace period of 8 weeks, in case he has to import any spare part for the repairs from countries other than supplier's country. Otherwise a grace period of 2 weeks shall be provided.

However, the supplier must ensure the availability of all essential items with them to minimize the delays during warranty period.

#### 4.5 Inspection of the machine

Inspection will be carried out in two stages:

- (i) During manufacturing and
- (ii) After completion of manufacturing of the machine.

Such Inspectorate shall comprise 3 technical persons at a time, for each of the 2 stages,

with 7-days visit for each of the 2 stages.

#### 4.6 Commissioning, Testing and Supervision of machines

- a) The supplier shall be responsible to complete commissioning and trials tests within 60 days after the machine is delivered to Sri Lanka Railways.
- b) Bidder should confirm that their supervision engineer(s) will be available at site for at least one month. The supervision period will start after the commissioning and acceptance of the machine.

- c) All costs related to travel, boarding and lodging, local conveyance etc. will be borne by the bidder. SLR will not pay any per day chargers or allowances towards such services.
- d) Bidder should confirm that the bid price is inclusive of these service charges and that no separate charges shall be demanded towards these supervision services.

Training duration shall be in addition to the supervision period of 30 days.

#### 4.7. Maintenance and Service Contract for machine

The Bidder shall, along with his bid, offer a Maintenance and Service Contract for a period of three (3) years beginning with the date of final acceptance by SLR of the machine covered by this specification. The supplier shall arrange all schedule services and maintenance works up to end of three (3) years from the date of acceptance. (Should be submitted with the bid. If any missing details, clarification will be called).

The service contract shall cover within its duration:

- Supervision of the machine operation, training in operation and maintenance, training of repair and workshop staff as well as actual repair work with assistance of SLR staff for training on the job at SLR workshop.
- Deputation of one Service Engineer on four (4) occasions - each trip for five (5) working days during the duration of the service contract.
- The Manufacturer shall also provide the Railway during the entire period for which the equipment is in service contract with any information, advice, drawings etc. of which SLR may stand in need in connection with the efficient operation and maintenance of the equipment.
- Maintenance and Service contract shall be extended beyond the initial 3 years period also. Estimated price for sixth year Maintenance and service contract shall be provided with the offer.

#### 4.8. Approval of Drawing

Approval for the conceptual drawings must be obtained from SLR before commencing the manufacturing.

### 5. Draw and Buffing Gear per machine as per machine specification

#### Auto Couplers

Automatic side swiveling type center couplers and draft gear with transitional heads similar to that shown on drawing Nos. P.3544/01 and P 4034 with the parking cotter inserted form top shall be provided.

The contour of the head shall conform to AAR10A and coupler is required both for buffing and drawing.

The height of the centre line of coupler head over the rail shall be 1054mm. (Drawing no.P3544/01)

#### Screw Couplers and Buffers

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- In addition to the automatic side swiveling type center coupler, screw coupler similar to that shown on drawing No.P 3274/03 shall be provided to facilitate coupling of the machine.
  - Self-contained plunger type side buffers with 160mm stroke similar to that shown in drawing No.P 2636A/00 shall be provided.
  - The height of the centre line of the buffer over the rail shall be 1143 mm. (Drawing no. DL.643/01)
6. The machine should be able to regulate ballast crown of the SLR rail tracks to a very high quality. The heavy-duty ballast profiling machine shall be of axle type and shall have all working units located between the buffer bars.
  7. The machine shall be self-propelled during transfer and work in whole Sri Lankan tracks. Traveling speed shall be 80 km/h, if the machine is driven by its own power, when hauled the traveling speed shall be 80 km/h.
  8. The machine shall be able to work on single and/or on multiple tracks as well as between station platforms. The machine shall work in curves as well as in super elevations.
  9. All work units shall be arranged on one rigid end- to- end frame.
  10. The machine shall be fitted with two axles.
  11. The machine shall be equipped with a hydrostatic drive acting on both axles during transfer and work.
  12. The machine shall be equipped with pneumatically operated block brakes acting on all wheels (one block per wheel) and an indirect train brake system with KE-valve according to UIC shall be provided
  13. Driver's brake valve shall be provided for driving desk.
  14. Brake hose pipes and main reservoir air pipes shall be provided for the machine at both ends to attach it to a train in a case of a failure.
  15. The machine shall be equipped with mechanically operated parking brake.
  16. The machine shall be equipped with a fully enclosed, heat and sound insulated cabin with safety glass. All operations for transfer and work shall be controlled from this cabin. The access to the cabin shall be via hand rails and safety platform from both sides. The engine and other accessories shall be easily accessible.  
  
The driver's seat and driving desk shall be positioned cross- wise to the direction of travel. One operator's seat shall be provided guaranteeing a good view onto the working units.
  17. The cabins shall be equipped with adequate sound and heat insulation.

18. The cabin shall be equipped with a sun shade roof and sun protection roller blinds, electric cabin ventilation with filter and air conditioning. One fire extinguisher and one first aid kit in the cabin shall also be provided. Wipers shall be provided at both ends.
19. Suction fan shall be fixed to have sufficient ventilation for the cabin. Glazed windows shall be provided for the cabin. Side windows could be opened when required; same should be possible to be closed to retain cooling effect created by air conditioning.
20. Air conditioning in cabin shall be provided.
21. All cables; conducts and electrical installations shall be protected against climatic and other outer agents.
  22. Minimum capacity of the fuel tank shall be sufficient for operating the machine for minimum 12 hrs.
  23. The machine shall carry sufficient light sources to allow perfect sight during night work. The machine shall be equipped with a rotating beacon on the roof, one on each cabin roof end. Head lamps & Tail lamps & brake lamps shall be provided on both ends. The machine shall be fitted for tropical weather conditions.
  24. The machine shall be fitted with a roof from cabin to engine area over engine and major components for protection against tropical weather conditions.
  25. The machine shall be equipped with an electric horn.
  26. Suitable primer and top coat shall be applied which resist corrosion. Final color of the machine shall be yellow.
  27. Steel cupboard (approx. size 0.5m x 0.5m x 0.5m) to be provided inside cabin.
  28. FM radios shall be provided in cabin.
  29. The machine shall be of proven design with not more than 30tons in weight.
  30. A manually actuated emergency pump shall be integrated in the hydraulic plant.
31. Working units
  - 31.1. The machine shall be used to establish a uniform ballast profile. This operation shall be carried out both on newly ballasted track and on tracks on which the ballast has been deposited a long time ago.
  - 31.2. The machine shall carry suitable arranged ballast ploughs, capable of moving the ballast both in the direction of the track axis and across for the establishing of the desired profile.
  - 31.3. Furthermore, the machine shall be equipped with a sweeper unit to sweep the sleepers from surplus ballast and depositing it at the track shoulders.
  - 31.4. The machine shall be equipped with a regulating plough on the front end, two shoulder ploughs, rail fastening brushes and a sweeper unit at the rear end.
  - 31.5. The regulating plough in front of first axle shall be adjustable in height by hydraulics to adapt to the level of the sleepers. This plough shall be made of strong steel sheets to be capable of moving the ballast.
  - 31.6. The regulating plough shall be equipped with rail fastening protection tunnels.
  - 31.7. The following ballast movements shall be possible in one single passage in the zone of the ballast crown:
    - from one side of the ballast bed to the other

-from the area outside the sleeper ends into the tamping zone -from the track center to the shoulders

- 31.8. All plough shares shall be fitted with high-wear resistant edges
- 31.9. The shoulder ploughs shall be adjustable both horizontally and vertically.
- They shall allow the step-less adjustment for any shoulder angle up to 45°.
- 31.10. Each shoulder plough shall have a working range adjustable in step-less variations from track centre.
- 31.11. The shoulder ploughs shall be capable of avoiding obstacles on the shoulder, such as mile posts, catenary supports, fix points, etc., in such a manner as to prevent ballast from heaping up and the angle to change
- 31.12. All adjustments of the shoulder ploughs shall be operated hydraulically.
- 31.13. The design of the shoulder ploughs shall allow working with the machine in both directions.
- 31.14. The sweeper unit shall be fixed to the rear part of the machine behind second axle. A hydraulically driven rotating brush shall sweep the concrete shape sleepers in plain track. Surplus ballast should be picked-up to a cross conveyor belt and deposited on the right or left shoulder as requested.
- 31.15. The height of the brush shall be adjustable
- 31.16. Rail fastening brushes shall be provided for sweeping stones out of the rail fastenings.

## 32. Frame and drive

- 32.1. The superstructure, underframe and the body of the Ballast Profiling machine shall be a sturdy welded end- to- end construction of welded steel girders and sheets providing utmost stability. The material shall be of weather resistant steel of WR50 of BS4360 of 1979 or equivalent.
- 32.2. 100m reverse curve on 1:44 gradient to be freely negotiated on the tracks of Sri Lanka Railways given in this specification.
- 32.3. The axles shall be specially designed for the requirements of railway maintenance machines. Adequate suspension shall be provided. A minute description of suspension shall be added to the bid. (Should be submitted with the bid. If any missing details, clarification will be called).
- 32.4. The machine shall be equipped with a diesel engine with power output of at least 200kW following emission regulation at least COMII. Diesel engine shall be well proven, reputed brand and reliable in service in tropical countries.
- 32.5. The sound isolated engine compartment should be fitted with temperature sensors. An optical pre-alarm (blinking light) should be triggered by a control unit when the temperature rises in the engine compartment
- 32.6. A drive diagram shall be attached to the bid. A minute description of power transmission during work and transfer shall also be added to the bid. (should be submitted with the bid. If any missing details, clarification will be called).
- 32.7. A description of the brakes (traveling and parking brake) shall accompany the offer. (should be submitted with the bid. If any missing details, clarification will be called).
- 32.8. The machine shall be equipped with buffers, auto couplers and screw couplers (drawing attached) at both ends according to SLR specification. Suitable lifting places for jacking during re-railing operations and four places for lifting the

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entire body from the axle by the overhead cranes and by jacks at the workshops shall be provided and those points shall be painted in Blue color for easy identification.

### 33. Running Gear

#### 33.1. Axles, Axle Boxes, and Wheels

The wheels shall be of the 'mono block' type to following dimensions and drawings. Axle and wheels shall be of steel axles with pressed on solid disc wheels. Wheel Diameter shall be at least 730 mm. Wheel profile shall be according to the drawing no. DE 3221/00.

Wheel set material shall be according to UIC-regulations.

Axle boxes shall be of a proven design with sufficient strength to withstand the loads and shocks that are present in the specified application. Overall tyre gauge shall be according to the drawing no H12/01.

#### 33.2. Primary Suspension

The suspension system shall comprise of metal rubber springs as well as hydraulic shock-absorbers between axle bearing and machine frame.

The shock absorbers shall be of a robust design to ensure a maintenance free life period of at least three years and shall be able to recondition by using seals, oil and etc.

### 34. Machine Control

#### 34.1. The control system shall be

- User friendly
- Suits Sri Lankan climate condition
- Highly reliable
- Guaranteed spare parts availability

34.2. Adequate control equipment including gauges, instruments and safety devices shall be provided for safe and satisfactory operation of the machine. The equipment shall be so arranged in control desk that it will be within easy reach of the driver.

All accessories used in control system; safety devices and switchgears are a reputed brand, with specifications at least equivalent to European or Japanese standards. Details shall be provided with the offer. (If any missing details, clarification will be called).

34.3. The control system shall be equipped suitable LCD or LED display/s to display operating instructions. Easy fault finding shall be also possible. All necessary fault diagnostic interfaces and soft wares shall be supplied.

Details Shall be provided with the offer. ( If any missing details, clarification will be called).

## 4. Drawings

Attached as per the technical specifications

# Section 7 - General Conditions of Contract

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**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 thereto made prior to the date of Contract.

<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).

#### 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 of the relevant passages in the language specified in the SCC, in 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;
  - (b) now or hereafter enters the public domain through no fault of that party;
  - (c) 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
  - (d) 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.

29.4 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.

29.5 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 Subcontractors 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 Subcontractors, 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 Subcontractors 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.

## 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: Sri Lanka
<b>GCC 1.1(k)</b>	The Purchaser is: Ministry of Transport
<b>GCC 1.1 (q)</b>	The Site is: Sri Lanka Railway - Track Maintenance Department
<b>GCC 4.2 (b)</b>	The version of Incoterms shall be: <u>2010</u>
<b>GCC 5.1</b>	The language shall be: English The language for translation of supporting documents and printed literature is: English
<b>GCC 8.1</b>	For <b><u>notices</u></b> , the Purchaser's address shall be: Attention: <u>Project Director, Colombo Suburban Railway Project</u> Street address: <u>No. 217, Cotta Road,</u> Floor/Room number: - City: Colombo 08 ZIP code: 00800 Country: Sri Lanka Telephone: 011-2056240-41 Fax: 011-2674354 E-mail: pd@csrp.lk
<b>GCC 9.1</b>	The governing law shall be: The Law of Sri Lanka
<b>GCC 10.2</b>	The formal mechanism for the resolution of disputes shall be: <b><u>For a contract with a Foreign Supplier:</u></b> In the case of a dispute between the Purchaser and the Supplier, the dispute shall be settled by arbitration in accordance with the provisions of the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules". Place of arbitration: Singapore



	<p><b><u>For a contract with a Local Supplier:</u></b></p> <p>In the case of a dispute between the Purchaser and the Supplier, the dispute shall be settled by arbitration in accordance with the Laws of Sri Lanka as per the Arbitration Act No.11 of 1995 (as amended).</p> <p>Place of arbitration: Colombo, Sri Lanka</p>
<b>GCC 11.1</b>	<p>The Scope of Supply shall be defined in : Section 6, Schedule of Supply. [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>Details of shipping and documents to be furnished by the Supplier shall be:</p> <p><b>For Goods supplied from abroad as per Incoterms DDP (Colombo, Sri Lanka):</b></p> <p>Upon shipment, the Supplier shall notify the Purchaser and the Insurance Company by telex or fax the full details of the shipment, including Contract number, description of Goods, quantity, the vessel, the bill of lading number and date, port of loading, date of shipment, port of discharge, etc. The Supplier shall send the following documents to the Purchaser, with a copy to the Insurance Company:</p> <ul style="list-style-type: none"> <li>a) Two (2) copies of the Supplier’s invoice showing the description of the Goods, quantity, unit price, and total amount;</li> <li>b) A copy of the negotiable, clean, on-board bill of lading marked “freight prepaid” and two (2) copies of non-negotiable bill of lading;</li> <li>c) Upon unloading at destination, the supplier shall send the following documents to the purchaser: Original and two (02) copies of tax and duty payment certificates.</li> <li>d) Two (2) copies of the packing list identifying contents of each package;</li> <li>e) Insurance certificate;</li> <li>f) Manufacturer’s or Supplier’s warranty certificate;</li> <li>g) Inspection certificate, issued by the nominated inspection agency, and the Supplier’s factory inspection report; and</li> <li>h) Certificate of origin</li> </ul> <p>The Purchaser shall receive the above documents at least one (1) week before arrival of the Goods at the port or place of arrival and, if not received, the Supplier will be responsible for any consequent expenses.</p>

<p><b>GCC 13.2</b></p>	<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>
<p><b>GCC 15.2</b></p>	<p>The price adjustment shall be: Not applicable</p>
<p><b>GCC 16.1</b></p>	<p>Payment of the Contract Price shall be made in the following manner:</p> <p>(a) Advance Payment: 20% of the Contract Price of goods value within 28 days of signing of the Contract. Payment shall 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 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 goods received by Sri Lanka Railways, The Purchaser shall pay the Supplier 65% of the Contract Price, of the Goods shipped through irrevocable letter of credit, opened in favor of the Supplier in a bank in its country under the ADB commitment procedure, upon submission of claim supported by the acceptance certificate issued by the purchaser.</p> <p>The cost of all taxes/duties at import point and handling and delivery charges shall be paid within 28 days, upon submission of the claim. All original payment receipt related to the paid taxes/duties at import point to be submitted along with the claim to verify the actual payments to be done.</p> <p>(c) On signing of a Maintenance agreement for 3 year: 10% of the Contract Price, of Goods received shall be paid within 28 days of receipt of the Goods upon signing of the Maintenance Agreement for 3 year.</p> <p>(d) On completion of Warranty Period:05% of the contract Price of the goods value or balance amount of the Contract price upon submission of a claim supported by the acceptance certificate issued by the purchaser or can be released upon submission of a retention guarantee by the supplier, which equal to remaining amount.</p>

<b>GCC 16.4</b>	The currencies for payments shall be: <i>the currency/ies in which the bid price is expressed in the bid of the successful bidder.</i>
<b>GCC 18.1</b>	The Supplier shall provide a Performance Security of 10% percent of the Contract Price. The Performance Security shall be denominated in the following amounts and currencies:  <i>The Performance Security shall be denominated in the currency/ies stated in the bid of the successful bidder</i>
<b>GCC 18.3</b>	<b>The forms of acceptable Performance Security are:</b>  <i>A bank guarantee issued by a reputable bank located in Sri Lanka or abroad, acceptable to the Purchaser, in the format included in Section 9 (Contract Forms). In case the institution issuing the security is located outside the purchaser's country. It shall be counter guaranteed by a comercial bank established in the purchaser's country".</i>
<b>GCC 18.4</b>	Discharge of the Performance Security shall take place:  <i>Discharge of the Performance Security shall take place in accordance with GCC Sub-Clause 18.4.</i>
<b>GCC 23.2</b>	The packing, marking, and documentation within and outside the packages shall be:  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.
<b>GCC 24.1</b>	The insurance coverage shall be in accordance with:  The insurance coverage shall be in accordance with: Pursuant to GCC Subclause 24.1, the Supplier must insure the Goods in an amount to equal to 110% of the CIF, CIP or EXW price of the Goods from "Warehouse" to "Warehouse" on "All Risks" basis, including War Risks and Strikes
<b>GCC 25.1</b>	Obligations for transportation of the Goods shall be in accordance with:  Incoterms 2010.
<b>GCC 26.2</b>	The inspection of operation and test may be conducted in the factory of the supplier within and after the production of the machine.  During seven (07) days of period, inspection with reasonable facilities and assistance including access and production data shall be furnished to the purchaser appointing three (03) inspectors at two stages at no charge to purchaser.  The inspection should be carried out in two stages while manufacturing and after completion of manufacturing of the machine.  Stage 1- While the machine is in production, it is to be inspected for materials, equipment, sub-assemblies which used for the machine comply with the technical specification, codes and standard under the contract.  Stage 2- When the production of machine completed, it is to be inspected to verify the existence of all related items and sub-assemblies in the machine and as well as to test the characteristics and performance of the machine comply with the technical specification under the contract.

<b>GCC 27.1</b>	The applicable rate for liquidated damages for delay shall be: <i>The applicable rate for liquidated damages for delay shall be: 0.5% of the Contract Price per week or part thereof.</i>
<b>GCC 27.1</b>	The maximum amount of liquidated damages shall be: 10 % of the contract price
<b>GCC 28.3</b>	The period of validity of the Warranty shall be: Two (2) Years from the date of delivery The place of final destination shall be: Maradana, Sri Lanka
<b>GCC 28.5</b>	The Supplier shall correct any defects covered by the Warranty within 30 days of being notified by the Purchaser of the occurrence of such defects.
<b>GCC 30.1 (b)</b>	The amount of aggregate liability shall be: 100% of the Contract Price
<b>GCC 33.1</b>	If the Harmonized System Code obtained by the supplier is different from the actual Harmonized System Code accepted by Sri Lanka Customs at the Import point, an equitable adjustment shall be made in the Contract price.

## Section 9 - Contract Forms

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# 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 Price Bid Submission Sheet and the Price Schedules submitted by the Supplier;
  - (c) the Technical Bid Submission Sheet submitted by the Supplier;
  - (d) the Special Conditions of Contract;
  - (e) the List of Eligible Countries that was specified in Section 5 of the Bidding Document;
  - (f) the General Conditions of Contract;
  - (g) the Schedule of Supply; and

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)

# Performance Security

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

**Beneficiary:** ..... *insert 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, and 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.