

ROAD DEVELOPMENT AUTHORITY
MINISTRY OF HIGHWAYS AND ROAD DEVELOPMENT
THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

**THE DETAILED DESIGN STUDY
ON
THE OUTER CIRCULAR HIGHWAY
TO
THE CITY OF COLOMBO**

**FINAL REPORT
(FOR NORTHERN SECTION 1)
DRAFT TENDER DOCUMENTS
VOLUME I : INSTRUCTION TO BIDDERS
VOLUME II : CONDITIONS OF CONTRACT**

5 of 10

February 2008

JAPAN INTERNATIONAL COOPERATION AGENCY

Oriental Consultants Company Limited

Pacific Consultants International

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**DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA
MINISTRY OF HIGHWAYS & ROAD DEVELOPMENT
ROAD DEVELOPMENT AUTHORITY**

**COLOMBO OUTER CIRCULAR HIGHWAY (OCH) PROJECT
NORTHERN SECTION-1
Kadawatha (Sta. 8+648) to Kaduwela (Sta.16+560)**

PART 1

INVITATION FOR BIDS

Date : _____

Loan No : _____

Contract No.: _____

1. The Government of the Democratic Socialist Republic of Sri Lanka has received an Official Development Assistance (ODA) Loan with **“Special Terms for Economic Partnership, (STEP)”** from Japan Bank for International Cooperation (hereinafter referred to as JBIC) in the amount of Japanese Yen _____ million towards the cost of Greater Colombo Urban Transport Development Project and it is intended that part of the proceeds of this loan will be applied to eligible payments under the Contract for the Outer Circular Highway to the city of Colombo Project,, Northern Section-1, Kadawatha to Kaduwela (hereinafter referred to as “the Works”). Disbursement of an ODA Loan by JBIC will be subject, in all respects, to the terms and conditions of the Loan Agreement, including the disbursement procedures and the “Guidelines for Procurement under JBIC ODA Loans”. No party other than the Government of the Democratic Socialist Republic of Sri Lanka shall derive any rights from the Loan Agreement or have any claim to loan proceeds.
2. JBIC requires that bidders and contractors, as well as the Government of the Democratic Socialist Republic of Sri Lanka, under contracts funded with JBIC ODA Loans and other Japanese ODA, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, JBIC;
 - (a) will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
 - (b) will recognize a contractor as ineligible, for a period determined by JBIC, to be awarded a contract funded with JBIC ODA Loans if it at any times determines that the contractor has engaged in corrupt or fraudulent practices in competing for, or in executing, another contract funded with JBIC ODA Loans or other Japanese ODA.

3. The Chairman, Cabinet Appointed Procurement Committee (CAPC), on behalf of the Road Development Authority, established under Act No.73 of 1981 under Ministry of Highways & Road Development, hereinafter referred to as the “RDA”, as the Implementing Agency (hereinafter referred to as “the Employer”), invites sealed bids from pre-qualified eligible bidders for the construction and completion of the Works.
4. A complete set of bidding documents may be purchased by interested eligible pre-qualified bidders at the office:

Project Director
Outer Circular Highway to the city of Colombo (OCH),
Road Development Authority (RDA),
Ministry of Highways & Road Development,
21/9 Pagoda Road,
Nugegoda,
Sri Lanka.

Tel: ++94-(0)11- 285- 4906, 281-7823, 281-7824
Fax: ++94-(0)11- 281- 7821

From _____2008 to _____2008, from _(Time)_____ during working days and upon payment of a non-refundable fee of Sri Lanka Rupees Twenty Thousand (Rs.20,000) per set in the form of a Banker’s certified cheque made payable in favour of PMU Outer Circular Highway Project or by cash. Additional set of documents, excluding drawings, may be purchased by Sri Lankan Rupees Ten Thousand (Rs.10,000).

5. Bidders from foreign countries are requested to comply with the Public Finance Circular No.357 (3) dated March 05, 2002 which is given in Part 8.
6. Submission of bid must be accompanied by a bid security for the amount of Sri Lanka Rupees One Hundred and Fifty million (Rs.150,000,000) or an equivalent amount in United States Dollars.

A pre-bid meeting will be convened by the Employer and the bidders will be advised of the place, date and time of this meeting. Attendance will not be compulsory.

8. Technical and Financial Proposals shall be submitted simultaneously in two separate envelopes (packing) as follows:

No. Proposal	Required No.		Remark to be added on each packing
	Original	Copy	
1) Technical Proposal	1	2	“Open on bidding day”
2) Financial Proposal	1	2	“Don’t open until 2nd stage”

Technical and Financial Proposals shall be packed completely separate and must be delivered to:

Chairman,
Cabinet Appointed Procurement Committee,
C/o The Secretary,
Ministry of Highways & Road Development,
9th Floor "Sethsiripaya"
Battaramulla,
Sri Lanka

at or before _____ on _____ 2008.

The technical proposals will be opened immediately thereafter.

9. Bidding Method

Bidding method is Single-Stage: Two-envelope bidding according to JBIC's Procurement Guidelines, Section 2.03 (January 2005). The bidders are invited to submit technical and financial proposals simultaneously in two separate envelopes. The technical proposals are opened first and evaluated to determine that they conform to the Specifications.

After the technical evaluation has been completed, the financial ones of the bidders, whose technical proposals have been determined to conform to the technical specifications, are then opened publicly, with bidders or their representatives allowed to be present. The opening of financial proposals shall follow the procedures stipulated in Section 5.02 of these Guidelines.

10. The Employer will not be responsible for any costs or expenses incurred by bidders in connection with the preparation or delivery of bids, including costs and expenses related to site visits.

Chairman

Road Development Authority

Part 2
INSTRUCTIONS TO BIDDERS

A. General

1. Scope of Bid

- 1.1 The Chairman of the Cabinet Appointed Procurement Committee (CAPC) of the Ministry of Highways & Road Development on behalf of the Road Development Authority (hereinafter referred to as “the Employer”) wishes to receive bids for the construction and completion of:

**Colombo Outer Circular Highway Project (OCH), Northern Section-1,
from Kadawatha (Sta. 8+648) to Kaduwela (Sta.16+560),**

as defined in these bidding documents (hereafter referred to as “the Works “).

- 1.2 The successful bidder will be expected to complete the Works within **36 (Thirty six) calendar months** from the Commencement Date.

1.3 Bidding Method

Bidding is to be carried out via the Single-Stage: Two-envelope bidding method according to JBIC’s Procurement Guidelines, Section 2.03 (January 2005). The bidders are invited to submit technical and financial proposals simultaneously in two separate envelopes. The technical proposals are opened first and evaluated. Bids that do not conform to the specified technical requirements and are not acceptable in terms of performance, technical or service factors may be rejected. (Refer to details in Clause 18.)

After the above evaluation has been completed, the financial proposals of the bidders, whose technical proposals have been determined to be technically responsive, are then opened publicly with bidders or their representatives allowed to be present. The opening of financial proposals shall follow the procedures stipulated in Section 5.02 of these Guidelines.

2. Source of Funds

- 2.1 The Government of the Democratic Socialist Republic of Sri Lanka has received an ODA loan with “**Special Term for Economic Partnership, (STEP)**” from the Japan Bank for International Cooperation (hereinafter referred to as JBIC), towards the cost of Greater Colombo Urban Transport Development Project and intends to apply a portion of the proceeds of the loan to payments of Colombo Outer Circular Highway (hereinafter OCH) Project, Northern Section-1, from Kadawatha to Kaduwela, and intends to apply a portion of the proceeds of this loan to payments under the contract. Disbursement of an ODA Loan by JBIC will be subject, in all respects, to the terms and conditions of the Loan Agreement, including the disbursement procedures and the “Guidelines for Procurement under JBIC ODA Loans”. No party other than the Government of the Democratic

Socialist Republic of Sri Lanka shall derive any rights from the Loan Agreement or have any claim to loan proceeds.

The above Loan Agreement will cover only a part of the project cost. As for the remaining portion, the Government of the Democratic Socialist Republic of Sri Lanka will take appropriate measures for finance.

2.2 JBIC requires that bidders and contractors, as well as the Road Development Authority, hereinafter referred to as RDA, under contracts funded with JBIC ODA Loans and other Japanese ODA, observe the highest standard of ethics during the procurement and execution of such contracts. In the pursuance of this policy, JBIC will;

- (a) reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
- (b) classify a contractor as ineligible to be awarded a future contract funded with JBIC ODA Loans, for a period to be determined by JBIC, if at any times it determines that the Contractor has engaged in corrupt or fraudulent practices in competing for, or in executing, another contract funded with JBIC ODA Loans or other Japanese ODA.

3. Eligible Bidders under STEP

3.1 This invitation to bid is open to pre-qualified bidders meeting both of the following requirements:

a) Procurement Conditions in STEP loan

Prime contractors must be Japanese firms. Joint Ventures (JV) with the firms incorporated and registered in recipient countries are also allowed to be a prime contractor under condition that a Japanese firm is a lead partner. Subcontractors may be from any country.

b) a bidder (including all the members of a joint venture) shall not be one of the following:

- i) A firm or an organization which has been engaged by the Employer to provide consulting services for the preparation related to procurement for or implementation of this project.
- ii) Any association/affiliates (inclusive of parent firm) of a firm or organization mentioned in subparagraph i) above; or
- iii) A firm or an organization who lends, or temporarily seconds its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the project.

3.2 Bidders shall provide such evidence of their eligibility which is satisfactory to the Employer.

4. Eligible Materials, Equipment, and Services under STEP

4.1 Scheme of STEP

STEP is expected to raise the visibility of Japanese ODA among citizens in both recipient countries and Japan through best use of advanced technologies and know-how of Japanese firms.

4.2 Country of Origin of Goods and Services to be procured under STEP

Not less than 30 % of the total amount of Civil Works (Construction cost only. Consulting services are excluded.) financed by STEP loan must be accounted for by goods from Japan and services provided by Japanese firms.

5. Qualification of the Bidder

5.1 To be qualified for the award of a Contract, bidders shall:

- (a) Submit a written power of attorney authorizing the signatory of the bid to commit the bidder.
- (b) Submit documentary evidence which establishes that the bidder has adequate experience, financial capacity and technical capability to undertake the Contract. Confirmation of these matters may involve the updating, verification and reassessment of information which may previously have been considered during prequalification, and an assessment of the bidder's proposals regarding work methods, scheduling and resourcing, which shall be provided in sufficient detail to confirm the bidder's capability to complete the works in accordance with the Specifications and the Time for Completion.

5.2 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements:

- (a) the bid, and in the case of the successful bid, the Form of Agreement with the Power of Attorney signed so as to be legally binding on all partners;
- (b) one of the partners shall be authorized to be in charge and this authorization shall be evidenced by submitting a power of attorney signed by the legally authorized signatories of all the partners;
- (c) the partner in charge shall be authorized to incur liabilities, receive payments and receive instruction for and on behalf of any or all partners of the joint venture;
- (d) all partners of the joint venture shall be jointly and severally liable for the

execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under (b) above as well as in the Bid Form and the Form of Agreement (in case of a successful bid); and

- (e) a copy of the agreement entered into by the joint venture partners with the Power of Attorney submitted with the bid.

6. One Bid per Bidder

6.1 Each bidder shall submit either by himself, or as a partner in a joint venture the following:

- 1) He shall submit only one bid as per the Bidding documents (using the original BOQ).
- 2) Only one alternative bid (if applicable), using an alternative BOQ for all or part of:

- Section 120 Design by the Contractor (structural part only),
 - Section 500 Structures (concrete part)
 - Section 507 Structural Steelwork
 - Section 508 Protection of Steelwork against Corrosion)

About soft ground treatment, the bidders can propose alternative method in only their technical proposal, but not in the BOQ.

7. Cost of Bidding

7.1 The bidder shall bear all costs associated with the preparation and submission of its bid and the Employer will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

8. Site Visit

8.1 The bidder is advised to visit and examine the Site of the Works and its surroundings and obtain all information necessary for the preparation of the bid and entering into a contract for the construction of the Works. The costs of visiting the Site shall be at the bidder's own expense.

8.2 The bidder and any of its personnel or agents will be granted permission by the Employer to enter the premises and lands for the purpose of such inspection, but only upon the express condition that the bidder, its personnel and agents, will release and indemnify the Employer and his personnel and agents from and against all liability in respect thereof and will be responsible for death or personal injury, loss of or damage to property and any other loss, damage, costs and expenses incurred as a result of the inspection. Upon entering the Employer's premises and lands, the bidder hereby agrees that such release and indemnity is so provided.

8.3 The Employer may conduct a Site visit concurrently with the Pre-Bid Meeting referred to in Clause 19.

B. Bidding Documents

9. Content of Bidding Documents

9.1 The bidding documents are those stated below, and should be read in conjunction with any Addenda issued in accordance with Clause 11:

Volume I Invitation for Bids

Part 1	Invitation for Bids
Part 2	Instructions to Bidders
Part 3	Scope of Work
*Part 4-1	Form of Bid
*Part 4-2	Appendix to Bid
Part 5	Form of Agreement
Part 6-1	Sample Form of Performance Security,
Part 6-2	Sample Form of Advance Payment Security
Part 6-3	Sample form of Joint Venture Agreement (if any)
*Part 7-1	Sample Form of Bid Security
*Part 7-2	Schedules of Supplementary Information (incl. Unit price analysis format)

Volume II Conditions of Contract

Part 1	General Conditions of Contract
Part 2	Conditions of Particular Application

Volume III Technical Specifications

Part 1	Technical Specifications
Part 2	Appendix to Specifications

***Volume IV Bill of Quantities**

Volume V Drawings

Data Provided by the Employer

* Required to be completed by the bidder.

9.2 The bidder is expected to examine carefully the contents of all the bidding documents. Failure to comply with the requirements of bid submission will be at the bidder's own risk. Pursuant to Clause 28, bids which are not substantially responsive to the requirements of the bidding documents will be rejected.

10. Clarification of Bidding Documents

10.1 A prospective bidder requiring any clarification of the bidding documents may notify the Employer in writing by fax and Internet at the Employer's address indicated in the Invitation for Bids. The Employer will respond to any request for clarification, which it receives earlier than 28 (twenty eight) days prior to the deadline for submission of bids. Copies of the Employer's response will be forwarded to all purchasers of the bidding documents, including a description of the inquiry, at least 14 days before the deadline for

the bid submission.

- 10.2 All queries shall be committed to writing and, together with written responses thereto, will be sent to all bidders in the form of Addenda in accordance with Clause 11 as soon as possible, but not later than 14 days before the date for submission of bids. Each communication from the Employer to each bidder will contain a receipt slip, which shall be signed by the authorised signatory of the bidder and returned immediately to the Employer. The identity of the bidder who posed the query will not be revealed.
- 10.3 Except as above, neither the Engineer nor his employees nor any agents of the Employer have any authority to explain to bidders the meaning of the Bidding Documents or any other matter such as to bind the Employer or to bind or fetter the judgement or discretion of the Engineer in the exercise of his powers and duties in terms of the Contract.
- 10.4 Modifications to the Bidding Documents (as listed in Sub-Clause 9.1), which may become necessary as a result of such queries, will be made exclusively through the issue of formal Addenda in accordance with Clause 11.

11. Amendment of Bidding Documents

- 11.1 At any time prior to the deadline for submission of bids, the Employer may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective bidder, modify the bidding documents by issuing an Addendum or Addenda to Bid.
- 11.2 Any Addendum thus issued shall be part of the bidding documents pursuant to Sub-Clause 9.1, and shall be communicated in writing or by fax to all prequalified bidders. Prospective bidders shall acknowledge receipt of each Addendum by fax to the Employer.
- 11.3 To afford prospective bidders reasonable time in which to take an Addendum into account in preparing their bids, the Employer may extend as necessary the deadline for submission of bids, in accordance with Clause 22.

C. Preparation of Bids

12. Language of Bid

- 12.1 The bid, and all correspondence and documents related to the bid, exchanged by the bidder and the Employer shall be written in the English language. Supporting documents with other languages shall be translated into English and certified by an authorized person. In case of discrepancy the English version will prevail.

13. Documents Comprising the Bid

- 13.1 The bid submitted by the bidder shall comprise the documents:

The Technical Proposal shall include:

- (1) Cover Letter for Technical Proposal,
- (2) Power of Attorney,
- (3) Part 4-2: Appendix to Bid
- (4) Part 7-1: Form of Bid Security,
- (5) Part 6-3: Form of Joint Venture Agreement (if any),
- (6) Part 7-2: Schedules of Supplementary Information (incl. Unit Price Analysis and alternatives).
- (7) Alternative Bid (without BOQ)

The Financial Proposal shall include:

- (1) Cover Letter for Financial Proposal,
- (2) Part 4-1: Form of Bid,
- (3) Volume IV: Priced Bill of Quantities (Original and alternative, if applicable).

The Technical Proposal shall not include any price information.

13.2 All the remaining documents which comprise part of the Bidding documents are not to be submitted.

13.3 Japanese STEP loan

This project is subject to Japanese “Special Terms for Economic Partnership (STEP)” loan.

14. Bid Prices

14.1 Unless stated otherwise in the bidding documents, the Contract shall be for the whole Works as described in the Bidding documents.

14.2 The bidder shall fill in the rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the bidder will not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities.

14.3 All duties, taxes and other levies **excluding VAT** payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total bid price submitted by the bidder. The bidder shall be familiar with the Tax laws of the Employer’s country. The Contractor shall fill the BOQ, assuming **no tax exemptions**.

14.4 The rates and prices quoted by the bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of Clause 70 of the Conditions of Contract.

14.5 Application of Any Discount

If Bidders want to offer any discount in his bid, it shall be either a percentage discount or a lump sum. In the case of the lump sum discount, the Employer will calculate the

relevant percentage by using the lump sum discount offered. However, Provisional sums, Contingencies and Price adjustment amounts shall not be discounted. The finalised percentage discount shall be applied to all rates in the Bill of Quantities except those items just mentioned. The discounted rates shall be applied for any variation of quantities and claims except those items. All payments due to the Contractor will be calculated on this basis. Any discount letter not included in the bid shall not be accepted.

15. Currencies of Bid and Payment

15.1 All unit rates and prices shall be quoted by the bidder entirely in Sri Lanka Rupees. When Bidders expect to incur expenditures in other currencies for input to the Works supplied from outside the Employer's country (referred to as "foreign currency requirements"), he shall indicate in the Appendix to Bid, the proportion of the bid price (excluding Provisional Sums) for the payment of such foreign currency, either:

- (i) entirely in the currency of the home country or,
- (ii) at the bidders option, entirely in United States Dollars.

If the Contractor wish to be paid in a currency or currencies other than those stated (i) and (ii) above, he shall indicate the respective portion in its bid

15.2 Payment of the Contract Price shall be made in the currencies expressed in the Appendix to Bid.

15.3 The rates of exchange to be used by the bidder for currency conversion during bid preparation shall be the selling rates for similar transactions published by the Central Bank of Sri Lanka, prevailing on the date 28 (twenty eight) days prior to the date Technical bids are opened. If exchange rates are not published for certain currencies, the bidder shall state the rates used and the source. For the purpose of payments, the exchange rates used in bid preparation as specified in the Appendix to Bid shall apply for the duration of the Contract except as provided otherwise under the Contract

15.4 Bidders shall indicate their expected foreign currency requirements in the Appendix to Bid, including but not limited to the specific requirements for:

- (a) expatriate staff and labour employed directly on the Works;
- (b) social, insurance, medical and other charges relating to such expatriate staff and labour, and foreign travel expenses;
- (c) imported materials, both temporary and permanent, including fuels, oil and lubricants required for the Works;
- (d) depreciation and usage of imported Plant and Contractor's Equipment, including spare parts, required for the Works;
- (e) foreign insurance and freight charges for imported materials, Plant and

Contractor's Equipment, including spare parts; and

(f) overhead expenses, fees, profit, and financial charges arising outside the Democratic Socialist Republic of Sri Lanka in connection with the Works.

15.5 Bidders may be required by the Employer to clarify their foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices shown in the Appendix to Bid are reasonable and responsive to Sub-Clause 15.1, in which case a detailed breakdown of its foreign currency requirements shall be provided by the bidder.

15.6 Bidders should note that during the progress of the Works, the foreign currency portions of the outstanding balance of the Contract Price may be adjusted by agreement between the Employer and the Contractor in order to reflect any changes in foreign currency requirements for the Contract, in accordance with Sub-Clause 72.2 of the Conditions of Contract. Any such adjustment shall be effected by comparing the percentages quoted in the bid with the amounts already used in the Works and the Contractor's future needs for imported items.

16. Bid Validity

16.1 Bids shall remain valid for a period of 182 (One Hundred and Eighty Two) days after the date of the Technical Proposal opening specified in Clause 25.

16.2 In exceptional circumstances, prior to expiry of the original bid validity period, the Employer may request that the bidders extend the period of validity for a specified additional period. The request and the responses thereto shall be made in writing or by fax. A bidder may refuse the request without forfeiting his bid security. A bidder agreeing to the request will not be required or permitted to modify his bid, but will be required to extend the validity of his bid security for the period of the extension, and in compliance with Clause 17 in all respects.

Maximum period of bid validity extension will be 4 (four) weeks.

17. Bid Security

17.1 The bidder shall furnish, as part of his bid, a bid security in the amount of Sri Lanka Rupees One Hundred and Fifty Million (Rs.150,000,000) or an equivalent amount in United States Dollars.

17.2 The bid security shall, at the bidder's option, be in the form of a certified check, bank draft, letter of credit or bank guarantee from a Sri Lankan bank or a reputed foreign bank having operations in Sri Lanka. The format of the bank guarantee or bond shall be in accordance with the sample form of bid security included in Part 7-1. Other formats may be permitted, subject to the prior approval of the Employer. Bank guarantees and bonds issued, as surety for the bid shall be valid for 56 days beyond the validity of the bid.

- 17.3 Any bid not accompanied by an acceptable bid security shall be rejected by the Employer as non-compliant.
- 17.4 The bid securities of unsuccessful bidders will be returned as promptly as possible, but not later than 56 days after the expiration of the period of bid validity or any extension made thereto pursuant to Clause 16.
- 17.5 The bid security of the successful bidder will be returned when the bidder furnishes the required performance security.
- 17.6 The bid security may be forfeited
- (a) if the bidder withdraws his bid during the period of bid validity; or
 - (b) if the bidder does not accept the correction of his bid price pursuant to Sub-Clause 29.2; or
 - (c) in the case of a successful bidder, if he fails within the specified time limit to:
 - (i) sign the Agreement, or
 - (ii) furnish the required performance security.

18. Alternative Bid by Bidders

18.1 Alternative bid

Bidders wishing to offer technical alternatives to the requirements of the Bidding Documents must first price the Employer's Bill of Quantities as described in the Bidding Documents. He shall further provide all information necessary for the complete evaluation of the alternative proposal by the Employer.

The alternative proposal shall include:

- Drawings,
- Design calculations,
- Technical specifications,
- Breakdown of prices,
- Proposed method of construction,
- Proposed construction schedule,
- Required equipment, materials, manpower and vehicles,
- Past experience, performance records and construction schedule.

Alternatives of not only the lowest evaluated bidder but also all the bidders, who conform to the basic technical requirements, shall be evaluated by the Employer.

Only alternative bids for following sections will be accepted by the Employer:

- 1) Section 120, Design by the Contractor (for Concrete and Steel Bridges),
- 2) Soft ground treatment in Section 200, Earthworks,
- 3) Section 500, Structures (Bridges only),
- 4) Section 507, Structural Steelwork,
- 5) Section 508, Protection of Steelwork against Corrosion

This project is subject to Japanese STEP loan, described in Clause 13.3. Both original and alternative bids shall comply with the Japanese STEP loan requirements. The bids which does not satisfy the STEP loan requirements won't be accepted by the Employer.

18.2 Bidders shall indicate in Schedule IX of the Schedules of Supplementary Information if any technical Alternative Bids have been submitted.

19. Pre-Bid Meeting

19.1 The bidder or his official representative is invited to attend a pre-bid meeting as follows:

Pre-Bid Meeting

Time and date: will be informed later.

Venue : Ministry's Conference room,
9th Floor, Ministry of Highways & Road Development,
"Sethsiripaya", Battaramulla,
Sri Lanka.

19.2 The purpose of the meeting will be to receive any questions in writing on any matter that bidders may have at that stage and to assemble the site visit on the same day.

19.3 The bidder is requested to submit any questions in writing.

19.4 Minutes of the meeting will be prepared by the Employer regarding only for attendance, and any verbal information provided by the Employer or the Engineer at the meeting should not be relied upon by the Contractor. Any modification of the bidding documents listed in Sub-Clause 9.1, which may become necessary as a result of the pre-bid meeting and written questions by bidders shall be made by the Employer exclusively through the issue of an Addendum pursuant to Clause 11.

19.5 Bidders are advised to attend the pre-bid meeting. However, non-attendance at the pre-bid meeting will not be a cause for disqualification of a bidder. Bidders who do not attend the pre-bid meeting assume the responsibility to comply with modifications to the bidding documents mentioned in sub-Clause 19.4 above and which are communicated through addendums pursuant to Clause 11.

20. Format and Signing of Bid

20.1 The bidder shall prepare 1 (one) original and 2 (two) copies of the Bid documents comprising the bid as described in Clause 13 of these Instructions to Bidders, bound with the volume containing the Form of Bid, and clearly marked "ORIGINAL" and "COPY" as appropriate. In the event of discrepancy between them, the original shall prevail.

20.2 The original and all copies of the bid shall be typed or written in indelible ink (in the case of copies, Photostats are also acceptable) and shall be signed by a person or persons duly authorized to sign on behalf of the bidder, pursuant to Sub-Clauses 5.1 (a) or 5.2 (b), as

the case may be. The person or persons signing the bid shall initial all pages of the bid where entries, corrections or amendments have been made.

D. Submission of Bids

21. Sealing and Marking of Bids

21.1 The bidder shall seal one original and two copies of the bid in an inner and an outer envelope, duly marking the envelopes as “ORIGINAL” and “COPY”. Technical and Financial Proposals shall be submitted simultaneously in two separate envelopes (packing) as follows:

No. Proposal	Required No.		Remark to be added on each packing
	Original	Copy	
1) Technical Proposal	1	2	“Open on bidding day”
2) Financial Proposal	1	2	“Don’t open until 2nd stage”

Technical and Financial Proposals shall be packed completely separate and must be delivered to:

Chairman,
 Cabinet Appointed Procurement Committee,
 C/o The Secretary,
 Ministry of Highways & Road Development,
 9th Floor “Sethsiripaya”
 Battaramulla,
 Sri Lanka

at or before _____ on _____ 2008.

21.2 The inner and outer envelopes shall be addressed to the Employer at the following address:

The Chairman,
 Cabinet Appointed Procurement Committee,
 C/o. The Secretary,
 Ministry of Highways & Road Development,
 9th. Floor, “Sethsiripaya“,
 Battaramulla,
 Sri Lanka.

And shall bear the following identification:

BID FOR THE COLOMBO OUTER CIRCULAR HIGHWAY PROJECT (OCH),
 Northern Section-1, Kadawatha to Kaduwela.
 Bid Reference No. _____
 DO NOT OPEN BEFORE _____ 2008

21.3 In addition to the identification required in Sub-Clause 21.2, the inner envelope shall indicate the name and address of the bidder to enable the bid to be returned unopened in case it is declared “late” pursuant to Clause 23 or not selected for 2nd stage evaluation in Two-envelope bidding.

21.4 If the outermost envelope referred to Sub-Clause 21.1 is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the bid.

22. Deadline for Submission of Bids

22.1 Bids must be received by the Employer at the address specified above no later than _____ pm on _____ 2008.

22.2 The Employer may, at his discretion, extend the deadline for submission of bids by issuing an addendum in accordance with Clause 11, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will thereafter be subject to the deadline as extended.

23. Late Bids

23.1 Any bid received by the Employer after the deadline for submission of bids prescribed in Clause 22 will be returned unopened to the bidder.

24. Modification and Withdrawal of Bids

24.1 The bidder may modify or withdraw his bid after bid submission, provided that written notice of the modification or withdrawal is received by the Employer prior to the deadline or at the time of opening of the bids.

24.2 The bidder’s modification or withdrawal notice shall be prepared, sealed, marked and delivered in accordance with the provisions of Clause 21, with the outer and inner envelopes additionally marked “MODIFICATION” or “WITHDRAWAL”, as appropriate. A withdrawal notice may also be sent by fax but must be followed by a signed confirmation copy.

24.3 No bid may be modified by the bidder after the deadline for submission of bids.

24.4 Withdrawal of a bid during the interval between the deadline for submission of bids and the expiration of the period of bid validity specified in the Form of Bid will result in the forfeiture of the bid security pursuant to Clause 17.

E. Bid Opening and Evaluation

25. Bid Opening

25.1 The Employer will open the **Technical proposal only**, including modifications made

pursuant to Clause 24, in the presence of bidders' representatives who choose to attend, at _____ 2008 at the following location:

Conference Room,
Ministry Highways & Road Development,
9th. Floor "Sethsiripaya",
Battaramulla, Sri Lanka.

The bidders' representatives who are present shall sign a register evidencing their attendance.

- 25.2 Envelopes marked "WITHDRAWAL" shall be opened first and the name of the bidder shall be read out. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause 24 shall not be opened and will be returned to the bidder.
- 25.3 The bidders' names, any withdrawals, the presence or absence of bid security, Power of Attorney, bid prices, discounts and proportion of various currencies required and such other details as the Employer may consider appropriate, will be announced by the Employer at the opening. Any bid price and discount won't be read out and recorded at bid opening. The bidders' representatives will be required to sign the record.
- 25.4 The Employer shall prepare minutes of the bid opening, including the information disclosed to those present in accordance with Sub-Clause 25.3.

26. Process to be Confidential

- 26.1 Information relating to the examination, clarification, evaluation and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process. Any effort by a bidder to influence the Employer's processing of bids or award decisions may result in the rejection of the bidder's bid.

27. Clarification of Bids

- 27.1 To assist in the examination, evaluation and comparison of bids, the Employer may, at his discretion, ask any bidder for clarification of his bid, including breakdowns of unit rates. The request for clarification shall be in writing or by fax and the response shall be in writing and e-mail, but no change in the price or substance of the bid shall be sought, offered or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids in accordance with Clause 29.

28. Examination of Bids and Determination of Responsiveness

- 28.1 Prior to the detailed evaluation of bids, the Employer will determine whether each bid:
- (i) meets the eligibility criteria of JBIC ODA Loans;

- (ii) has been properly signed;
- (iii) is accompanied by the required securities;
- (iv) is substantially responsive to the requirements of the bidding documents; and
- (v) provides any clarification and/or substantiation that the Employer may require pursuant to Sub-Clause 27.

28.2 A substantially responsive bid is one which conforms to all the terms, conditions and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one:

- (i) which affects in any substantial way the scope, quality or performance of the Works;
- (ii) which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the bidder's obligations under the Contract; or
- (iii) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

28.3 If a bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

29. Correction of Errors

29.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Arithmetic errors will be rectified on the following basis. If there is a discrepancy between the unit rate and the total cost per item that is obtained by multiplying the unit rate and quantity, the unit rate shall prevail and the total cost per item will be corrected unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit rate, in which case the total cost per item as quoted will govern and the unit rate corrected. If there is a discrepancy between the total bid amount and the sum of total costs per item, the sum of the total costs per item shall prevail and the total bid amount will be corrected.

29.2 The amount stated in the Form of Bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors and, shall be considered as binding upon the bidder. If the bidder does not accept the corrected amount of bid, his bid shall be rejected, and the bid security shall be forfeited in accordance with Sub-Clause 17.6 (b).

30. Conversion to Single Currency

30.1 The Employer will convert the amounts in various currencies in which the Bid Price is payable (excluding Provisional Sums but including Daywork where priced competitively)

to Sri Lanka Rupees at the selling exchange rates officially prescribed for similar transactions as established by the Central Bank of Sri Lanka on the date of 28 days prior to the date of the Technical bid opening.

31. Evaluation and Comparison of Bids

31.1 The Employer will evaluate and compare only the bids determined to be substantially responsive in accordance with Clause 28 and qualifies for award of Contract in accordance with Clause 5. Bidding method is Single Stage: Two-envelope bidding according to JBIC's Procurement Guidelines, Section 2.03. After the Technical proposals have been evaluated, the envelopes containing the Financial proposals, whose Technical proposal has been determined to conform to the Bidding documents and engineering practice, shall be opened publicly, with bidders or their representatives allowed to be present. The Financial proposals, whose Technical proposal has not been determined to conform to the Bidding documents and engineering practice, shall be returned to the bidder without opening them. All the bids including alternative ones shall be evaluated at the same time.

31.2 In evaluating the bids, the Employer will determine for each bid the Evaluated Bid Price by adjusting the Bid Price as follows:

- (a) making any correction for errors pursuant to Clause 29;
- (b) excluding Provisional Sums and the provision, if any, for Contingencies in the Summary Bill of Quantities, but including Daywork, where priced competitively;
- (c) making an appropriate adjustment for any other acceptable variations and deviations.
- (d) converting the amount resulting from applying (a) to (c) above to a single currency in accordance with Clause 30, adjusted to use the exchange rates prevailing on 28 days prior to the date of Technical bid opening for the purposes of evaluation only.
- (e) applying any discounts offered by the bidder for the award.

Any discount offered by the bidder shall be expressed either as a percentage or as a lump sum. Any lump sum discount offered by the bidder will be converted into a percentage discount in respect of all competitively priced items.

31.3 The Employer reserves the right to accept or reject any variation and deviation. Variations, deviations, and other factors which are in excess of the requirements of the bidding documents or otherwise result in the accrual of unsolicited benefits to the Employer shall not be taken into account in bid evaluation.

31.4 The evaluation of bids shall take into account the price and other commercial features of the offer. In addition, it shall also take into account other criteria, such as those listed below.

- Work Programme for Bid
- Construction Methods
- Adequacy of Proposed Construction Equipment
- Adequacy of Proposed Key Personnel and Head Office and Site Organisation
- Quality Control System
- Health, Safety and Environmental Measures

31.5 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.

31.6 If the bid of the successful bidder is seriously unbalanced in relation to the Engineer's estimate of the cost of work to be performed under the Contract, the Employer may require the bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, the Employer may require that the amount of the performance security set forth in Clause 36 be increased at the expense of the successful bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful bidder under the Contract.

F. Award of Contract

32. Award

32.1 Subject to Clauses 31 and 33, the Employer will award the Contract to the bidder whose bid has been determined to be substantially responsive to the bidding documents and who has offered the Lowest Evaluated Bid Price, provided that such bidder has been determined to be:

- (i) eligible in accordance with the provisions of Sub-Clause 3.1 and 4.1; and
- (ii) qualified in accordance with the provisions of Clause 5. When there was pre-qualification, the latter examination shall be limited to confirming that the bidders' conditions for pre-qualification remain substantially unchanged, but this examination remains a prerequisite for award.

33. Employer's Right to accept any Bid and to Reject any or all Bids

33.1 Notwithstanding Clause 32, the Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids, at any time prior to award of Contract, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds for the Employer's action.

34. Notification of Award

- 34.1 Subject to Clause 33, prior to expiration of the period of bid validity prescribed by the Employer, the Employer will notify the successful bidder by fax confirmed by registered letter that its bid has been accepted. This letter (hereinafter and in the Conditions of Contract called the “Letter of Acceptance”) shall name the sum which the Employer will pay the Contractor in consideration of the execution, completion and maintenance of the Works by the Contractor as prescribed by the Contract (hereinafter and in the Conditions of Contract called “the Contract Price”).
- 34.2 The notification of award will constitute the formation of the Contract.
- 34.3 The bid security of the successful Bidder shall be returned as promptly as possible once the successful bidder has signed the Contract and furnished the required performance security.
- 34.4 Upon the furnishing by the successful bidder of a performance security, the Employer will promptly notify the other bidders that their bids have been unsuccessful. The bid security of unsuccessful bidders shall be returned as promptly as possible.

35. Signing of Agreement

- 35.1 Within 28 days of the date of the Letter of Acceptance, the Employer will advise the bidder the date upon which the parties shall convene to sign the Form of Agreement provided in the bidding documents, incorporating all agreements between the parties.
- 35.2 Within 28 (twenty eight) days of receipt of the Form of Agreement, the successful bidder shall sign the Form and return it to the Employer.

36. Performance Security

- 36.1 Within 28 (twenty eight) days of receipt of the Letter of Acceptance from the Employer, the successful bidder shall furnish to the Employer a performance security in the form of a bank guarantee in the amount specified in the Appendix to Bid. The form of performance security shall be as provided in the Contract.
- 36.2 Failure of the successful bidder to comply with the requirements of Clauses 35 or 36 shall constitute a Default by the Contractor under Sub-Clause 63.1 of the Conditions of Contract and may result in the forfeiture of the bid security.

37. Registration and Licensing

- 37.1 The bidder’s attention is drawn to the legislation in Sri Lanka concerning the registration and licensing requirements for external companies wishing to do business in Sri Lanka.
- Bidders shall satisfy themselves that the legal requirements can be complied with, without there being any adverse affect upon the construction programme, including,

if necessary, initiating the procedure during the bid evaluation period.

- Sri Lanka's legislation is presented in "Procurement Guidelines 2006" by National Procurement Agency.

Part 3
SCOPE OF WORKS**1. The Project**

The Project comprises the construction of:

**Colombo Outer Circular Highway Project (OCH),
Northern Section-1,
Kadawatha (Sta. 8+648) to Kaduwela (Sta.16+560), L=7.8 km (Break: 103 m).**

The construction and consulting service costs are funded by Japan Bank for International Cooperation (JBIC), Special Terms for Economic Partnership (STEP).

2. Location and Objectives

The OCH is a new full access-controlled circular highway, linking Colombo - Katunayake Expressway (CKE) and Southern Transport Development Project (STDP). It is 10-15 km away from the City center and 28.89 km long in total (Southern and Northern Sections in total). It will connect north and south more quickly as a bypass and disperse the traffic from/to Colombo more effectively, resulting in easing traffic congestions in Metropolitan Colombo Region.

Traffic volume forecast is 25,000 vehicles/day in 2012 and 38,700 vehicles/day in 2020. Initial stage will be a 4-lane (each 3.5 m wide) highway (Design speed: 80 km/hour) and it will be expanded into a 6-lane in the final stage.

Divisional Secretariat Divisions: Kadawatha and Biyagama.

3. Major Features of Northern Section-1

Northern Section-1 is the second construction section of the OCH, following the first Southern section, to connect the Southern section with Colombo-Kandy Road (A1 Interchange). It consists of new construction of an access-controlled 4-lane (Each lane 3.5 m wide, 6-lane in the future) highway, L=7.8 km.

Major quantities are estimated as follows:

- Materials from quarries: 456,000 cu.m.
- Materials from borrow pit: 800,000 cu.m
- Disposal of unsuitable material: 6,000 cu.m
- Total earth work: 1,262,000 cu.m
- Major soft ground treatment: Gravel Compaction Pile (GCP), Dia. 700 mm
- Two interchanges (A1 (Kadawatha) and Biyagama),
- Pavement:
Asphalt wearing and binder courses and aggregate base and subbase courses.
- 11 bridges and viaduct (PC I-girders, Steel I-girders and Steel box-girders) including interchange ramps, total 2,601 m in length.
- Five overpasses, total 226 m in length.

- Incidental works:
Guardrails, road signs, markings, lighting, traffic signals, landscaping etc.
- Utility relocations: High Tension pylons, electric, telephone and water lines.

The soft ground and bridge design details are as follows:

Location	Superstructure	Length	Present design	Required Design *	Alternative design
<u>Soft Ground Treatment</u>	-	-	D/D	-	Will be evaluated only in the Technical proposal
<u>Bridges</u>					In both Technical proposal and BOQ
At A-1 Interchange					
Main line (V1)	Steel I-girder	322 m	B/D	D/D	Acceptable for evaluation
Ramps (V5-V8)	Steel box-girder	506 m	B/D	D/D	Acceptable for evaluation
At Biyagama					
Main line (V2-V4)	PC I-girder	1,010 m	B/D	D/D	Acceptable for evaluation
B214 ramp (V9,10)	PC I-girder	408 m	B/D	D/D	Acceptable for evaluation
Kelani Bridge	PC I-girder	355 m	D/D	-	Not acceptable
Overpass (5 Nos.)	PC I-girder	226 m	D/D	-	Not acceptable
Total		2,827 m			

Note* D/D shall be prepared by the Contractor. B/D: Basic Design, D/D: Detailed Design.

4. Environmental Management Plan (EMP)

The Northern Section-1 is located mostly in marsh and abandoned paddy fields. The Contractor shall pay sufficient attention not to produce any air and water pollution, noise and vibration during the construction. At the same time, he shall keep good relation with neighbouring residents, including the convenience of access and temporary roads.

The whole process regarding the environment, the Contractor shall follow Environmental Management Plan (EMP) in the Tender documents and various

regulations and instructions included in Central Environmental Agency's (CEA) approval letter (included in Data provided by the Employer).

5. Requirements of STEP loan

Not less than 30 % of the total amount of contract (Civil works only. The Consulting services are excluded.) must be accounted for goods from Japan and services provided by Japanese firms. The prime contractors must be Japanese firms.

6. Alternative bid

Alternative bid for bridges are acceptable for evaluation as detailed in the Table in Clause 2. If the alternative is applied, the alternative BOQ shall be submitted in the Financial proposal.

For the soft ground treatment, the alternative design will be acceptable for evaluation in the Technical proposal only but the alternative BOQ should not be submitted.

7. Construction Schedule

Construction period is 3 (three) years, starting in 2008/2009 and ending 2011/2012.

PART 4 - 1

FORM OF BID

(If alternative is applicable, make this as Alternative bid.)

**COLOMBO OUTER CIRCULAR HIGHWAY PROJECT
NORTHERN SECTION-1, KADAWATHA TO KADUWELA**

Contract No. _____

To: Chairman,
Cabinet Appointed Procurement Board
Ministry of Highways & Road Development,
9th Floor, "Sethsiripaya"
Battaramulla
Sri Lanka

1. Having examined the Conditions of Contract, Specification, Drawings, and Bill of Quantities and Addenda Nos. _____ as furnished with the Bid Documents for the execution of the above-named Works, we, the undersigned, offer to execute, complete and maintain such Works and remedy any defects therein in conformity with the Conditions of Contract, Specification, Drawings, Bill of Quantities and Addenda for the sum of Sri Lanka Rupees _____ (Rs. _____) only, as calculated from the attached Bill of Quantities, as specified in the Appendix to Bid, or such other sums as may be ascertained in accordance with the said Contract.
2. We acknowledge that the Appendix to Bid forms part of our Bid.
3. We undertake, if our Bid is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Engineer's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Bid.
4. If our Bid is accepted, we will provide security for our proper performance of the Contract to the Employer within 28 days after the receipt of the Letter of Acceptance, according to Conditions of Contract, Sub-Clause 10.1 (Replaced one). In addition, we will sign the Form of Agreement when called upon to do so.
5. We agree to abide by this Bid for the period of 182 (one hundred and eighty two) days from the date fixed for receiving the same, and it shall remain binding upon us and may be accepted at any time before the expiration of that period or any extension thereof to which we may agree.
6. Unless and until a Form of Agreement is prepared and executed, this Bid together with your written acceptance thereof, shall constitute a binding Contract between us.

- 7. We understand that you are not bound to accept the lowest or any Bid you may receive.
- 8. We enclose with the Bid, as attachments to this Form of Bid, the following completed documentation:
 - a) The Appendix to Bid
 - b) The Bid Security
 - c) The Power of Attorney
 - d) Copy of Joint Venture Agreement (if any)
 - e) The Schedules of Supplementary Information
 - f) The Bill of Quantities (priced)

Dated this day of 200

Signature..... in the capacity of.....duly
(Name:)
authorised to sign bids for and on behalf of.....

[in block capitals or typed]

Address:

.....
.....

Witness:

.....
.....

Address

.....
.....

Position and Company

.....

[The Power of Attorney shall be authenticated by a Notary Public and shall evidence a person's authority to sign the bid on behalf of a firm or a joint venture. In the case of a joint venture it shall also:

- (a) authorise one of the partners to be in charge, and
- (b) confirm that all partners of the joint venture are jointly and severally liable for the performance of the Works under the Contract in accordance with the Contract terms.

In the case of a joint venture, a copy of the joint venture agreement shall be enclosed with the bid.]

PART 4-2

Appendix to Bid

Sub-Clause of Conditions of Contract

Subcontracting	4.1 (c) Maximum aggregate value of all subcontracts: 45 percent of Contract Price.
Permanent Works Designed by Contractor	<p>7.2 If alternative bid is submitted for bridge structures, the Contractor shall be responsible for the designs.</p> <p>The Contractor shall prepare Detailed Design (D/D) for some designated bridges. He shall be responsible for the D/D. (For other parts of Basic Design and D/D, the Engineer is responsible.)</p>
Amount of Performance Security	10.1 10 (ten) percent of the Contract Price.
Programme to be Submitted	14.1 Within 42 (forty two) days after the date of commencement.
Amount of Professional Indemnity Insurance	21.1 Amount to be insured is Rs.50 million. (a)
Minimum amount of Third Party Insurance	23.2 Sri Lanka Rupees 12 (twelve) million per Third Party Insurance occurrence, with the number of occurrences being unlimited
Time within which Safety Plan is to be submitted	34.6 Within 42 (forty two) days after the Letter of Acceptance
Time for issue of the notice to commence	41.1 Within 42 (forty two) days after the Letter of Acceptance
Time to commence the Works	41.1 Within 28 (twenty eight) days after the receipt of the notice to proceed, the Contractor shall commence the Work.
Time for establishing Contractor's and Engineer's offices, housing & vehicles and mobilising of Contractor's Representative to the site	<p>41.1 From the commencement date:</p> <ul style="list-style-type: none"> - Contractor's and Engineer's offices and Engineer's housing: within 6 months. - Engineer's and Employer's vehicles: within 2 months. - The Contractor's representative mobilisation: on the commencement date.

- If above establishment is delayed, the Engineer will provide suitable ones and the cost involved shall be deducted by the Employer from payments due to the Contractor.

The land for offices and housings shall be approved by the Employer and the Engineer.

Time for granting possession of Site	42.1	Within 7 (seven) days after the notice to commence.
Possession of Site	42.1	Progressive possession by the Contractor according to the Contractor's site requirement schedule. Whole section possession within 6 months from the Commencement date.
Time for Completion	43.1	
1) Temporary access road along the entire road length	1)	6 calendar months after the Commencement Date.
2) All works	2)	36 calendar months after the Commencement Date
Exceptionally Adverse Climatic Conditions	44.4	1) Base data from the Government's Department of Meteorology Stations: Station Name: Homagama, 2) Site daily rainfall notes (critical path work only) 3) The Contractor's rainfall record
Amount of liquidated damages - For Whole of the Works	47.1	Sri Lanka Rupees two (2) million per day
Limit of liquidated damages	47.1	10% of total contract amount.
Defects Liability Period	49.1	365 (three hundred and sixty-five) days
Mark-up for Provisional Sum	59.4	The Contractor is entitled to claim the 10 % (c) overhead and profit in addition to the direct cost.
Minimum amount of Interim Payment Certificate	60.2	Sri Lanka Rupees two hundred million, (Rs.200 million).
Currency Proportions	72.2	(* The Table below to be completed by the Bidder) The rate of exchange shall be the selling rate of the Sri Lanka Rupee on the date 28 days prior to the date of the Technical proposal

opening.

Source for obtaining rates of exchange 72.2 Central Bank of Sri Lanka
for currencies used by the bidder in
calculating its bid price

Summary of currencies of bid in which amounts due under the Contract are payable:

<i>Currency (name)</i>	<i>Percent Payable In currency</i>	<i>Detailed use of each currency (Bidder to list)</i>

(Max. four currencies)

.....
Signature of Bidder

PART 4-4
Particular Application Clauses

Origin of Materials and Plant	60.3 (a) (v) 60.3 (d)	All Countries and Areas Currency proportions as per relevant item listed in Sub-Clause 72.2
Retention Money	60.5	10 (ten) percent of Interim Payment Certificate
Limit of Retention Money	60.5	10 (ten) percent of Contract Price
Advance Payment	60.7	Two instalment of 10 % and 10% of the Contract Price
Start Repayment of Advance Payment	60.7	After certification of 30 (thirty) % progress of the Contract Price.
Monthly repayment of Advance Payment	60.7	<p>Monthly repayment of Advance Payment shall be calculated using the following formula</p> $(V2-V1) \times \frac{0.20}{(0.8-0.3)}$ <p>V1 = Previous monthly valuation (cumulative) V2 = Current monthly valuation (cumulative) 0.20= Advance Payment, 20 % of Contract Price 0.3 = 30 % of Contract Price (Repayment start) 0.8 = 80 % of Contract Price (Full payment after advance payment)</p> <p>Above formula is applicable only when the cumulative value of interim payments certified to the Contractor has reached to 30 % of the Contract Price</p>
Rate of interest upon	60.8 (b) 60.8 (c)	Interest rate to be added: 2 %/year (Local currency) Interest rate to be added: 0.5 %/year (Foreign currency)
Procedure for Settlement of Disputes	67	The procedure for Settlement of Disputes is: Dispute Adjudication Board (DAB) Procedure, Version 1: Terms of appointment for a board of three members (Annex A of Conditions of Particular Application)

Number of members of Dispute Adjudication Board	67.1	Three (3)
Appointing Authority of members of Dispute Adjudication Board (when the parties fail to nominate)	67.1	The President of the Institution of Engineers of Sri Lanka
Number of arbitrators	67.4	Three (3)
Place of arbitration	67.4	Colombo, Sri Lanka
Language of arbitration	67.4	English
Price adjustment	70.1	Adjustment for Local and Foreign currencies portion shall be paid as follows:
Factors for price adjustment formulae (Local currency)	70.1 (L)	For the purpose of calculating the Price Adjustment, the input percentage representing the estimated proportions of each cost element shall (irrespective of the actual proportions of the work) be as follows:
Sources of Indices (Local currency)	70.1 (L)	The indices applicable are those compiled and published by the Institute for Construction Training and Development (ICTAD), Sri Lanka, in the ICTAD Bulletin of Construction Statistics.

Input Name	ICTAD Reference	Input Percentage
Skilled Labour	L1	2
Semiskilled Labour	L3	2
Cement	M4	6
Rubble	M6	4
Aggregate (Metal)	M7	7
Sand	M8	1
Reinforcement Steel	M13	5
Structural Steel	M14	13
Bitumen	M30C	2
Small Equipment	P1	2
Heavy Equipment	P2	30
Fuel	P3	16
Non-adjustable element		10
Total		100

Note: Refer to “COST INDICES FOR TYPES OF CONSTRUCTION AND ALL CONSTRUCTION” in the Bulletin
 If alternative bid is accepted, the input % shall be agreed at the time of negotiation.

Factors for price adjustment
formulae (Foreign currency)

70.3 (F)

Please fill in the Table below according to required
foreign currencies.

Cost Element	Coefficients (%) for each currency		
	Foreign Currency (1)	Foreign Currency (2)	Foreign Currency (3)
(a) Fixed for non-adjustable element	10	10	10
(b) Labour
(c) Materials
(d) Contractor's Equipment and Plant
Total	100 %	100 %	100 %

Sources of Indices
(Foreign currency)

70.4 (F)

Please fill in the Table below for each currency.
Those shall be reviewed and agreed by the
Employer and the successful bidder.

Cost index	Country of Origin	Currency of Index	Published sources of Index	Base cost index of date (Prevailing on the 28 days prior to the closing date for submission of bids)
(Lo) Labour (Mo) Materials (Eo) Contractor's Equipment and Plant				

- The foreign currency index must be in wide use in the country of origin and the bidder shall obtain the approval of the relevant government for the source of the foreign currency index.
- The Contractor is responsible for the supply of the indices on monthly basis.

PART 5

Form of Agreement

AGREEMENT

This Agreement made this _____ day of _____ 200_

between the Road Development Authority of Ministry of Highways & Road Development, “Sethsiripaya“, Battaramulla, Sri Lanka (hereinafter called “the Employer”) of the one part and _____ of _____ (hereinafter called “the Contractor”) of the other part.

Whereas the Employer is desirous that certain Works should be executed by the Contractor, viz. Contract No. _____, JBIC Funded Section of Colombo Outer Circular Highway, Northern Section-1, from Kadawatha to Kaduwela, and has accepted a Bid by the Contractor for the execution and completion of such Works and the remedying of any defects therein.

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 Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz:
 - (a) This Contract Agreement (with power of attorney)
 - (b) The Letter of Acceptance
 - (c) The Form of Bid
 - (d) The Addenda to Bid
 - (e) The Conditions of Particular Application (Part II)
 - (f) The General Conditions (Part I)
 - (g) Appendix to Bid
 - (h) Technical Specifications
 - (i) Drawings
 - (j) Bill of Quantities (Priced)
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works 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 the day and year first before written.

CONTRACTOR
SIGNED, SEALED AND DELIVERED

ROAD DEVELOPMENT AUTHORITY
SIGNED, SEALED AND DELIVERED

BY:

Name:

Position:

on behalf of the Contractor

IN THE PRESENCE OF

1:

Name:

Address:

BY:

Name:

Position:

on behalf of the Employer

IN THE PRESENCE OF

2:

Name:

Address:

Part 6 -1

**FORM OF PERFORMANCE SECURITY
(BANK GUARANTEE)**

To: The Chairman,
Road Development Authority,
“Sethsiripaya”
Battaramulla
Sri Lank

**Colombo Outer Circular Highway Project
Northern Section-1, Kadawatha to Kaduwela**

THIS AGREEMENT is made on the _____ day of _____ (state month and year) between _____ (name of bank) of _____ (address of bank) (hereinafter called “the Guarantor”) of the one part and of the **Road Development Authority of Ministry of Highways & Road Development, “Sethsiripaya”, Battaramulla, Sri Lanka** (hereinafter called “the Employer”) of the other part.

WHEREAS

(1) this agreement is supplemental to a contract (hereinafter called “the Contract”) made between (name of Contractor) of _____ (address of Contractor) (hereinafter called “the Contractor”) of the one part and the Employer of the other part whereby the Contractor agreed and undertook to execute the Works of, Contract No. _____ Japan Bank for International Cooperation (JBIC) Funded Section of the Colombo Outer Circular Highway Project (OCH), from Kadawatha to Kaduwela for the sum of _____ (amount in Contract currency) being the Contract Price; and

(2) the Guarantor has agreed to guarantee the due performance of the Contract in the manner hereinafter appearing.

NOW, THEREFORE, the Guarantor hereby agrees with the Employer as follows:

(a) If the Contractor (unless relieved from the performance by any clause of the Contract or by statute or by the decision of a tribunal of competent jurisdiction) shall in any respect fail to execute the Contract or commit any breach of his obligations thereunder, then the Guarantor will indemnify and pay the Employer the aggregate sum of _____ (amount of Guarantee)¹ _____ (in words), such sum being payable in the types and amounts of currencies in which the Contract Price is payable, provided that the Employer or his authorized representative has notified the Guarantor to that effect and has made a claim

¹ An amount is to be inserted by the Guarantor, representing the percentage of the Contract Price specified in the Contract, and denominated either in currency/ies of the Contract or in a freely convertible currency acceptable to the Employer.

against the Guarantor before the issue of the Defects Liability Certificate.

(b) The Guarantor shall not be discharged or released from his guarantee by an arrangement between the Contractor and the Employer, with or without the consent of the Guarantor, or by any alteration in the obligations undertaken by the Contractor, or by any forbearance on the part of the Contractor, whether as to payment, time, performance, or other wise, and any notice to the Guarantor of any such arrangement, alteration, or forbearance is hereby expressly waived.

This Guarantee shall be valid until the bank receives written notification from the Employer that the sum (or any remaining sum) is no longer required by the Employer, or until this Bank Guarantee is returned to the bank, or until payment has been made to the Employer of the whole of the sum.

Given under our hand on the date first mentioned above.

SIGNED BY

for and on behalf of the
Guarantor in the presence of

(Witness)

SIGNED BY

for and on behalf of the
Employer in the presence of

(Witness)

PART 6-2

**FORM OF ADVANCE PAYMENT SECURITY
(BANK GUARANTEE)**

To: The Chairman
Road Development Authority
"Sethsiripaya"
Battaramulla
Sri Lanka.

**Colombo Outer Circular Highway Project
JBIC Funded Section**

Northern Section-1: Kadawatha to Kaduwela

Gentlemen:

In accordance with the provisions of the Conditions of Particular Application, Sub-Clause 60.7 ("Advance Payment") of the above-mentioned Contract _____ (name and Address of Contractor) (hereinafter called "the Contractor") shall deposit with the Road Development Authority ("the Employer"), a bank guarantee to guarantee his proper and faithful performance under the said Clause of the Conditions of Contract in an amount of _____, (amount of Guarantee) _____ (in words).

We, the _____, (bank or financial institution), as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to The Road Development Authority on its first demand if we received following statement from the Employer:

- 1) The Contractor failed to repay the advance payment according to the Contract. and
- 2) The amount which the Contractor failed to repay.

This payment will be made without his first claim to the Contractor, in the amount not exceeding _____, (amount of Guarantee)² _____ (in words).

We further agree that no change or addition to or other modification of the terms of the Contract or of Work to be performed thereunder or of any of the Contract documents which may be made between The Road Development Authority and the Contractor, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

² An amount is to be inserted by the bank or financial institution representing the amount of the Advance Payment, and denominated either in the currency/ies of the Advance Payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.

“This Guarantee shall be valid until the bank receives written notification from the Employer that the sum (or any remaining sum) is no longer required by the Employer, or until this Bank Guarantee is returned to the bank, or until payment has been made to the Employer of the whole of the sum.”

Yours truly,

SIGNATURE AND SEAL: _____
Name of Bank/Financial Institution: _____
Address: _____
Date: _____

PART 6-3

JOINT VENTURE AGREEMENT

To: _____
 [name and address of the Employer]

The undersigned of this declaration of cooperation are by means of attached Powers of Attorney legally authorized to act with regard to _____ [name of the Project] and on behalf of their organizations.

They hereby declare:

that they will legalize a joint Venture Agreement in case that a Contract for the _____ [name of the Project] is awarded to their group;

that they have nominated _____ [name of the lead partner] as Leading Firm of the group for the purpose of this Bid;

that they authorize Mr./Ms. _____ [name of the person who is authorised to act as the Representative on behalf of the Joint Venture] to act as the Bidder's Representative in the name and on behalf of their group.

that all partners of the Joint Venture shall be liable jointly and severally for the execution of the Contract;

that this joint Venture is an association constituted for the purpose of the execution of the _____ [name of the Project] under this Contract;

that if the Employer accepts the Bid of this Joint Venture, it shall not be modified in its composition or constitution until the completion of Contract without the prior consent of the Employer;

that each partner's share of the Work, stated as percentage of the total contract amount, shall be as follows:

Colombo Outer Circular Highway Project (OCH) Northern Section-1, Kadawatha to Kaduwela

Name of Partner	Share of the Work (as percentage of the contract amount)
1. Lead Partner	
2. Partner	
3. Partner	
4. Partner	
Total	100

Give names and positions of the proposed Joint Venture Representatives, as well as

organisation's names and addresses:

1.	Name:	Signature:
	Position	Date:
	Representative of; (Organization's Name)	

2	Name:	Signature:
	Position	Date:
	Representative of; (Organization's Name)	

3.	Name:	Signature:
	Position	Date:
	Representative of; (Organization's Name)	

4.	Name:	Signature:
	Position	Date:
	Representative of; (Organization's Name)	

5..	Name:	Signature:
	Position	Date:
	Representative of; (Organization's Name)	

PART 7-1

To: The Chairman
Cabinet Appointed Procurement Committee
c/o. Secretary,
Ministry of Highways & Road Development,
9th Floor, "Sethsiripaya"
Battaramulla
SRI LANKA

FORM OF BID SECURITY (BANK GUARANTEE)

WHEREAS, _____ (hereinafter called "the Bidder") has submitted his bid dated _____ for the construction of JBIC Funded Section of Colombo Outer Circular Highway Project, Northern Section-1 (hereinafter called "the Bid").

KNOW ALL MEN by these presents that We _____ of _____ having our registered office at _____ (hereinafter called "the Bank") are bound unto **The Road Development Authority** (hereinafter called "the Employer") in the sum of _____

_____ for which payment well and truly to be made to the said Employer the Bank binds himself, his successors and assigns by these presents.

SEALED with the Common Seal of the said Bank this _____ day of _____ 200_

THE CONDITIONS of this obligation are:

- (1) If the Bidder withdraws his Bid during the period of bid validity specified in the Form of Bid: or
- (2) If the Bidder does not accept the correction of arithmetical errors of his bid price in accordance with the Instructions to Bidders: or
- (3) If the Bidder having been notified of the acceptance of his Bid by the Employer during the period of bid validity:
 - (a) fails or refuses to execute the Form of Agreement in accordance with the Form of Bid, if required; or
 - (b) fails or refuses to furnish the Performance Security, in accordance with the Form of Bid,

we undertake to pay to the Employer up to the above amount upon receipt of his first written demand, provided that in his demand the Employer will note that the amount claimed by him is

due to him owing to the occurrence of one or more of the above mentioned, specifying the occurred condition or conditions.

This Guarantee will remain in force up to and including the date 238 (Two hundred and thirty eight) days after the deadline for submission of bids as such deadline is stated in the Instructions to Bidders or as it may be extended by the Employer pursuant to the Instructions to Bidders, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date.

DATE _____ SIGNATURE OF THE BANK _____

WITNESS _____ SEAL _____

(Signature, Name, and Address)

DATE _____ SIGNATURE OF THE CONTRACTOR _____

WITNESS _____ SEAL _____

(Signature, Name, and Address)

PART 7-2

SCHEDULES OF SUPPLEMENTARY INFORMATION

The bidder shall submit the following documents with the bid. If the bid includes:

- Non-conformance to the technical requirements or
- Unrealistic or inadequate construction plans, methods or schedules,

it will be rejected according to the JBIC's Procurement Guidelines and Evaluation Guide.

The information submitted in the Schedules of Supplementary Information including updated PQ forms, current and past performance of the bidder and technical aspects of the tender will be assessed as part of the tender evaluation, and may result in a tender being rejected by the Employer if found unsatisfactory.

1. Up-dated PQ Forms

The bidders shall up-date and re-submit all PQ Application Forms. Forms similar to those of the bidding documents may be replaced by the latter forms.

In addition the bidder is to complete Schedule X in this Part 7 with details of current and past projects performed in Sri Lanka over the past 10 years.

2. Technical Information Data Sheets

The bidder shall thoroughly review the bidding documents, in particular, Drawings, Specifications, Bill of Quantities and Data provided by the Employer and study the site conditions. The bidder shall plan the work and submit the following attached schedule Data Sheets:

- 1) Schedule I: Preliminary Planning of Major Construction Equipment
- 2) Schedule II: List of Contractor's key personnel
- 3) Schedule III: Subcontractors
- 4) Schedule IV: Supply and Disposal Plan of Earth/Aggregate Materials
- 5) Schedule V: Details of materials and Contractor's Equipment proposed to be imported using foreign exchange
- 6) Schedule VI: Work Programme for Bid
- 7) Schedule VII: Unit Price Analyses (for all pay items) (example format provided)
- 8) Schedule VIII: Method Statement
- 9) Schedule IX: Alternative Bid
- 10) Schedule X: Current and Past Projects in Sri Lanka

3. General

The bidder is required to submit with his Bid, by way of these Schedules of Supplementary Information, full details as specified below. Should the space available on any of the schedules be inadequate, the bidder shall append such supplementary sheets as he deems necessary to comply with the Bid Requirements. Such supplementary sheets shall display "Colombo Outer Circular Highway Project, Northern Section-1", and shall be properly cross-referenced and firmly appended to the relevant Schedule or otherwise included such that they will not inadvertently be detached from the Bid.

References given are for guidance only and not necessarily exclusive of other pertinent information in the Bidding Documents. Each page of each Schedule, including any supplementary sheets, shall be duly signed and dated by the bidder.

Where in the schedules information is required by periods, the start of the first of such periods shall be taken as the date of receipt of the notice to commence the Works issued in accordance with Sub-Clause 41.1 of the Conditions of Contract.

If the bidder is not required to supply any information in respect of any particular schedule, or where supply of such information is optional on the bidder, two lines should be drawn diagonally across the schedule with the words "NOT REQUIRED" written between. The schedule shall nevertheless be duly signed and dated by the bidder.

The information provided in the Schedules of Supplementary Information is material to the Bid and to the assessment of the bidder's understanding of and ability to undertake the Works. In particular, the proper integration of programme- and progress-related information with the bidder's Work Programme for Bid (Schedule VIII) will be taken as evidence of such understanding and ability.

4. Preliminary Planning of Major Construction Equipment (Schedule I)

The bidder shall provide to the detail required in Schedule I relevant information on the major items of construction equipment which he proposes to bring on the Site, both owned and leased. Any additional information which the bidder considers necessary which is not provided for in the Schedule shall be appended on supplementary sheets as appropriate.

5. List of Contractor's Key Personnel (Schedule II-1 and/or Schedule II-2)

The bidder shall provide:

- (a) details of key personnel he proposes to assign to this Contract, including those of his main subcontractors and
- (b) organisation charts for both head office-based and site-based personnel. Where appropriate, but at least for the upper levels of superintendence and function, current Curriculum Vitae (CVs) shall be provided and appended as necessary in Schedule II-1.

6 Subcontractors (Schedule III)

The bidder shall as called for in Schedule III, submit full details of all Subcontractors proposed to be used on the Works, their respective specialities, areas of responsibility, etc.

7. Supply and Disposal Plan of Earth/Aggregate Materials (Schedule IV)

The bidder shall provide to the detail required in Schedule IV procurement of earth/aggregate materials taking into account the work sequence of excavation and embankment/fill.

Procurement of embankment/aggregate materials shall consider excavation schedule as well as readiness of borrow areas and/or stockpiles and development schedule of those borrows/stockpiles, if necessary.

Hauling distance for each disposal of excavated material and embankment work shall be clearly shown on the figure showing earth/aggregate material distribution plan. Earth material conversion factors shall be tabulated for preparation of the distribution plan.

8. Details of materials and Contractor's Equipment proposed to be imported using foreign exchange (Schedule V)

All construction materials (incl. steel structures) and the Contractor's equipment brought from outside Sri Lanka shall be listed together with the source, in Schedule V. The estimated value, either C.I.F cost or delivered local cost of Plant, construction materials shall also be inserted by the bidder in this Schedule.

9. Work Programme for Bid (Schedule VI)

The bidder shall submit a programme for the Works in accordance with the details specified in Section 112 of the Specifications and Method statements in Schedule VIII, related to the readiness of temporary installations and submission by the Contractor of drawings, design calculations, etc. and approval thereof, as required in terms of Clause 7.2 of the Conditions of Contract shall be stated in Schedule VI-1. The detailed working shift arrangements for and make-up of the labour and supervisory teams for each activity or group of related activities of the programme shall be submitted in a suitable format and properly cross-referenced to the relevant activity/ies on the programme. The rates of progress, for particular types of works related to the various structures (concrete and steels) shall also be stated and cross-referenced to the programme.

The software used for the Work Programme for Bid presented in Schedule VI-1 shall be detailed in Schedule VI-2.

10. Unit Price Analyses (for all bill items) (example format provided) (Schedule VII)

The bidder shall provide a detailed breakdown of the charges included in all rates given or as indicated in Schedule VII by subdividing the rate into at least the following elements:

- Labour:
 - Local labour
 - supervision¹,
 - plant operator,
 - operator
 - Driver
 - skilled labour²
 - common labour
 - Foreign labour
 - supervision¹
- Equipment
 - Plant and equipment
 - Fuel and lubricant
 - Electricity
- Materials
 - Cement

Steel
Miscellaneous

- Indirect cost and profit
- Notes:
 1. *The type of supervisory staff shall also be given separately e.g. Foreman, General Foreman, etc.*
 2. *The actual job description and charge element of each labour or artisan/craftsman category shall be given: e.g. Carpenter, Welder, etc.*

11. Method Statement (Schedule VIII)

The bidder shall submit detailed statements including readiness of borrow areas, stockpiles and spoil banks as well as temporary installations, drawings on methods of construction and quality management for the various aspects of the work and where indicated shall include details of the types of labour, materials and equipment that shall be used for execution of the work. Such submissions shall be made in terms of Schedule VIII:

Part 1: Conditions for Construction Methods,

Part 2: Construction Methods with construction resources and

Part 3: Contractor's Quality Management Plan, respectively.

Bidders shall ensure that the details given in terms of this section of the Bid Documents are fully compatible with the information supplied in their Work Programme for Bid (see item 9 hereof, Schedule VIII).

The Method Statement in Schedule VIII Part 1 shall describe the following conditions but not limited to:

- Workable days taking into account the rainfall and holidays in Sri Lanka,
- Material conversion factors (bank, loose, embankment measures),
- Production rates of constructional equipment and plant,
- Description of critical path works,

The Method Statement in Schedule VIII Part 2 shall describe in detail work sequences and the methods by which the Bidder proposes to carry out the Works, including details of temporary and permanent works and equipment to be used, for the items listed below. The Method Statement is to be detailed and shall include narrative descriptions, explanatory diagrams and schedules for the various items or phases of work such as:

- (i) Steel bridges:
Fabrication, transport and erections (I and box - girders),
- (ii) Soft ground treatment:
Proposed disposal locations and alternative method, if any.
- (iii) Borrow materials and aggregate quarries:
Planning and transportation .
- (iv) Kelani River Bridge (Sta.16+300):
Construction method and its piling.
- (iv) Traffic congestion problems at A-1 and B-214 Roads
Measures for transport of concrete, reinforcement steels, asphalt materials and mitigation measures in environmental aspects.

The above supplementary information shall be sufficient for the Employer to evaluate the quality of the bid, and shall be used by the parties for this purpose only, with the exception of the Unit Price

12. Alternative Bid (Schedule IX)

The bidder shall detail in Schedule IX any Alternative Bids submitted in accordance with the requirements of Part 2 - Instructions to Bidders, Clause 18 - Alternative Bid by Bidders.

13. Current and Past Projects in Sri Lanka (Schedule X)

The bidder shall list in Schedule X the past and on-going projects in Sri Lanka within the last 10 years.

14. Contractor's Responsibility

The inclusion by the successful bidder of any information in the Schedules of Supplementary Information shall not relieve the Contractor of any of its obligations under the Contract, and acceptance of a bid does not infer any approval of information submitted herewith.

The Contractor specifically agrees that it shall have no entitlement to any claim which relies upon information provided in Schedules I to IX of the Schedules of Supplementary Information.

SCHEDULE I

Preliminary Planning of Major Construction Equipment

(Names of plant and equipment are only for guides. The bidder shall fill out the schedule according to his own planning.)

No.	Name of plant & equipment	Total Min. No.	Breakdown of ownership (Indicate each No., capacity, year & country of made)		
			Owned & available	New purchase	Lease or sub-contract
1	Crushing plant				
2	Concrete batching plant				
3	Asphalt mixing plant				
4	Bulldozer				
5	Ripper bulldozer				
6	Excavator				
7	Loader				
8	Dump truck				
9	Grader				
10	Roller				
11	Water bowser				
.....				
.....				

Note)

1. The bidder shall enter all major items of the Contractor's equipment which he proposes to bring on site.
2. The bidder shall enter name of plant and equipment, total Min. No. and breakdown of ownership in the Schedule I.
3. The Contractor is responsible to provide adequate No. and capacity of equipment in time. The Schedule I shall not provide any basis of claims on equipment.

SCHEDULE II-1

LIST OF CONTRACTOR'S KEY PERSONNEL

1. Prime Candidate

Position to be held	Name	Nationality	Age	Education (1)	Years of Service in Company	Years of Experience in Bridge & Highway Construction	Years of Experience in Similar Position
1. Project Manager							
2. Deputy Project Manager							
3. Highway Construction Engineer							
4. Geotechnical Engineer							
5. Bridge Construction Engineer							
6. Foundation Manager							
7. Quality Assurance Engineer							
8. Environmental Specialist							
9. Quantity Surveyor							
10. Safety Manager							
11. Equipment and Plant Manager							

- (1) Insert University/Academy, High School or Secondary School and year of finishing
- (2) Copies of educational qualification and experience certificate of above listed personnel should be attached
- (3) The Bidder agrees to recruit the personnel listed above or that in Schedule II-2 for the execution of the Works.
- (4) In addition, Organisation Charts shall be appended to this Schedule by the bidder, indicating the title, position and relationship of key personnel and the support staff for (a) site based personnel and (b) head office-based personnel. See also Schedule VIII for organisation chart concerning site supervisory and support staff.

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SCHEDULE II-2

LIST OF CONTRACTOR'S KEY PERSONNEL

2. Alternative Candidate

Position to be held	Name	Nationality	Age	Education (1)	Years of Service in Company	Years of Experience in Bridge & Highway Construction	Years of Experience in Similar Position
1. Project Manager 2. Deputy Project Manager 3. Highway Construction Engineer 4. Geotechnical Engineer 5. Bridge Construction Engineer 6. Foundation Manager 7. Quality Assurance Engineer 8. Environmental Specialist 9. Quantity Surveyor 10. Safety Manager 11. Equipment and Plant Manager							

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DETAILS ON CONTRACTOR’S KEY PERSONNEL

- 1. Proposed Position _____
- 2. Name of Staff _____
- 3. Name and Address of Firm _____
- 4. Profession _____
- 5. Date of Birth _____
- 6. Years with Firm/entity _____
- 7. Nationality _____
- 8. Languages _____
- 9. Membership in Professional Societies _____
- 10. Full details of qualifications _____
 (giving dates, places, effective period, organization issued, etc.) _____

11. Full details of past experience with particular reference to work on similar projects and positions.
(Detailed experience on soft ground treatment shall be added for key positions.) _____

12. Employment Record _____

DATE
 SIGNATURE

SCHEDULE IV

SUPPLY and DISPOSAL PLAN OF EARTH/AGGREGATE MATERIALS

No .	Material	Location * and area	Scheduled time for readiness	Scheduled Max. volume
Note: *; Locations are to be shown on a map.				

1. The bidder shall enter in this schedule a list of borrow areas and disposal areas with location map, scheduled time for readiness and scheduled maximum volume for the satisfactory completion of the Works

SCHEDULE VI

VI-1: WORK PROGRAMME FOR BID

The bidder shall submit with his Bid a work execution programme as required in terms of Conditions of Contract, Clause 14 and Section 112 of the Specifications.

1. The programme shall be submitted under the title "Schedule VI, WORK PROGRAMME FOR BID" with the bidder's name.
2. The programme shall be related with Schedule I: Preliminary Planning of construction equipment and Schedule VII: Unit Price Analysis.
3. The programme will be used only for bid evaluation and won't be used as part of contract document. The contract programme shall be prepared by the successful bidder after award of the Contract.
4. The programme shall provide sufficient details for the Employer's bid evaluation. The details shall include:
 - No. of parties to be employed and No. of divided sections (from Sta. to Sta.)
 - Activities for each Section (relation with production capacities and climatic conditions)
 - Access road construction
 - Accommodation, office and the Contractor's site establishment construction
 - Major plants construction, quarries and borrow material opening
 - Steel bridges construction incl. fabrication, transport and erections
 - Soft ground treatment

SCHEDULE VI

WORK PROGRAMME FOR BID

VI-2: PROGRAMMING SOFTWARE

The bidder shall submit below details of the computer software used to generate the bidder's Work Programme for Bid and which will be used for the Contract Programme in accordance with the Conditions of Contract Sub-Clause 14.1 and Section 112 of the Specifications.

Software name

SCHEDULE VII

Example Format for Unit Price Analysis (Required for all Pay Items)

Item No.

Work Item:

Estimated Quantity (Q):

Ref. No.	Equipment Cost	No. of Units	No. of Hours	Foreign Currency (JPY)		Local Currency (Rs)	
				Unit Rate	Amount	Unit Rate	Amount
	Sub-total (1)						

Ref. No.	Labour Cost	No. of Persons	No. of Days	Foreign Currency (JPY)		Local Currency (Rs)	
				Unit Rate	Amount	Unit Rate	Amount
	Sub-total (2)						

Ref. No.	Material Cost	Q'ty	Unit	Foreign Currency (JPY)		Local Currency (Rs)	
				Unit Rate	Amount	Unit Rate	Amount
	Sub-total (3)						

- 4) Total Direct Job Costs(DJC) (1)+(2)+(3)
- 5) Indirect Cost and Profit [(1)+(2)+(3)] x
 %
- 6) Total (4)+(5)
- 7) Unit Rate (6)/Q
- 8) Combined Rupee Rate (F+L)

All taxes are included except VAT.

SCHEDULE VIII

METHOD STATEMENTS

1. The bidder is required to submit full statements of his proposed methods for construction of the Works. The details shall be submitted under separate cover, and shall display "COLOMBO OUTER CIRCULAR HIGHWAY PROJECT – NORTHERN SECTION-1" and the name of the bidder and shall be titled "Schedule VIII - Method Statements". All details in Schedule VIII shall match other details in other Schedules.
2. After award of the Contract, where required by the Engineer, the Contractor shall provide details of its proposed work methods pursuant to Sub-Clause 14.1 of the General Conditions.
3. The method statements shall be submitted in three parts, as follows:
 - (a) Schedule VIII - Part 1: Conditions for Construction Methods
 - (b) Schedule VIII - Part 2: Construction Methods with Construction Resources
 - (c) Schedule VIII - Part 3: Contractor's Quality Management Plan

SCHEDULE IX

ALTERNATIVE BID

The bidder shall submit details of an alternative bid (if applicable) under Schedule IX as described in Part 2 - Instructions to Bidders, Clause 18 “Alternative Bid by Bidders”.

A brief outline of the Alternative proposed and its effect on the Bid Sum (strictly only for Pay Items 203 and 204. The total contract sum shall not be mentioned here. If it is mentioned here, the bid will be disqualified.) for each of the currencies of the Bid and/or the Time for Completion or Work Programme for Bid shall be stated in the table below:

Outline of Alternative	Financial Effects	Programme and Environmental Effect

SCHEDULE X

Current and Past Projects in Sri Lanka

The bidder shall provide details for all projects currently being performed in Sri Lanka and any other projects undertaken in Sri Lanka over the past 10 years.

Following description shall be included:

- 1) Any accidents during the construction
- 2) Average monthly performance (Rs. Million/month) in the projects
- 3) Major third party insurance paid to the third parties

False description may cause rejection of the bid by the Employer.

Dates	Project Description	Employer Name/Address	Consultant Name, Address and Tel No.

Part 8

Public Finance Circular No.FIN 357(3)

My No. FIN-1076-260-180
Dept. of Public Finance,
General Treasury,
Colombo 01.
5 March 2002

To: All Secretaries of Ministries,
Chief Secretaries of Provincial Councils,
Heads of Departments,
Chairmen of State Corporations, Statutory Boards,
Fully govt. Owned Companies, and
Heads of Local Authorities.

New procedures Applicable to International Companies Bidding for Large

Scale Government Tenders and BOO/BOT Projects.

1. Please be informed that the Public Finance Circulars No.357 of 29.06.98, 357(1) of 03.08.98 and 357(2) of 25.09.98 on the above subject are hereby repealed and the following new procedures are introduced with regard to international companies bidding for large scale government tenders and BOO/BOT projects.
2. Any foreign investor / contractor bidding for a Government tender or BOO/BOT project the value of which exceeds Rs.250 million – shall furnish following information along with the bid or proposal.
 - (a) Whether the bidder uses a local agent (s);
 - (b) Whether the bidder uses a local agent,
 - i. the name and address of the local agent (s);
 - ii. the year of registration of the business of the local agent (s);
 - iii. a certified copy of the audited accounts of the local agents (s) for any one of the two financial years immediately preceding the date of submission of bids or proposals, audited by an independent external auditor in accordance with Sri Lanka Auditing Standards together with the Auditor's report confirming that the accounts were prepared in accordance with the Sri Lanka Accounting Standards; and
 - iv. All details of commissions or gratuities, if any, paid or to be paid to the local agents (s) connected with or relating to the bid or proposal up to contract execution if the bidder is awarded the contract, including any success fees payable.
3. In the case where a bidder uses a local agent (s), the bid will be rejected if

- (a) the bidder fails to furnish any of the information specified in paragraph (3 (b),
 - (b) the accounts of the local agent (s) for any one of the two financial years immediately preceding the date of submission of bids or proposals have not been audited by an independent external auditor in accordance with the Sri Lanka Auditing Standards, and
 - (c) the auditor's report does not confirm that the accounts of the local agent (s) have been prepared in accordance with the Sri Lanka Accounting Standards.
4. Bidders for Government tenders and BOO / BOT projects may submit bids proposals without local agent (s).
5. These provision will be applicable with immediate effect to new bids or proposals as well as bids and proposals already invited.

(Signed)
Charitha Ratwatte
Secretary to the Treasury

VOLUME II CONDITIONS OF CONTRACT

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Part I: General Conditions of Contract

Part II: Conditions of Particular Application

VOLUME II

Part I—General Conditions of Contract

The General Conditions of Contract Applicable to this Project are;

**FIDIC – FEDERATION INTERNATIONALE DES INGENIEURS - CONSEILS
CONDITIONS OF CONTRACT FOR WORKS OF CIVIL ENGINEERING
CONSTRUCTION**

PART I GENERAL CONDITIONS

FOURTH EDITION 1987

Reprinted 1988 with editorial amendments

Reprinted 1992 with further amendments

**Included by reference only
(Not bound into Tender documents)**

(Prospective Bidders should obtain their own copies)

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VOLUME II

Part I—General Conditions of Contract

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Volume II

Part II, Conditions of Particular Application

Clause 1

Sub-Clause 1.1: Definitions

Delete Sub-Clauses 1.1. (a) (i) & (iv) and replace with the following:

“(a) (i) The “Employer” is the Road Development Authority established under Act No. 73 of 1981 under Ministry of Highways, of the Democratic Socialist Republic of Sri Lanka.

(a) (iv) The “Engineer” is Director of Road Transport Division, Pacific Consultants International (Tokyo, Japan) or any other person or organisation of the same company, appointed by the Employer, and notified to the Contractor in writing.

Sub-paragraph (b) (v) of Sub-Clause 1.1 is amended by the addition of the following words at the end:

“The word ‘Tender’ is synonymous with ‘Bid’ and the words ‘Tender Documents’ with ‘Bidding Documents’.”

Sub-Clause 1.1 (b). After sub-paragraph (viii) add the following sub-paragraphs:

“(ix) “Employer’s Requirements” means the description of scope, standard, design criteria (if any) and programme of work, as included in the contract, and any alterations and modification thereto in accordance with the Contract.

(x) “Construction Documents” means all drawings, calculations, computer software (programs), samples, and other manuals and information of similar nature, to be submitted by the Contractor expressly required by the Contract to be performed by the Contractor, or as a part of a Contractor’s Proposal

(xi) “Variation” means any addition, omission, alteration and/or modification as defined in clause 51.1 of General Condition of Contract.”

After Sub-paragraph (c), (ii) add the following Sub-paragraph:

“(iii) With regard to “Base Date”, the meaning of base date is the date 28 days prior to the latest date for submission of bids, or in the case of monthly published cost indices, the indices current on the Base Date.

(iv) “Due Date for Completion” means the date on the last day of the Time for Completion or any extension thereto of the whole of the Works or any Section thereof.

(v) “Substantially Complete”, “Substantially Completed” or “Substantial Completion” are

synonymous and mean that the work is 100 (one hundred) percent complete except for minor omissions and defects, and can be used for its intended purpose safely.

In Sub-paragraph (e), (ii), substitute “Sub-Clause 60.2” for “Sub-Clause 60.2 (a)” In Subparagraph (e), (iv), substitute “Sub-Clause 60.13” for “Sub-Clause 60.8”.

Substitute Sub-paragraph (f), (vii) as:

“**Site**” means the places where the Permanent Works are to be executed, including storage and working areas, and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.”

After Sub-paragraph (f) (vii) add the following Sub-paragraph:

“(f) (viii) “Country” means the Democratic Socialist Republic of Sri Lanka in which the Works are to be executed and to which Plant and materials are to be delivered.”

After Sub-paragraph (g) (iv) add the following new Subparagraphs:

“(g) (v) “Provisional Sum” is as defined in Clause 58.1 of the General Conditions of Contract.

(g) (vi) “Local Currency” means Sri Lanka Rupees and Cents.”

(h) (i) “Government” means the Government of the Democratic Socialist Republic of Sri Lanka.

(h) (ii) “JBIC” means the Japan Bank for International Cooperation.

(h) (iii) “Contractor’s Representative” means the person appointed by the Contractor from time to time under Sub-Clause 15.1 and notified in writing to the Engineer.

(h) (iv) "Rs." or "SLR" or “LKR” or "Rupee" means the lawful currency of the Democratic Socialist Republic of Sri Lanka.

(h) (v) “J. Yen” or “JPY” or “Yen” means the lawful currency of Japan.

Clause 2

Sub-Clause 2.1: Engineer’s Duties and Authority

At the end of Sub-clause 2.1(b) add the following sub-paragraph:

The Engineer will administer the Contract and ensure that the Works are constructed in accordance with its provisions. The Engineer will have all of those powers, which are defined as being the Engineer’s duties with the exception of the following, which will be retained and exercised by the Employer, generally on the advice of the Engineer. The Engineer shall obtain the specific approval of the Employer before taking any of the following actions specified in Part I:

- (a) Issuing the Notice to Proceed under Sub-Clause 41.1,
- (b) Approving the subcontracting of any part of the Works under Clause 4,
- (c) Determining an extension of time under Clause 44,

- (d) Fixing rates or prices under Clause 52.
- (e) The Engineer shall have the authority to vary the Works under Clauses 51 and 52. However, the following variations should be subject to prior approval from the Employer:
 - 1) Increase or decrease of quantities of the pay items exceeds 25 %.
 - 2) Increase or decrease of the Contract price exceeds 0.25 %.
 - 3) Increase or decrease of the unit rates (due to quantity changes) exceeds 2.5 %.

Sub-Clause 2.5: Instructions in Writing

Delete Sub-clause 2.5 and replace with the following:

“Instructions given by the Engineer, the Engineer’s Representative or the Engineer’s Representative’s assistants shall be in writing.”

Clause 4

Sub-Clause 4.1 Subcontracting

Delete the text of paragraph (a) entirely and substitute:

“(a) the provision of labour where there is a direct employment agreement between the labour and the Contractor”.

At the end of paragraph (b) delete the comma and the word “or” and replace with a full stop.

Delete the text of paragraph (c) entirely and substitute:

“(c) The total aggregate value of work subcontracted shall not exceed the respective amounts stated in the Appendix to Bid.

At the end of Sub-clause 4.2 add the following:

In any Subcontract made and entered by the Contractor subject to Sub-Clause 4.1, a provision shall be included in the Subcontract to effect the requirement stipulated in Sub-Clause 63.4.

After Sub-Clause 4.2 Add the following Sub-Clause 4.3

Sub-Clause 4.3 Improper Work of Subcontractor

If any Subcontractor engaged in the Works either executes any work which in the opinion of the Engineer is not in accordance with the Contract or for any other reason is undesirable, the Engineer, on receipt of the Employer's consent, may by written notice require the Contractor to terminate the subcontract and the Contractor shall immediately dismiss the Subcontractor and the latter shall forthwith leave the Site.

In the event of such dismissal, the Contractor shall take over and complete that part of the Works which should have been executed by such Subcontractor without any additional payment.

Clause 5

Sub-Clause 5.1: Language and Law

- (a) The language is the English language
- (b) The law is that in force in the Democratic Socialist Republic of Sri Lanka.

Sub-Clause 5.2: Priority of Contract Documents

Delete the documents listed 1 - 6 and substitute:

- (1) the Contract Agreement (with power of attorney);
- (2) the Letter of Acceptance (with Minutes of Understanding);
- (3) the Form of Bid;
- (4) the Addenda to the Bid (with Particular Application Clauses)
- (5) the Appendix to Bid
- (6) the Conditions of Contract Part II – Conditions of Particular Application;
- (7) the Conditions of Contract Part I – General Conditions;
- (8) the Specifications;
- (9) the Drawings;
- (10) the Bill of Quantities.

After Sub-Clause 5.2 Add the following Sub-Clause 5.3

Sub-Clause 5.3 Discrepancies in Contract Documents

Anything mentioned in the Specifications and not shown on the Drawings or anything shown on the Drawings and not mentioned in the Specifications shall be of like effect as if shown or mentioned in both. In case of any difference between scaled dimensions and numbers on the Drawings the numbers shall prevail. Large scale Drawings shall have preference over small scale Drawings. If any discrepancies occur either in the Drawings, Specifications, or other Bid Documents, the same shall be reported to the Engineer before proceeding with the work and the Engineer's decision on resolving each discrepancy shall be final.

Clause 6

Sub-Clause 6.1 Custody and Supply of Drawings and Documents

Delete the last text of the 1st paragraph “Upon issue of the Defects Liability Certificate, the Contractor shall return to the Engineer the Drawings, Specification and other documents provided under the Contract” and substitute with the following:

The Contractor shall disclose all such confidential and other information as the Engineer may reasonably require in order to verify the Contractor’s compliance with the Contract.

Clause 7

Sub-Clause 7.2: Permanent Works Designed by Contractor

Delete the text of paragraph (a) entirely and substitute:

- (a) Such designs, drawings, specifications, calculations and other information as stipulated in the pertinent Section 113 of Specifications.

The cost of documents under this Sub-Clause shall be borne by the Contractor.

After Sub-Clause 7.3 add the following Sub-Clause:

Sub-Clause 7.4 As-Built Drawings

“The Contractor shall prepare, and keep up-to-date, a complete set of “as-built” records of the execution of the Works, showing the exact “as-built” locations, sizes and details of the work as executed, with cross references to relevant specifications and data sheets. These records shall be kept on the Site and shall be used exclusively for the purposes of the Sub-Clause. Two copies shall be submitted to the Engineer prior to the commencement of the Tests on Completion.

In addition, the Contractor shall prepare and submit to the Engineer “as-built drawings” of the Works, showing all Works as executed. The drawings shall be prepared as the works proceed, and shall where possible be submitted to the Engineer progressively for his inspection. The Contractor shall obtain the consent of the Engineer as to the size of the drawings, the referencing system, and other pertinent details.

Prior to the issue of any “Taking-Over Certificate”, the Contractor shall submit to the Engineer:

- (i) One electronic copy (CD) of all “As-built” drawing files using AutoCAD computer software in a version format acceptable to the Engineer,
- (ii) Six sets of all “As-built” drawings (A-3 size bound) and
- (iii) Any further Construction Documents specified in the Employer’s reasonable requirements.

Any amount for preparation of documents under this Sub-Clause shall be borne by the Contractor.

The Works shall not be considered to have satisfied the requirements for taking-over under Sub-Clause 48.1 until such documents have been submitted to and approved by the Engineer.”

Clause 8

Sub-Clause 8.1: Contractor’s General Responsibilities

Delete second paragraph and substitute:

“The Contractor shall promptly notify the Employer and the Engineer of any error, omission, fault or any other defect in the design of or specifications for the Works which he discovers when reviewing the Contract Documents or in the process of execution of the Works.”

After the end of this Sub-Clause add the following:

The Contractor shall carry out such additional soil investigations using Provisional Sum (Pay Item No.1001(6)) that the Engineer deems necessary to construct each earth and concrete structure. The Contractor shall submit the results of such investigations as part of the Construction Documents.

After Sub-Clause 8.2 add the following:

Sub-Clause 8.3: Utilities

Delays caused by Utility Authorities

If the following conditions apply, namely:

- (a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in Sri Lanka,
- (b) these authorities delay or disrupt the Contractor's work, and
- (c) the delay or disruption was Unforeseeable,

then this delay or disruption will be considered as a cause of delay under Sub-Clause 44.1 Extension of Time for Completion.

Responsibility

“The Contractor shall be responsible for the management, co-ordination and execution of all activities associated with the survey, recording, relocation, removal and protection of public utilities including:

- (i) liaising with utility authorities, the Employer, the Engineer, landowners and any other party concerned,
- (ii) the performance of the relocation, removal or protection work. At the discretion of the public utility concerned part or parts of this work may be performed by themselves.
- (iii) After seeking approval of the Employer for any amounts payable to public utility authorities, making payment to public utility authorities of such amounts payable for work performed or to be performed by utility agencies.

Risk and Consequences

It is expressly understood and agreed that the Contractor has made full allowance in his Tender for all risk and consequences of delay, inconvenience, cost or damage associated with:

- (a) the known or unhidden permanent and temporary facilities (which may or may not be shown on the Drawings) in or arising from or in connection with their temporary protection, removal and relocation, and
- (b) the known or unhidden permanent and temporary facilities (which may or may not be shown on the Drawings) and any other permanent and temporary facilities that may be discovered during the performance of the Works in or arising from or in connection with their survey and recording.

Additional Costs

Further to the above, the Contractor's entitlement to claim additional costs (such assessed costs being payable under a Provisional Sum) shall be limited to:

- 1) the known or unhidden permanent and temporary facilities (which may or may not be shown on the Drawings) in or arising from or in connection with their permanent protection,
- 2) the unknown or hidden permanent and temporary facilities that may be discovered during the performance of the Works arising from or in connection with their temporary or permanent protection, removal and relocation."

Clause 10

Sub-Clause 10.1: Performance Security

Replace the text of Sub-Clause 10.1 with the following:

"The Contractor shall provide security for his proper performance of the Contract to the Employer within 28 days after the receipt of the Letter of Acceptance. The Performance Security shall be in the form of a bank guarantee, issued either

- (a) by a bank located in Sri Lanka or
- (b) by a foreign bank through and confirmed by a bank located in Sri Lanka. The both banks shall have a "back to back" guarantee between them.

In both cases, the banks shall be those acceptable to the Employer. The Performance Security shall be denominated in the types and proportions of currencies in which the Contract Price is payable. When providing such security to the Employer, the Contractor shall notify the Engineer of so doing.

The Performance Security shall be in accordance with the form of Performance Security included in Part 6 of Volume I of the Bidding Documents.

Without limitation to the provisions of the preceding paragraph, whenever the Engineer determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a variation amounting to more than 25 percent of the portion of the Contract Price payable in a specific currency, the Contractor, at the Engineer's written request, shall promptly increase the value of the performance security in that currency by an equal percentage. The performance security of a joint venture shall be in the name of the joint venture.

The cost of obtaining and maintaining any increase in the performance security required under the Contract shall be reimbursed to the Contractor by increase in the item of the Bill of Quantities considering the duration over which the increased security was provided".

Sub-Clause 10.2: Period of Validity of Performance Security

Delete the final full stop and add a comma and:

“provided that the Contractor has furnished documentary proof of compliance with the regulations of the Sri Lankan Customs Department regarding duty-exempt materials, Contractor’s Equipment and Plant if any, associated with the Works.”

Clause 11

After Sub-Clause 11.1 add the following Sub-Clause:

Sub-Clause 11.2: Access to Data

“Data made available by the Employer in accordance with Sub-Clause 11.1 shall be deemed to include Cross section drawings as open for inspection at the office of:

Project Director/PMU
Colombo Outer Circular Highway Project (OCH),
Road Development Authority (RDA),
21/9 Pagoda Road,
Nugegoda,
Sri Lanka.
Tel: ++94-(0)11- 285- 4906, 281-7823, 281-7824
Fax: ++94-(0)11- 281- 7821

Clause 14

Sub-Clause 14.1: Programme to be Submitted

The time within which the program shall be submitted for the Engineer’s review shall be 42 days after the date of commencement as stipulated in the pertinent Section 112 of Specifications.

After the above text add the following:

“Upon Engineer's acceptance of this programme, it shall be referred to as the Contractual Construction Programme and it shall become a part of the Contract. This Contractual Construction Programme shall supersede all other programmes and shall be deemed to be the programme on which the Contractor has based his Contract Price, and in accordance with which he will execute the work. provided that the acceptance by the Engineer of such Programme shall not relieve the Contractor of any of his duties or responsibilities under the Contract.”

Sub-Clause 14.2: Revised Programme

After the end of this Sub-Clause add the following:

“Any revised programme shall be submitted as soon as practicable but within 21 days of the Engineer’s request therefore. The Engineer will have the right to withhold the payment certificate due

to the Contractor at any time if the Contractor fails to submit the revised programme which have become necessary because of the Contractor's failure to maintain satisfactory progress.”

Sub-Clause 14.3: Cash Flow Estimate to be Submitted

After the word “submitted”, insert the words “shall be”.

“The time within which the detailed cash flow estimate shall be submitted shall be within 42 (forty two) days after the date of commencement.”

After Sub-Clause 14.4 Add the Following Sub-Clause

Sub-Clause 14.5: Monthly Progress Reports

“Monthly Progress Reports shall be prepared by the Contractor and submitted to the Engineer in accordance with Section 109 of Specifications.”

Clause 15

Sub-Clause 15.1: Contractor’s Superintendence

After the end of Sub-Clause 15.1 add the following:

“On the removal of the Contractor’s personnel, the Engineer shall notify the Contractor of the reason of the removal. The Contractor shall not be entitled to any compensation nor any extension of time for completion due to such removals.

The Contractor's authorized representative and all his deputies shall be fluent in English, both written and spoken, so that they will be able to understand and will be understood by the Employer and the Engineer.”

Clause 16

Sub-Clause 16.1: Contractor’s Employees

Delete the full stop at the end of paragraph (b) and add a comma and “and”.

Add the following paragraphs (c) and (d):

“(c) All Contractor's higher level supervisory, technical and office staff shall have an acceptable working knowledge of English. All supervisors at foreman level shall have reasonable working knowledge of English and if hired locally, also knowledge of Sinhala and Tamil languages to ensure proper transmission of instructions and information.

(d) The Contractor shall submit to the Engineer for the Engineer’s approval the Contractor’s proposed organization structure. This structure will only be approved and be considered to remain approved if:

- (i) it ensures that each individual team of workers is properly supervised by a suitably experienced leading hand, and
- (ii) each appropriately sized group of teams and all subcontractors are supervised by a suitably experienced foreman in the direct employment of the Contractor, and
- (iii) all leading hands and foremen are identified by name, and
- (iv) all leading hands have an efficient means of communicating with foreman and all foremen have an efficient means of communicating with the Contractor's Representative, and
- (v) the approved organization structure is implemented on Site."

After Sub-Clause 16.2 add the following Sub-Clauses 16.3 to 16.5:

Sub-Clause 16.3: Employment of Local Personnel

"The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour from sources within The Democratic Socialist Republic of Sri Lanka."

Sub-Clause 16.4: Work Permission for Non-Sri Lanka Employees

"The Contractor shall submit a list of all non-Sri Lankan personnel required and labour whom the Contractor and his Subcontractors plan to employ for execution of the Works and shall process with the relevant Sri Lankan authorities to obtain permits with assistance of the Employer pursuant to Sub-Clause 26.2, for legal entry into, and residency in Sri Lanka of those non-Sri Lankan personnel and labour. The Contractor shall pay all expenses in connection with arrival to, and departure from Sri Lankan territory of employees who are non-Sri Lankan nationals and were hired outside the Democratic Socialist Republic of Sri Lanka for work on the Contract when such employee's services are no longer required, or if and when demanded by proper authority of Sri Lanka or official representation of the country of which the employee is a citizen."

Sub-Clause 16.5: Political Activity Prohibited

"The entire Contractor's and his Subcontractors' foreign personnel are strictly prohibited to participate in any political activity in the Democratic Socialist Republic of Sri Lanka."

Clause 17

Sub-Clause 17.2: Setting Out

After Sub-Clause 17.1, add the following Sub-Clause 17.2:

"The Contractor shall give to the Engineer not less than 24 hours written notice of his intention to set out or establish levels for any part of the Works so that timely arrangement may be made for checking or issuing instructions".

Clause 19

Sub-Clause 19.1: Safety, Security and Protection of the Environment

After the end of Sub-Clause 19.1 add the following:

“The Contractor is reminded that this Clause and the provisions contained in Section 114 of the Specifications are complementary and mutually explanatory of one another. If, in the opinion of the Engineer, any ambiguities or discrepancies make it necessary to issue any instructions to the Contractor in explanation or adjustment, the Engineer shall have the authority to issue such instruction.”

Sub-Clause 19.3 HIV Prevention Programme

Add following Sub-Clause 19.3

19.3.1 For the purpose of this Sub-Clause:

The Contractor’s Employees’ means, without prejudice to any other definition contain in the Contract, any workers who are under the Contractor’s control and on the Site in connection with the Contract, including any workers who are under the control of any person or entity to whom the Contractor has sub-contracted any obligations under the Contract other than those responsibilities set out in this Sub-Clause.

The HIV Prevention Program’ means basically:

- 1) Promotion of condom use,
- 2) Test and treatment of Sexual Transmitted Infection(STI),
- 3) HIV/AIDS education through peer education,
- 4) Volunteer Counseling and Testing)

In cooperation with the Employer.

‘Service Provider’ means a person or entity approved by Implementing agency and National HIV/AIDS authority (i.e. Ministry of Health, relevant national government to have responsibility for HIV/AIDS prevention) to provide the HIV Awareness and Prevention Program.

19.3.2 The Contractor:

- (a) is responsible for implementing an HIV Prevention Program among the Contractor’s Employees (and the local community) for the duration of the Contractor’s contract and commencing as soon as practicable after the Contractor’s Employees arrive at the Site/s in conjunction with occupational health staff of the Contractor and the local health authorities involved in HIV/AIDS prevention;
- (b) sub-contracts with a Service Provider in the case that he/she will not be able to implement the Program; when sub-contracting with the Service Provider, the Contractor gives any representative of the Service Provider and the Employer all reasonable access to the Site in connection with the HIV Prevention Program;

(c) instructs the Contractor's Employees to participate in the HIV Prevention Program in the course of their employment and during their normal working hours or any period of overtime provided for in the relevant employment contracts;

(d) does nothing to dissuade the Contractor's Employees from participating in the HIV Prevention Program.

19.3.3 Payment

The Contractor shall be entitled to be reimbursed by the Employer for any eligible payments.

These payments include a sub-contract made for the purpose of Sub-Clause 19.3.2 (b) in accordance with the relevant provisions in the Contract.

19.3.4 In case the additional Program is required, this Program should be approved as eligible expenditure under JBIC loan according to the Loan Agreement dated [filled in as appropriate] between [the Government ...] and JBIC. If the Program is agreed by the relevant parties (the Implementing Agency, the Contractor, JBIC), the Contractor shall be entitled to be reimbursed by the Employer with evidences including (a) payment of the amount claimed to the Approved Service Provider, and (b) provision of the Program issued by the Service Provider.

19.3.5 Where a clinic is provided on behalf of the Contractor on Site, the Contractor shall ensure that such clinic provides to the Contractor's Employees without charge: information and counseling on STI/HIV/AIDS and condoms that comply with the quality standard made by Ministry of Health or relevant ministries in a country or with the WHO/UNAIDS Specification and Guidelines for Condoms 1998 to a maximum of [number] per member of the Contractor's Employees per year.

19.3.6 Where the Contractor sub-contracts any of its obligations under the Contract, it shall require any sub-contractor to comply with this Sub-Clauses 19.3.2 (b) through 19.3.2 (d) of the Contract as if it were the Contractor.

Clause 20

Sub-Clause 20.4: Employer's Risks

This Sub-Clause 20.4 is amended to read as follows:

The Employer's risks are:

- (a) insofar as they directly affect the execution of the Works in the country where the Works are to be executed:
 - (i) war and hostilities (whether war be declared or not), invasion, act of foreign enemies;
 - (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;
 - (iii) ionising radiations, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other

- hazardous properties of any explosive nuclear assembly or nuclear component thereof;
 - (iv) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
 - (v) riot, commotion or disorder, unless solely restricted to the employees of the Contractor or of his Subcontractors and arising from the conduct of the Works;
- (b) loss or damage due to the use or occupation by the Employer of any Section or part of the Permanent Works, except as may be provided for in the Contract;
- (c) loss or damage to the extent that it is due to the design of the Works, other than any part of the design provided by the Contractor or for which the Contractor is responsible; and
- (d) any operation of the forces of nature (insofar as it occurs on the Site) which an experienced Contractor:
- (i) could not have reasonably foreseen, or
 - (ii) could reasonably have foreseen, but against which he could not reasonably have taken appropriate measures to prevent loss or damage to physical property and humans from occurring.

After Sub-Clause 20.4 add the following Sub-Clauses 20.5 and 20.6:

Sub-Clause 20.5: Obstruction of Rights of Way

The Contractor shall not close, obstruct or modify any right of way without the written permission of the person having legal charge over the right of way (the “Right of Way Owner”). Where any right of way is affected by the Contractor’s operations, the Contractor shall take such steps as may be agreed by the Engineer and the Right of Way Owner to maintain the function of the right of way.

In this regards, the Employer shall give adequate advice to the Contractor and coordinate with both the Right of Way owner and the Contractor.

Where any operation connected with the Works requires the closure of any road or any other right of way, the written approval of the Engineer and the relevant authorities shall be obtained by the Contractor at least 48 hours in advance.

Sub-Clause 20.6: Work Disrupting Existing Facilities

Unless otherwise specifically provided for in the Contract or agreed with the Engineer, the Contractor shall not do any work in the course of fulfilling his obligations under the Contract which would disrupt or interfere with the operation of any utility, service, drainage channel, structure or agricultural process or the like until he has obtained the permission of the owner of the facility and has given the Engineer due notice of his intention to start such work.

In this regards, the Employer shall give adequate advice to the Contractor and coordinate with him.

Clause 21

Sub-Clause 21.1: Insurance of Works and Contractor’s Equipment

Delete sub-paragraph (a) and replace with:

“(a) The Works, together with materials and Plant for incorporation therein, to the full replacement cost (the term “cost” in this context shall include profit).

It is understood that such insurance shall provide for compensation to be payable in currencies required to rectify the loss or damages incurred”.

In sub-paragraph (b), after the last word, nature, add the following words:

“It is understood that such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred”.

Delete sub-paragraph (c) and replace with:

“(c) The Contractor’s Equipment and other things (which are deemed to include offices, huts, laboratories and accommodation provided by the Contractor for the use of the Employer, Engineer or other firms or persons as required by the Contract) brought onto the Site by the Contractor, for a sum sufficient to provide for their replacement at the Site.”

Sub-Clause 21.2: Scope of Cover

Paragraph (a) of Sub-Clause 21.2 is amended by deletion of the words “... from the start of work at the Site...” and by the substitution thereof of the words “... from the first working day after the Commencement Date...”.

Sub-Clause 21.4: Exclusions

This Sub-Clause 21.4 is amended to read as follows:

“There shall be no obligation for the insurances in Sub-Clause 21.1 to include loss or damage caused by the risks listed under Sub-Clause 20.4, sub-paragraphs (a), (i) to (iv).”

Clause 22

Sub-Clause 22.1: Damage to Persons and Property

In the second line of the first sentence after the word “Employer” add the words “the Employer’s representatives, their contractors, agents and employees”.

Clause 22.2: Exception

Add the following paragraph (e):

“(e) Notwithstanding the provisions of paragraph (d) above the Contractor shall continue to indemnify the Employer as required by Sub-Clause 22.1 where the Employer has had to employ such

other contractors, servants or agents for reasons for which the Contractor is responsible.”

Clause 23

Sub-Clause 23.1: Third Party Insurance

After the end of the Sub-Clause add the following:

“Such insurance shall be effective with any reputed Insurance Company in Sri Lanka acceptable to the Employer.”

Sub-Clause 23.3: Cross Liabilities

At the end of this Sub-Clause add the following:

“Wherever pursuant to the Contract the insurance is effected in more than one name, the policy of such insurance shall provide that, insofar as the policy may cover more than one insured, all insuring agreements and endorsements shall operate in the same manner as if there were a separate policy of insurance covering each party comprising the insured. Such policy shall provide that the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties constituting the insured and the failure by any insured party to observe and fulfil the terms of the policy shall not prejudice the insurance in regard to any other insured party.”

After Sub-Clause 23.3 add the following Sub-Clause:

Sub-Clause 23.4: Motor Insurance

“The Contractor shall, without limiting his obligations and responsibilities under Clause 22, effect and maintain policies of Motor Insurance in respect of all vehicles used by him and his Subcontractors including their employees, or furnished to the Employer or Engineer in connection with the Works on public highways, roads and Site access roads or in any circumstances such as to be eligible for compulsory Motor Insurance.”

Clause 24

After Sub-Clause 24.2 add the following Sub-Clause:

Sub-Clause 24.3: Minimum Amount of Insurance

At the end of this Sub-Clause add the following:

“Such insurance shall provide and thereafter maintain for all employees under the Contract who are nationals or permanent residents of Sri Lanka, security for compensation benefits meeting at least the minimum requirements of the applicable law of Sri Lanka for injury or death in the course of such employment or in the absence of such law, Employer’s Liability Insurance.”

Clause 25

Sub-Clause 25.1: Evidence and Terms of Insurances

This Sub-Clause 25.1 is amended by inserting the words “... as soon as practicable after the respective insurances have been taken out but in any case...” before the words “...prior to the start of work at the Site...”.

Clause 26

After Sub-Clause 26.1 add the following Sub-Clauses 26.2 and 26.3:

Sub-Clause 26.2: Inspections and Audit by JBIC

“The Contractor shall permit the JBIC and the Government of Sri Lanka to inspect the Contractor’s accounts and records relating to the performance of the Contract and to have them audited by auditors appointed by the JBIC and the Government of Sri Lanka, if so required by JBIC and the Government of Sri Lanka. JBIC and the Government of Sri Lanka mean their authorized officers.”

Sub-Clause 26.3: Employer’s Assistance Concerning Statutes, Regulations

Without limiting the Contractor's obligation and responsibilities under this Clause, the Employer shall give the Contractor assistance to enable him to ascertain the nature and extent of any laws, regulations, orders or bylaws having the force of law in Sri Lanka which may affect the Contractor and shall assist the Contractor in obtaining the necessary permits and licenses to perform the Works.

Clause 28

Sub-Clause 28.2: Royalties

At the end of the first sentence of Sub-Clause 28.2, delete the full stop and add the following:

“including material obtained from the Government quarries or borrow areas.

The Contractor shall also be liable for all payments or compensation, if any levied in relation to the dumping of part or all of any such materials or any other surplus material in connection with the execution of the Works.”

Clause 29

Sub-Clause 29.1: Interference with Traffic and Adjoining Properties

After the end of this Sub-Clause add the following:

“If conditions are observed that might develop into public controversy and misunderstanding, this information should be transmitted to the Engineer without delay. The Contractor should ensure the safety and convenience of the public and their property. Courtesy and consideration are necessary in all contacts with the public as the entire Project is judged by the actions of its personnel.

In this regards, the Employer shall give adequate advice and assistance to the Contractor.”

Clause 30

Sub-Clause 30.1: Avoidance of Damage to Roads

After the end of this Sub-Clause add the following:

“Should the Contractor fail to comply with the requirements of this Sub-Clause or with the constraints relating thereto described in the Specification, the Engineer may arrange for any necessary rectification work to be performed by others and the Contractor shall indemnify the Employer in accordance with the provisions of Sub-Clause 22.1 in respect of such work. After due consultation with the Employer and the Contractor, the Engineer will determine the amount to be deducted from the Contract Price for such work.”

After Sub-Clause 30.4 add the following Sub-Clause:

Sub-Clause 30.5: Maintenance of the Contract Road

“Should the Contractor fail to comply with the requirements of the Specification relating to the maintenance of that part of the Works of which he has possession of Site, the Engineer may arrange for necessary maintenance work to be performed by others and the Contractor shall indemnify the Employer in accordance with the provisions of Sub-Clause 22.1 in respect of such work. After due consultation with the Employer and the Contractor, the Engineer will determine the amount to be deducted from the Contract Price for such work.”

Clause 32

After Sub-Clause 32.1 add the following Sub-Clause:

Sub-Clause 32.2: Dust Nuisance

“Dust nuisance originating from any construction activity at or near the Site shall be adequately controlled by the Contractor to the satisfaction of the Engineer.”

Clause 33

After Sub-Clause 33.1 add the following Sub-Clause:

Sub-Clause 33.2: Temporary Roads to be Handed Over

“Temporary roads constructed by the Contractor for the purpose of the Works shall, as an alternative to their removal and at the discretion of the Employer, be put by the Contractor into a good state of repair to the satisfaction of the Engineer and be handed over to the Employer without any payment. Failure by the Contractor to carry out any such instruction given shall be dealt with in accordance with Sub-Clause 49.4 hereof.”

Clause 34: Labour

Delete Sub-Clauses 34.1 and substitute:

Sub-Clause 34.1: Rates of Wages and Conditions of Labour

“The Contractor shall comply with the following regulations for the local labour and other statutory laws as enforced by the Government of Sri Lanka from time to time during the continuance of the Contract:

- (a) Age of Labour: The minimum age of the labour to be employed shall be eighteen unless otherwise stated in the Labour Laws of the Government of Sri Lanka.
- (b) Fair Wages: The Contractor shall pay rates of wages and observe conditions of labour not less favourable than those established for the trade or industry where the work is carried out. In the absence of any rates of wages or condition of labour so established, the Contractor shall pay rates of wages and observe conditions of labour which are not less favourable than the general level of wages and conditions observed by other employers whose general circumstances in the trade or industry in which the Contractor is engaged are similar.
- (c) The Contractor shall, notwithstanding the provisions of any contract to the contrary, pay fair wages to labour indirectly engaged in the Works including any labour engaged by sub-contractors in connection with the said Works as if labour had been directly employed by him.
- (d) Notices: The Contractor shall, before the commencement of the Work, display and correctly maintain in a clean and legible condition at a conspicuous place on the site notice in English and Sinhala/Tamil stating therein the rate of wages which have been fixed as fair wages and the hours of work for which such wages are earned and send a copy of such notice to the Engineer.
- (e) Wages Records: The Contractor shall maintain records of wages and other remuneration paid to his employees in such form as may be convenient and to the requirements of the Employer/Engineer and the Inspecting Officer or such other authorised person appointed by the Government and the same shall include the following particulars for each worker.
 - (i) Name, worker’s number and grade
 - (ii) Rate of daily or monthly wage
 - (iii) Nature of work on which employed
 - (iv) Total number of days worked during each wage period
 - (v) Total amount payable for the work during each wage period
 - (vi) All deductions made from the wage with details in each case of the ground for which the deduction is made
 - (vii) Wages actually paid for each wage period
 - (viii) deductions made as per Statutory requirements (EPF, ETF etc.)
- (f) The Contractor shall provide a wage slip for each worker employed on the Works.

- (g) The wage records and wage slips shall be preserved for at least 12 months after the last entry.
- (h) Inspection of Wage Records: The Contractor shall allow inspection of the aforesaid wage records and wage slips to the Engineer and to his agent at convenient time and place after due notice is received, or to the Employer or any other person authorised by him on his behalf.
- (i) The Employer and the Engineer or any other person authorised by them on their behalf shall have power to inspect the wage records at any time.
- (j) The Employer have the right to deduct from the monies due to the Contractor any sum required or estimated to be required for making good the loss suffered by a worker or workers by reason of non-payment of the aforesaid fair wage, except on account of any deductions that may be permissible under any law for the time being in force.
- (k) Enforcement: The Inspecting Officer mentioned in the Contractor's Labour Regulations or any other officer nominated on his behalf by the Engineer shall report to the Engineer/Employer all cases of failure on the part of the Contractor and/or his sub-contractors to comply with the provisions of these Rules either wholly or in part and the Government shall impose such fines and other penalties as are prescribed in the legislation.
- (l) Interpretations, etc: On any question as to application, interpretation or effect of these Rules, the decision of the Attorney General's Department Sri Lanka shall be final and binding.
- (m) Amendments: The Government may, from time to time, add or amend these Rules and issue these Rules and issue such directions as may be considered necessary for proper implementation of these rules or for the purpose of removing any difficulty which may arise in the administration thereof."

After Sub-Clause 34.1 add the following Sub-Clauses 34.2 to 34.20:

Sub-Clause 34.2: Employment of Persons

"The Contractor shall:

- (a) not recruit or attempt to recruit his staff and labour from amongst persons in the service of the Employer or the Engineer.
- (b) to an extent which is practicable, reasonable and as governed by the regulations in force from time to time in Sri Lanka, employ citizens of Sri Lanka as staff and labour.

Sub-Clause 34.3: Repatriation of Labour

The Contractor shall be responsible for the return to the place where they were recruited or to their domicile of all such persons as he recruited and employed for the purposes of or in connection with the Contract and shall maintain such persons as are so to be returned in a suitable manner until they have left the site or, in the case of persons who are not nationals of and have been recruited outside

the Democratic Socialist Republic of Sri Lanka shall have left the Democratic Socialist Republic of Sri Lanka.

Sub-Clause 34.4: Housing for Labour

Save insofar as the Contract otherwise provides, the Contractor shall provide and maintain such accommodation and amenities necessary for all his staff and labour, employed for the purposes of or in connection with the Contract, including all fencing, water supply (both for drinking and other purposes), electricity supply, sanitation, cookhouses, fire prevention and fire fighting equipment, air conditioning, cookers, refrigerators, furniture and other requirements in connection with such accommodation or amenities. On completion of the Contract, unless otherwise agreed with the Employer, the temporary camps/housing provided by the Contractor shall be removed and the site reinstated to its original condition, all to the approval of the Engineer.”

Sub-Clause 34.5: Safety Manager for Accidents Prevention

“The Contractor shall have on his staff a Safety Manager dealing only with questions regarding the safety and protection against accidents of all staff and labour. This Safety Manager shall be qualified for this work and shall have the authority to issue instructions and shall take preventive measures to prevent accidents.”

Sub-Clause 34.6: Health and Safety

“Due precautions shall be taken by the Contractor, and at his own cost, to ensure the safety of his staff and labour and, in collaboration with and to the requirements of the local health authorities, to ensure that medical staff, first aid equipment and stores, sick bay and suitable ambulance service are available at camps, housing and on the site at all times throughout the period of the Contract and that suitable arrangements are made for the prevention of epidemics and for all necessary welfare and hygiene requirements.

Within the time stated in the Appendix to Bid the Contractor shall prepare and submit to the Engineer for review and approval a Safety Plan based on International safety standards and practices in accordance with the provision stipulated in Section 114 of Specifications.”

Sub-Clause 34.7: Measures against Insect and Pest Nuisance

“The Contractor shall at all times take the necessary precautions to protect all staff and labour employed on the Site from insect nuisance, rats, and other pests and reduce dangers to health and the general nuisance caused by same. The Contractor shall provide his staff and labour with suitable prophylactics for the prevention of malaria, and take steps to prevent the formation of stagnant pools of water. He shall comply with all the regulations of the local health authorities in these respects and shall in particular arrange to spray thoroughly with approved insecticide all buildings erected on the site. Such treatment shall be carried out at least once a year or as instructed by the Engineer. ”

Sub-Clause 34.8: Epidemics

“In the event of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements, as may be made by the Government or the local medical or sanitary authorities, for the purpose of dealing with the same.”

Sub-Clause 34.9: Burial of the Dead

“The Contractor shall make any necessary arrangements for the transport, to any place as required for burial, of any expatriate employees or members of their families who may die in the Democratic Socialist Republic of Sri Lanka. The Contractor shall also be responsible, to the extent required by the local regulations, for making any arrangements with regard to burial of any of his local employees who may die when engaged upon the Works.”

Sub-Clause 34.10: Supply of Foodstuffs

“The Contractor shall arrange for the provision of a sufficient supply of suitable food at reasonable prices for all his staff and labour, or his Subcontractors, for the purposes of or in connection with the Contract.”

Sub-Clause 34.11: Supply of Water

“The Contractor shall, so far as is reasonably practicable, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of his staff and labour.”

Sub-Clause 34.12: Alcoholic Liquor or Drugs

“The Contractor shall not, otherwise than in accordance with the Statutes, Ordinance and Government Regulations or Orders for the time being in force, import, sell, give, barter, or otherwise dispose of any alcoholic liquor or drugs, or permit or suffer any such importation, sale, gift, barter or disposal by his Subcontractors, agents, staff or labour.”

Sub-Clause 34.13: Arms and Ammunition

“The Contractor shall not give, barter, or otherwise dispose of to any person or persons, any arms or ammunition of any kind or permit or suffer the same as aforesaid.”

Sub-Clause 34.14: Festivals and Religious Customs

“The Contractor shall, in all dealings with his staff and labour have due regard to all recognized festivals, days of rest, religious, and other customs.”

Sub-Clause 34.15: Disorderly Conduct

“The Contractor shall be responsible for keeping discipline on the Site and shall obey all police, health and municipal regulations and all other regulations which may from time to time require his observance and he shall instruct his agents, Subcontractors and other employees to obey such regulations. The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his staff and labour and for the preservation of peace and

protection of persons and property in the neighborhood of the Works against the same.

The Contractor shall not interfere with any members of any authorized force or other official security forces of Sri Lanka who shall have free and undisputed access at all times to any part of the Works in the execution of their duties.”

Sub-Clause 34.16: Conspicuous Notice to Workers

“Notices shall be posted in conspicuous places and work places concerned to inform the workers of the conditions of work provided by the Contract.”

Sub-Clause 34.17: Labour Conflicts

“The Contractor is obliged to notify immediately the Engineer of any labour conflicts faced by him or his Subcontractors that could influence the progress of the Works.”

Sub-Clause 34.18: Observance by the Subcontractors

“The Contractor shall be responsible for observance by his Subcontractors of the foregoing provisions of this Clause.”

Sub-Clause 34.19: Cost for Labour Affairs

“The cost of complying with this Clause and of complying with any relevant laws and regulations in force in Sri Lanka at the time of Tender shall be deemed to be included in the relevant unit rates, lump sum prices and day-work rates quoted in the Schedule of Quantities, Rates and Prices.”

Clause 35

After Sub-Clause 35.1 add the following Sub-Clauses 35.2 and 35.3:

Sub-Clause 35.2 Records of Safety and Health

“The Contractor shall maintain such records and make such reports concerning safety, health and welfare of persons and damage to property as the Engineer may from time to time prescribe.”

Sub-Clause 35.3 Reporting of Accidents

“The Contractor shall report to the Engineer details of any accidents as soon as possible after its occurrence. In the case of any fatality or serious accident, the Contractor shall, in addition, notify the Engineer immediately by the quickest available means. The Contractor shall also report such accident to the appropriate authority whenever such report is required by laws and regulations etc. in force in Sri Lanka.”

Clause 36

Sub-Clause 36.1: Quality of Materials, Plant and Workmanship

In the final paragraph after the word, “before”, add “and after”.

Add the following paragraph at the end of Sub-Clause 36.1:

“The Contractor is encouraged, to the extent practicable and reasonable, to use Plant and materials from sources within the Democratic Socialist Republic of Sri Lanka.”

After Sub-Clause 36.5 add the following Sub-Clauses 36.6 to 36.8:

Sub-Clause 36.6: Method of Working

“As stipulated in relevant Sections of Specifications, at least 28 days in advance of his programmed commencement of each item of work; the Contractor shall furnish for the Engineer’s consent, the method of working he intends to adopt for execution of the item giving full details of the method of working, equipment to be deployed and measures to be adopted for ensuring quality of construction and safety.”

Sub-Clause 36.7: Method of Construction Affecting Others

“Where, in the opinion of the Engineer, any particular aspect of the Works is of such a nature that its manner of execution may affect the safety of, or interfere with, the activities of the Employer or any third party then the Engineer may request, and the Contractor shall submit at such times and in such detail as the Engineer may reasonably require, such information pertaining to the methods of construction (including Temporary Works and the use of Contractor’s Equipment) which the Contractor proposes to use so as to enable the Engineer to decide whether, if these methods are adhered to, the Works can be constructed in accordance with the Contract and without unduly disturbing the activities of the Employer or the affected party.”

Sub-Clause 36.8: Method of Construction Affecting Permanent Works

“If required by the Engineer, the Contractor shall submit at such times and in such detail as the Engineer may reasonably require, information pertaining to the methods of construction (including Temporary Works and the use of Contractor’s Equipment) which the Contractor proposes to use and the calculations of stresses, strains and deflections that will arise in the Permanent Works or any part thereof during construction, so as to enable the Engineer to decide whether, if these methods are adhered to, the Works can be constructed in accordance with the Contract and without detriment to the Permanent Works.”

Clause 39

After Sub-Clause 39.2 add the following Sub-Clause:

Sub-Clause 39.3: Removal of Soil, Rock or Other Substances

“The Contractor shall not sell or otherwise dispose of or remove off the Site, except for the purpose of the Works, any sand, stone, clay, ballast, rock or other substances or materials which he obtains from

any excavation made for the purpose of the Works or any buildings or produce upon the Site at the time of the delivery of the possession of the Site, and all such substance, material, buildings and produce shall be the property of the Employer. Provided that the Contractor may with the permission in writing of the Engineer dispose of them off the Site at approved locations.”

Clause 42

Sub-Clause 42.1 Possession of Site and Access Thereto

Delete the text of Sub-Clause 42.1 entirely and substitute:

“Access to the Site” means the entitlement to the Contractor to enter the Site and does not mean the Temporary access mentioned in Section 107 of the Specifications,.

Unless otherwise provided by the Drawings, or the Specifications, only the right of way for the road shall be provided without cost to the Contractor.

Within the time after the notice to commence specified in the Appendix to Bid, the Employer will give the Contractor possession of parts of the Site as specified in the Appendix to Bid for the purpose of performing the Works, subject to the limitations set forth below:

- (a) The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Engineer as additional working areas. The Contractor shall take all necessary precautions to keep Contractor’s Equipment and Contractor’s Personnel within the Site and these additional areas, and to keep them off adjacent land.
- (b) Possession of the Site shall be deemed to give the Contractor only such limited possession as shall be necessary to enable him to perform the work effectively but shall not be deemed to confer a right to exclusive possession.
- (c) The Employer will have served notice to vacate upon owners and user of lands within the right of way of the Contract Works. However, the Contractor shall plan his work in such a way that crops being encountered within the right of way at the time of Commencement of Works as far as practicable are left undisturbed to allow for proper harvesting. The Contractor is entitled to additional payment and extensions of time relating to this issue.
- (d) From time to time, the Employer will give the Contractor possession of further parts of the Site to enable the Contractor to execute the Works under the Contract in accordance with the Contractual schedule. However, if the land acquisition problem caused the Contractor to change his schedule, he shall minimize the delay effect by changing his schedule and relocating his resources. Even with his efforts to minimize the delay, if the delay affects the critical path of his Works, he is entitled to claim the extension of time and additional costs.

Clause 44

Sub-Clause 44.1: Extension of Time for Completion

In paragraph (e), after the words “which may occur”, add “or a change in any specified sequence or timing of construction of any part of the Works which may be instructed”.

Sub-Clause 44.2: Contractor to Provide Notification and Detailed Particulars

Delete paragraph (a) entirely and substitute:

“(a) as soon as practicable, but within 28 days after identifying the event or circumstance which is the subject of the claim, notified the Engineer with a copy to the Employer, and submitted to the Engineer records for verification. Such verification shall apply to the physical circumstances, and shall not imply acceptance of any claim arising from such circumstances.

For the purposes of Sub-Clauses 44.2 and 44.3, detailed particulars shall include the following:

- (i) a full description of the facts relating to the events or circumstances which the Contractor considers entitles him to an extension to the Time for Completion, and
- (ii) the contractual basis upon which an extension of Time for Completion is sought, and
- (iii) a full description of how the Contractor has identified the consequences of the events or circumstances referred to in (i) above upon the Time for Completion for which an extension is sought, and
- (iv) the records relevant to (iii) above.”

Sub-Clause 44.3: Interim Determination of Extension

Delete “an extension of time” in the line 3-4 and substitute “have his claim for an extension of time considered”.

After the words “at intervals of 28 days” add “or such extended intervals as may be extended by the Engineer.”

After Sub-Clause 44.3 add the following Sub-Clause:

Sub-Clause 44.4: Exceptionally Adverse Climatic Conditions

“(a) For the purposes of Sub-Clause 44.1, it is agreed that “exceptionally adverse climatic conditions” shall satisfy following two conditions:

- (i) If the number of rainy days with more than 10 mm daily rainfall in a month exceeded the average number of the days in a month, which is recorded in the last 60 calendar months in the designated meteorological station (in Appendix to Bid).
- (ii) If the works actually affected by the exceptionally adverse climatic conditions are on the critical path in the Contractor’s construction schedule.

(b) Any delay caused by the exceptionally adverse climatic conditions will be “no fault delay”. The Contractor is entitled to claim an extension of time and the additional costs, if any. The Engineer shall evaluate the claim and make recommendations to the Employer for his approval.

Sub-Clause 44.5: Claims on Time Extension

“Claims regarding time extension shall be dealt with Clause 44, not Clause 53.”

Clause 45

After Sub-Clause 45.1 add the following Sub-Clause:

Sub-Clause 45.2: Working Hours

“The Contractor shall be deemed to have based his Tender on normal working hours of:

08:00 to 12:00 and 13:00 to 17:00 from Monday to Friday inclusive, and
08:00 to 13:00 on Saturdays,

giving a total of 45 hours per week, and made allowance for not working on the normal public and industrial holidays which obtain in Sri Lanka.

In addition to above working hours, the Contractor shall work for the following situations:

- 1) Emergency cases affecting the safety of life, Work or adjoining property.
- 2) Overtime or working on Saturday, Sundays or public holidays to catch-up the progress, if required.
- 3) To catch-up the progress during dry days to compensate rainy days (e.g. earthworks, soft ground treatment, foundations and substructures works of bridges and viaducts)
- 4) If the Contractor faced the land acquisition problems and he has to cope with it.
- 5) If overtime (even night work) or holiday work is required (e.g. night time concreting, traffic restriction on holidays).

In above cases except 1) Emergency, the Contractor shall submit the request sheet to the Engineer for his written consent two days before. The required contents are:

- Date, time, Work description, each location (Sta. No.) and names of responsible persons (foremen).

When the Contractor’s requirements in this respect involve the Engineer in an increase in supervision costs, such increased costs shall be paid by the Contractor after due consultation with the Engineer. If the overtime is required solely due to the Contractor’s default, the additional supervision costs shall be paid by the Contractor, so far as reasonable.”

Clause 47

Sub-Clause 47.1: Liquidated Damages for Delay

At the end of this Sub-Clause add the following:

“The Employer may recover an interim payment of liquidated damages from any payment that is due to the Contractor. Such interim payment shall be calculated by multiplying the amount per day stated in the Appendix to Bid by the number of days that have elapsed between the Due Date for Completion and the date on which the interim calculation is made, less any previous interim payment made.”

Clause 48

After Sub-Clause 48.4 add the following Sub-Clause:

Sub-Clause 48.5: Prevention from Testing

If the Contractor is prevented from carrying out the Tests on Completion by a cause for which the Employer or the Engineer or other contractors employed by the Employer are responsible, the Employer shall be deemed to have taken over the Works on the date when the Tests on Completion would have been completed but for such prevention. The Engineer shall issue a Taking-Over Certificate accordingly. Provided always that the Works shall not be deemed to have been taken over if they are not substantially complete in accordance with the Contract.

If the Works are taken over under this Sub-Clause, the Contractor shall nevertheless carry out the Tests on Completion during the Defects Liability Period. The Engineer shall require the Tests to be carried out by giving 14 days notice.

Any additional costs, to which the Contractor may be put, in making the Tests on Completion during the Defects Liability Period, shall be valued under Clause 52.”

Clause 51

Sub-Clause 51.1: Variations

In paragraph (e) after the words “necessary for the completion of the Works,” add “and the proper rectification of defects not attributable to the Contractor and agreed by the Engineer,”.

Sub-Clause 51.2: Instructions for Variations

Delete the text from “Provided that no instruction...” through to the end of the paragraph.

After Sub-Clause 51.2 add the following Sub-Clause:

Sub-Clause 51.3: Changes that are not Variations

“The following changes are agreed not to constitute varied work under the Contract :

- (a) Increases or decreases in the Bill of Quantities that arise through the remeasurement of the Works and the subsequent correction of errors made in the estimation of the amounts of work described in the Bill of Quantities. Such increases or decreases do not require an instruction

from the Engineer.”

- (b) The Engineer’s limited authority is specified in Sub-Clause 2.1.

Clause 52

Sub-Clause 52.1: Valuation of Variations

At the end of this Sub-Clause add the following:

“Where the Contract provides for the payment of the Contract Price in more than one currency, and varied work is valued at, or on the basis of, the rates and prices set out in the Contract, payment for such varied work shall be made in the amounts or proportions of various currencies specified in the Appendix to Bid for payment of the Contract Price. Where the Contract provides for payment of the Contract Price in more than one currency, and new rates or prices are agreed, fixed or determined as stated above, the amount or proportion payable in each of the applicable currencies shall be specified when the rates or prices are agreed, fixed or determined, it being understood that in specifying these amounts or proportions the Contractor and the Engineer (or, failing agreement, the Engineer) shall take into account the actual or expected currencies of cost (and the proportions thereof) of the inputs of the varied work without regard to the proportions of various currencies specified in the Appendix to Bid for payment of the Contract Price.”

Sub-Clause 52.2: Power of Engineer to Fix Rates

At the end of the first paragraph, add the following:

“Where the Contract provides for the payment of the Contract Price in more than one currency, the amount or proportion payable in each of the applicable currencies shall be specified when the rates or prices are agreed, fixed or determined as stated above, it being understood that in specifying these amounts or proportions the Contractor and the Engineer (or, failing agreement, the Engineer) shall take into account the actual or expected currencies of cost (and the proportions thereof) of the inputs of the varied work without regard to the proportions of various currencies specified in the Appendix to Bid for payment of the Contract Price.”

Sub-Clause 52.3: Variations Exceeding 15 percent

Delete this Sub-Clause entirely and substitute:

“Sub-Clause 52.3: Variations Exceeding 15 percent

A new rate or price shall be appropriate for an item of work if:

- (a) (i) the measured quantity of the item is changed by more than 15 % from the quantity of this item in the Bill of Quantities or other Schedule,
- (ii) this change in quantity multiplied by such specified rate for this item exceeds 0.15 % of the Accepted Contract Amount,
- (iii) this change in quantity directly changes the Cost per unit quantity of this item by more than

1%, and

(iv) this item is not specified in the Contract as a “fixed rate item”;

or

(b) (i) the work is instructed under Sub-Clause 51.1 through 51.3, Variations,

(ii) no rate or price is specified in the Contract for this item, and

(iii) no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.

Each new rate or price shall be derived from any relevant rates or prices in the Contract, with reasonable adjustments to take account of the matters described in sub-paragraph (a) and/or (b), as applicable. If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable Cost of executing the work, together with profit, taking account of any other relevant matters.

Until such time as an appropriate rate or price is agreed or determined, the Engineer shall determine a provisional rate or price for the purposes of Interim Payment Certificates as soon as the concerned Works commences.”

After Sub-Clause 52.4 add the following Sub-Clauses 52.5:

Sub-Clause 52.5: Right to Vary

“Variations may be initiated by the Engineer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal.

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer stating (with supporting particulars) that:

(i) the Contractor cannot readily obtain the Goods required for the Variation, or

(ii) such Variation triggers a substantial change in the sequence or progress of the Works.

Upon receiving this notice, the Engineer shall cancel, confirm or vary the instruction within 14 days in principle or 28 days at the most.”

Clause 53

Sub-Clause 53.1: Notice of Claims

After the end of this Sub-Clause add the following:

“If the Contractor fails to give notice of a claim within such period of 28 days, the time for completion shall not be extended, the Contractor shall not be entitled to additional payment and the Employer shall not accept the claim.

Sub-Clause 53.3: Substantiation of Claims

After the end of this Sub-Clause add the following:

For the purposes of this Sub-Clause ‘detailed particulars’ shall include the following:

- (a) a full description of the facts relating to the events or circumstances which the Contractor considers entitles him to additional payment, and
- (b) the contractual or legal grounds upon which the claim for additional payment is based, and
- (c) a full description of how the Contractor has identified and linked the financial consequences of the events or circumstances referred to in (a) above to the additional payment sought, and
- (d) the records relevant to (c) above.

Sub-Clause 53.5: Payment of Claims

In the first line after the words “The Contractor shall” add a comma and the words “if he has complied in all respects with the relevant requirements of Sub-Clauses 53.1, 53.2 and 53.3,”.

After Sub-Clause 53.5 add the following Sub-Clause:

Sub-Clause 53.6: Determination of Additional Payment Due

“Where, in accordance with the requirements of Sub-Clause 53.5, the Engineer has determined what, if any, amount is finally due in respect of any claim then that determination is agreed as being the proper valuation of such amount unless the determination is disputed by the Contractor or the Employer and referred to the Engineer for a decision pursuant to Sub-Clause 67.1 within 84 days of the communication from the Engineer advising of his determination.”

Clause 54

After Sub-Clause 54.8 add the following Sub-Clauses 54.9 and 54.10:

Sub-Clause 54.9: Records of Equipment

“The Contractor shall submit, to the Engineer, details showing the number of each type of Contractor’s Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Engineer, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

The details shall include a description of the equipment giving its type, manufacturer, model and capacity, together with a unique identification number. If an item of Contractor’s Equipment is hired, then the Contractor shall provide the name and address of the owner thereof or the name and address of the vendor named in the agreement for hire purchase thereof.

A certified copy of the agreement shall be supplied to the Engineer.”

Sub-Clause 54.10: Ownership of Materials on Site

“All materials paid for under Sub-Clause 60.1 shall be deemed to be owned by the Employer who shall have the full rights of ownership.”

Clause 56

Sub-Clause 56.1: Works to be Measured

Delete the text entirely and substitute:

“The Engineer shall, except as otherwise stated, ascertain and determine by measurement the value of the Works in accordance with the Contract and the Contractor shall be paid that value in accordance with Clause 60. The Engineer shall, when he requires any part of the Works to be measured, give reasonable notice of the time appointed for such measurement to the Contractor who shall :

- (a) send, at the appointed time, qualified and appropriately equipped representatives to conduct the measurement under the supervision of the Engineer, and
- (b) supply all particulars required by the Engineer.

Should the Contractor neglect or omit to send such representatives, then the measurement may be made by the Engineer and taken to be the correct measurement of such part of the Works. For the purpose of measuring such Permanent Works as are to be measured by records and drawings, the Contractor shall prepare records and drawings as the work proceeds and the Engineer, when called upon to do so in writing, shall, within 14 days, attend to, examine and agree such records and drawings with the Contractor and shall sign the same when so agreed. If the Engineer does not attend to examine and agree such records and drawings, they shall be taken to be correct. If, after examination of such records and drawings, the Engineer does not agree the same or does not sign the same as agreed, they shall nevertheless be taken to be correct, unless the Engineer, within 14 days of such examination, lodges with the Contractor notice of the respects in which such records and drawings are claimed by him to be incorrect. On receipt of such notice, the Contractor shall review the records and drawings and either confirm or vary them.”

Clause 58

Sub-Clause 58.2: Use of Provisional Sums

Delete (a) and (b) entirely and substitute :

- (a) by the Contractor for work it has performed itself, in which case the Contractor shall be entitled to the value determined in accordance with Clause 52 but considering that payment of this value shall include direct costs plus (overhead costs and profit, 10 %) under one Provisional Sum, and
- (b) by utility authorities, in which case the Contractor shall be entitled to the reimbursement of invoiced cost by the utility plus (overhead costs and profit 10 %) by payment under one Provisional Sum.

Clause 60: Certificates and Payment

Clause 60 of the General Conditions is deleted and the following Sub-Clauses 60.1 to 60.14 are substituted thereof:

Sub-Clause 60.1: Monthly Statements

“Disbursement procedures of JBIC ODA Loans shall be applied for disbursement of the proceeds of JBIC ODA Loans for eligible payment under this contract. The Contractor shall submit a statement in six copies to the Engineer at the end of each month, in a tabulated form approved by the Engineer, showing the amounts to which the Contractor considers himself to be entitled. The statement shall include the following items, as applicable, which shall be taken into account in the sequence listed

- (a) the estimated contract value of the Works executed up to the end of the month in question, determined in accordance with Sub-Clause 56.1, at the unit rates and prices included in the Contract, in the various currencies of the Contract Price in which the contract is payable;
- (b) the actual value certified for payment for the Works executed up to the end of the previous month, at the unit rates and prices included in the Contract, in the various currencies of the Contract Price;
- (c) the estimated contract value at the unit rates and prices included in the Contract of the Works for the month in question, in the various currencies of the Contract Price, obtained by deducting (b) from (a);
- (d) the value of any variations executed up to the end of the month in question, less the amount certified in the previous Interim Payment Certificate, expressed in the relevant amounts of foreign and local currencies, pursuant to Clause 52;
- (e) amounts approved in respect of Daywork executed up to the end of the month in question, less the amount for Daywork certified in the previous Interim Payment Certificate, indicating the amounts of foreign and local currencies as determined from the Daywork Schedule of the Bill of Quantities;
- (f) amounts reflecting changes in cost and legislation, pursuant to Clause 70, expressed in the relevant amounts of foreign and local currencies;
- (g) any credit or debit for the month in question in respect of materials and Plant for the Permanent Works, in the relevant amounts in foreign and local currencies, and under the conditions set forth in Sub-Clause 60.3;
- (h) any amount to be withheld under the provisions of Sub-Clause 60.5, determined by applying the percentage set forth in Sub-Clause 60.5 to the amounts in foreign and local currencies due under paragraphs 60.1 (c), (d), (e), and (f);
- (i) any amounts to be deducted as repayment of the Advance under the provisions of Sub-Clause 60.7; and
- (j) any other sum, expressed in the applicable currency or currencies, to which the Contractor may be entitled under the Contract or otherwise.”

Sub-Clause 60.2: Monthly Payments

“The said statement shall be approved or amended by the Engineer in such a way that, in his opinion, it includes all diagrams, calculations, detailed information and the like sufficient to justify any amount or quantity claimed, and it reflects the amounts in various currencies due to the Contractor in accordance with the Contract, after deduction, other than pursuant to Clause 47, of any sums which may have become due and payable by the Contractor to the Employer. In cases where there is a difference of opinion as to the value of any item, the Engineer’s view shall prevail. Within 28 days of receipt of the monthly statement referred to in Sub-Clause 60.1 in a form acceptable to the Engineer, the Engineer shall determine the amounts due to the Contractor and shall issue to the Employer and the Contractor a certificate herein called “Interim Payment Certificate”, certifying the amounts due to the Contractor.

Provided that the Engineer shall not be bound to certify any payment under this Sub-Clause if the net amount thereof, after all retentions and deductions, would be less than the Minimum Amount of Interim Payment Certificates stated in the Appendix to Bid.

Notwithstanding the terms of this Clause or any other Clause of the Contract, no amount will be certified by the Engineer for payment until the performance security referred to in Sub-Clause 10.1 has been provided by the Contractor and approved by the Employer.”

Sub-Clause 60.3: Materials and Plant for the Permanent Works

“With respect to materials and Plant brought by the Contractor to the Site for incorporation in the Permanent Works, the Contractor shall (i) receive a credit in the month in which these materials and Plant are brought to the Site and (ii) be charged a debit in the month in which they are incorporated in the Permanent Works, both such credit and debit to be determined by the Engineer in accordance with the following provisions:

- (a) no credit shall be given unless the following conditions shall have been met to the Engineer’s satisfaction:
 - (i) the materials and Plant are in accordance with the Specifications for the Works;
 - (ii) the materials and Plant have been delivered to the Site and are properly stored and protected against loss, damage or deterioration;
 - (iii) the Contractor’s records of the requirements, orders, receipts and use of materials and Plant are kept in a form approved by the Engineer, and such records are available for inspection by the Engineer;
 - (iv) the Contractor has submitted a statement of his cost of acquiring and delivering the materials and Plant to the Site, together with such documents as may be required for the purpose of evidencing such cost; and
 - (v) the origin of the materials and Plant and the currencies of payment thereof are those indicated in the Appendix to Bid;

- (b) the amount to be credited to the Contractor shall be the equivalent of 75 percent of the

Contractor's reasonable cost of the materials and Plant delivered to the Site, as determined by the Engineer after review of the documents listed in paragraph (a) (iv) above, as determined by the Engineer;

- (c) the amount to be debited to the Contractor for any materials and Plant incorporated into the Permanent Works shall be equivalent to the credit previously granted to the Contractor for such materials and Plant pursuant to Sub-Clause (b) above, as determined by the Engineer; and
- (d) the currencies in which the respective amounts shall be credited or debited as set forth above shall be determined by the Engineer, provided (i) that in the case of a credit, the currencies shall be those listed in the Appendix to Bid for the relevant item of materials or Plant; and (ii) that in the case of a debit, the currencies shall be those in which the credit for the respective item of materials or Plant had been given."

Sub-Clause 60.4: Place of Payment

"Payments to the Contractor by the Employer shall be made in the currencies in which the Contract Price is payable, into a bank account or accounts nominated by the Contractor and agreed by the Employer."

Sub-Clause 60.5: Retention Money

"A retention amounting to 10 (ten) percent of the amounts due in each currency, determined in accordance with the procedure set out in Sub-Clause 60.1 up to the limit of retention specified in the Appendix to Bid shall be made by the Engineer in the first and following Interim Payment Certificates.

Once the limit of retention has been reached, the amount of retention held shall remain constant until the retention is released pursuant to the Contract."

Sub-Clause 60.6: Payment of Retention Money

"Upon the issue of the Taking-Over Certificate with respect to the whole of the Works, one half of the Retention Money, or upon the issue of a Taking-Over Certificate with respect to a Section or part of the Permanent Works only such proportion thereof as the Engineer determines having regard to the relative value of such Section or part of the Permanent Works, shall be immediately certified by the Engineer for payment to the Contractor.

At the request of the Contractor, the second half of the Retention Money may also be released at the issue of the Taking-Over Certificate provided a bank guarantee is provided by the Contractor for an amount equal to half the Retention Money for the period from the issue of the Taking-Over Certificate to Thirty (30) days after the expiry of the Defects Liability Period.

Upon the expiration of the Defects Liability Period for the Works the other half of the Retention Money shall be certified by the Engineer for payment to the Contractor (or return of the bank guarantee, as the case may be). Provided that, in the event of different Defects Liability Periods being

applicable to different Sections or parts of the Permanent Works pursuant to Clause 48, the expression “expiration of the Defects Liability Period” shall, for the purposes of this Sub-Clause, be deemed to mean the expiration of the latest of such periods.

Provided also that if at such time, there shall remain to be executed by the Contractor any work ordered, pursuant to Clauses 49 and 50, in respect of the Works, the Engineer shall be entitled to withhold certification until completion of such work so that the balance of the Retention Money shall, in the opinion of the Engineer, represent the cost of the work remaining to be executed.

If the amount guaranteed under the Performance Security is more than half of the Retention Money when the Taking-Over Certificate is issued, the Retention Money guarantee will not be required. If the amount guaranteed under the Performance Security is less than half of the Retention Money when the Taking-Over Certificate is issued, the Retention Money guarantee will only be required for the difference between half of the Retention Money and the amount guaranteed under the Performance Security.”

Sub-Clause 60.7: Advance Payment

“(a) The Employer will make an interest-free advance payment (but not as Monthly payment) to the Contractor exclusively for the costs of mobilization in respect of the Works in the amount given in the Appendix to Bid, payable in the proportions of foreign and local currencies of the Contract Price. The advance payment will be made in two instalments of 10 %, and 10 % of the Contract Price respectively. Payment of the first instalment (10 % of the Contract Price in the Letter of Acceptance) will be due under separate certification by the Engineer after;

- (i) execution of the Form of Agreement by the parties hereto;
- (ii) provision by the Contractor of the performance security in accordance with Sub-Clause 10.1; and
- (iii) provision by the Contractor of a bank guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the first instalment of the advance payment. Such bank guarantee shall be returned to the Contractor when the advance payment has been repaid pursuant to paragraph (c) below.

The second instalment of the advance payment (10 % of the Contract Price in the Letter of Acceptance) will be due under separate certification of the Engineer after;

- (i) mobilization of Contractor’s key personnel.
- (ii) Construction of Contractor’s office and camp, test laboratory including the provision of all required services.
- (iii) Provision of Engineer’s offices, and survey equipment, including all required services by the Contractor.
- (iv) Provision of housing, furniture and equipment and vehicles for the Engineer and the Employer by the Contractor.
- (v) Provision by the Contractor of a bank guarantee in a form and by a bank acceptable to

the Employer in amounts and currencies equal to the second instalment of the advance payment. Such bank guarantee shall be immediately returned to the Contractor when the advance payment has been repaid pursuant to paragraph (c) below.

- (b) Such bank guarantee shall remain effective until the advance payment has been repaid pursuant to the paragraph below, but the amount thereof shall be progressively reduced by the amount repaid by the Contractor as indicated in Interim Payment Certificates issued in accordance with this Clause.
- (c) The advance payment shall be repaid through deductions calculated using the formula given in the Appendix to Bid, from the interim payments certified by the Engineer in accordance with this Clause. Deductions shall commence in the Interim Payment Certificate in which the cumulative value of all interim payments certified to the Contractor has reached thirty (30) percent of the Contract Price, and shall be made using the formula given in the Appendix to Bid in the types and proportionate amounts of currencies of the advance payment until such time as the advance payment has been repaid; always provided that the advance payment shall be completely repaid prior to the time when cumulative value of interim payments certified to the Contractor reaches 80 (eighty) percent of the Contract Price has been certified for payment.
- (d) Interest for delay of Advance payment shall be paid by the Employer and be calculated in the manner stipulated in Sub-Clause 60.8.

Provided that upon the occurrence of any of the events described in Sub-Clause 63.1 or termination under Clauses 65, 66, or 69, the whole of the balance of the advance payments then outstanding shall immediately become due and payable by the Contractor to the Employer.”

Sub-Clause 60.8: Time of Payment and Interest

- “(a) The amount due to the Contractor under any Interim Payment Certificate issued by the Engineer pursuant to this Clause, or to any other term of the Contract, shall, subject to Clause 47, be paid by the Employer to the Contractor within 56 days (Checking by the Engineer within 28 days and Payment by the Employer within 28 days) after the Contractor’s monthly statement has been submitted to the Engineer for certification or, in the case of the Final Certificate pursuant to Sub-Clause 60.13, within 84 days after the agreed Final Statement and written discharge have been submitted to the Engineer for certification. In the event of the failure of the Employer to make payment within the times stated, the Employer shall pay to the Contractor simple monthly interest at the rate(s) stated in paragraph (b) and (c) of this Sub-Clause upon all sums unpaid from the date upon which the same should have been paid, in the currencies in which the payments are due.
- (b) The interest payable on unpaid sums in local currency shall be paid entirely in the applicable local currency. The rate stated in the Appendix to Bid is to be added to the Average Weighted Prime Lending Rate (AWPLR) published by the Central Bank of Sri Lanka current on the date upon which such payment first becomes overdue.

- (c) The interest payable on unpaid sums in foreign currency shall be paid entirely in the applicable foreign currency. The rate stated in the Appendix to Bid is to be added to the London Inter Bank Offered Rate (LIBOR) current on the date upon which such payment first becomes overdue.
- (d) For the purpose of calculating the interest payable on amounts due in local currency, the date of payment shall be defined as the day on which the Contractor physically receives the financial instrument of payment. For calculating the interest payable on amounts due in foreign currency the date of payment shall be defined as the day on which JBIC remits payment to the bank nominated by the Contractor.”

Sub-Clause 60.9: Correction of Certificates

“The Engineer may by any Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificates, which has been issued by the Engineer, and shall have authority, if any work is not being carried out to the satisfaction of the Engineer, to omit or reduce the value of such work in any Interim Payment Certificate.”

Sub-Clause 60.10: Statement at Completion

Not later than 84 days after the issue of the Taking-Over Certificate in respect of the whole of the Works, the Contractor shall submit to the Engineer six copies of a Statement at Completion with supporting documents showing in detail, in the form approved by the Engineer,

- (a) the final value of all work done in accordance with the Contract up to the date stated in such Taking-Over Certificate;
- (b) any further sums which the Contractor considers to be due; and
- (c) an estimate of amounts which the Contractor considers will become due to him under the Contract.

Estimated amounts shall be shown separately in such Statement at Completion. The Engineer shall certify payment in accordance with Sub-Clause 60.2.”

Sub-Clause 60.11: Final Statement

“Not later than 56 days after the issue of the Defects Liability Certificate pursuant to Sub-Clause 62.1, the Contractor shall submit to the Engineer for consideration six copies of a draft final statement with supporting documents showing in detail, in the form approved by the Engineer,

- (a) the value of all work done in accordance with the Contract; and
- (b) any further sums which the Contractor considers to be due to him under the Contract.
- (c) Six copies of the following Contractor’s affidavits confirming:
 - (i) complete payment of all subcontractors, materials, labour, employees, suppliers of goods

- and services and other debts and liabilities related to the Contract, and
- (ii) complete payment of any applicable charges and fees in connection with the Contract, and
 - (iii) release of any and all liens.

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed (for the purposes of these Conditions referred to as the “Final Statement”). If, following discussions between the Engineer and the Contractor and any changes to the draft final statement which may be agreed between them, it becomes evident that a dispute exists, the Engineer shall issue to the Employer an Interim Payment Certificate for those parts of the draft final statement which are not in dispute. The dispute shall then be settled in accordance with Clause 67. The Final Statement shall be agreed upon settlement of the dispute.”

Sub-Clause 60.12: Discharge

“Upon submission of the Final Statement, the Contractor shall give to the Employer, with a copy to the Engineer, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment due under the Final Payment Certificate issued pursuant to Sub-Clause 60.13 has been made and the performance security referred to in Sub-Clause 10.1 has been returned to the Contractor.”

Sub-Clause 60.13: Final Payment Certificate

“Within 28 days after receipt of the Final Statement, and the written discharge, the Engineer shall issue to the Employer (with a copy to the Contractor) a Final Payment Certificate stating

- (a) the amount which, in the opinion of the Engineer, is finally due under the Contract, and
- (b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled under the Contract, other than Clause 47, the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer as the case may be.”

Sub-Clause 60.14: Cessation of Employer’s Liability

“The Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or execution of the Works, unless the Contractor shall have included a claim in respect thereof in his Final Statement and (except in respect of matters or things arising after the issue of the Taking-Over Certificate in respect of the whole of the Works) in the Statement at Completion referred to in Sub-Clause 60.10.”

Clause 62

Sub-Clause 62.1: Defects Liability Certificate

Delete the text “Sub-Clause 60.3” in the end and replace with “Sub-Clause 60.6”.

Clause 63

Sub-Clause 63.1: Default of Contractor

After the paragraph (e) delete the text and substitute:

- “(f) has failed in any design for which the Contractor is responsible,
- (g) Plant, Materials or workmanship not being in accordance with the Contract,
- (h) has violated the Laws and Regulations of Sri Lanka or,
- (i) is culpable of or has contravened Clause 74, “Bribes”.

If and to the extent that such work is attributed to any other cause, the Contractor shall be notified promptly by (or on behalf of) the Employer and Sub-Clauses 51 and 52, “Variations” shall apply.

If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Employer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under this Sub-Clause, the Employer may (at his option):

- (a) carry out the work himself or by others, in a reasonable manner and at the Contractor’s cost, but the Contractor shall have no responsibility for this work; and the Contractor shall subject to Sub-Clause 10.3, “Claims under Performance Security” pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage;
- (b) require the Engineer to agree or determine a reasonable reduction in the Contractor’s Contract Price in accordance with Sub-Clause 2.6, “Engineer to Act Impartially”; or
- (c) if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

After Sub-Clause 63.4 add the following Sub-Clause:

Sub-Clause 63.5 Corrupt or Fraudulent Practices

“If in the judgement of the Employer the Contractor has engaged in corrupt or fraudulent practices, in competing for or in executing the Contract, then the Employer may, after having given 14 days notice to the Contractor, terminate the Contractor’s employment under the Contract and expel the Contractor from the Site, and the provisions of Clause 63 shall apply as if such corrupt or fraudulent practices

had been a reason for termination under Sub-Clause 63.1.”

Clause 65

Sub-Clause 65.2: Special Risks

This Sub-Clause is amended to read as follows:

“The Special Risks are the risks defined under paragraph (a), sub-paragraphs (i) to (iv) of Sub-Clause 20.4.”

Clause 67: Settlement of Disputes

Delete Sub-Clause 67.2 to 67.4 and replace with the following Sub-Clauses 67.2 through 67.7:

Sub-Clause 67.2: Dispute Adjudication Board (DAB)

If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, the dispute shall initially be referred in writing to the Dispute Adjudication Board (DAB or the “Board”) for its decision. Such reference shall state that it is made under this Sub-Clause.

Unless the member or members of the Board have been previously mutually agreed upon by the parties and named in the Contract, the parties shall, within 28 days of the Commencement Date, jointly ensure the appointment of the Board. The Board shall comprise suitably qualified persons as members, the number of members being either one or three, as stated in the Appendix to Bid. If the Board is to comprise three members, each party shall nominate one member for the approval of the other party, and the parties shall mutually agree upon and appoint the third member (who shall act as chairman).

The terms of appointment of the Board shall:

- a) incorporate the model terms therefore published by the Federation Internationale des Ingenieurs Conseils (FIDIC), as they may have been amended by the parties,
- b) require each member of the Board to be, and to remain throughout the appointment, independent of the parties,
- c) require the Board to act impartially and in accordance with the contract, and
- d) include undertakings by the parties (to each other and to the Board) that the members of the Board shall in no circumstances be liable for anything done or omitted in the discharge of their functions unless the act or omission is shown to have been in bad faith; the parties shall indemnify the members against such claims.

The terms of the remuneration of each member of the Board, including the remuneration of any

expert from whom the Board may seek advice, shall be mutually agreed upon by the Employer, the Contractor and each member of the Board when agreeing the terms of appointment. In the event of disagreement, the remuneration of each member shall include a daily fee in accordance with the daily fee established from time to time for arbitrators under the administrative and financial regulations of the International Centre for Settlement of Investment Disputes, a retainer fee per calendar month equivalent to three times such daily fee and reimbursement for reasonable expenses. The Employer and the Contractor shall each be responsible for paying one-half of the Board's remuneration.

The appointment of any member of the Board may be terminated (other than on a member's own initiative) only by mutual agreement of the Employer and the Contractor. The appointment of each member of the Board shall expire when the discharge referred to in sub-clause 60.12 shall have become effective, or at such other time as the parties may mutually agree.

If any time the parties so agree, they may appoint a suitably qualified person or persons to replace (or to be available to replace) any or all members of the Board. Unless the parties agree otherwise, the appointment will come into effect if a result of death, disability, resignation or termination of appointment. If any of such circumstances should occur and no such replacement is available, the member shall be replaced in the same manner as such member was nominated or agreed upon.

If any of the following conditions apply, namely:

- (a) either party fails to nominate a member (acceptable to the other party), for a Board of three members, within 28 days of the Commencement Date,
- (b) the parties fail to agree upon the appointment of the third member (to act as chairman) for a Board of three members within 28 days of the Commencement date, or
- (c) the parties fail to agree upon the appointment of a replacement member of the Board within 28 days of the date on which a member of the Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

then the appointing body or official named in the Appendix to Bid shall, after due consultation with the parties, appoint such member of the Board, and such appointment shall be final and conclusive.

Sub-Clause 67.3: Procedure for Obtaining the Board's Decision

When in accordance with Sub-Clause 67.2 a dispute is referred by one party to the Board, a copy of such reference shall be sent by that party to the other party and (for information) to the Engineer. The parties shall promptly make available to the Board all such additional information, further access to the Site, and appropriate facilities, as the Board may require for the purposes of rendering a decision.

The Board shall have full power, among other things, to:

- (a) establish the procedure to be applied in deciding a dispute and to conduct hearings,
- (b) decide upon the Board's own jurisdiction, and as to the scope of any dispute referred to it,
- (c) take the initiative in ascertaining the facts and matters required for a decision,

- (d) make use of its own specialist knowledge, if any,
- (e) decide upon the payment of interest in accordance with the Contract,
- (f) decide to grant provisional relief such as interim or conservatory measures, and
- (g) open up, review and revise any opinion, instruction, determination, certificate or valuation of the Engineer related to the dispute.

No later than the eighty-fourth day after the day on which it received such reference, the Board, acting as a panel of expert(s) and not as arbitrator(s), shall give notice of its decision, to the parties and (for information) to the Engineer. Such decision, which shall be reasoned, shall state that it is given under this Sub-clause.

Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the works with all due diligence, and the Contractor and the Employer, as well as the Engineer, shall give effect forthwith to every decision of the Board, unless and until the same shall be revised, as hereinafter provided, in an amicable settlement or an arbitral award.

If either party is dissatisfied with the Board's decision, then either party, on or before the 28th day after the day on which it received notice of such decision, may notify the other party and (for information) the Engineer of its dissatisfaction. In either event, such notice of dissatisfaction shall state that it is given under this Sub-clause, and set out the matter in dispute and the reason(s) for dissatisfaction. Subject to Sub-Clause 67.6 and 67.7, no arbitration in respect of such dispute may be commenced unless such notice is given.

If the Board has given notice of its decision as to a matter in dispute to the Employer, the Contractor and the Engineer, and no notice of dissatisfaction has been given by either party on or before the 28th day after the day on which the parties received the Board's decision, then the Board's decision shall become final and binding upon the Employer and the Contractor.

Sub-Clause 67.4: Amicable Settlement

Where notice of dissatisfaction has been given under Sub-clause 67.3, the parties shall attempt to settle such dispute amicably before the commencement of arbitration. Provided that unless the parties agree otherwise, arbitration may be commenced on or after the 56th day after the day on which notice of dissatisfaction was given, even if no attempt at amicable settlement has been made.

Sub-Clause 67.5: Arbitration

Unless settled amicably, any dispute in respect of which the DAB's decision (if any) has not become final and binding shall be finally settled by international arbitration. Unless otherwise agreed by both Parties:

- (a) the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce,
- (b) the dispute shall be settled by three arbitrators appointed in accordance with these Rules, and
- (c) the arbitration shall be conducted in the language of English.

The arbitrator(s) shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DAB, relevant to the dispute. Nothing shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the DAB to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DAB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DAB shall not be altered by reason of any arbitration being conducted during the progress of the Works.”

Sub-Clause 67.6: Failure to Comply with the Board’s Decision

Where neither party has given notice of dissatisfaction within the period in Sub-Clause 67.3 and the Board’s related decision, if any, has become final and binding, either party may, if the other party fails to comply with such decision, and without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 67.5. The provisions of Sub-Clause 67.3 and 67.4 shall not apply to any such reference.

Sub-Clause 67.7: Expiry of the Board’s Appointment

When the appointment of the members of the Board, including any replacements, has either been terminated or expired, any such dispute referred to in Sub-Clause 67.3 shall be finally settled by arbitration pursuant of Sub-Clause 67.5. The provisions of Sub-clauses 67.3 and 67.4 shall not apply to any such reference.

Clause 68

Sub-Clause 68.2: Notice to Employer and Engineer

For the purposes of this Sub-Clause the respective addresses are:

- (a) The Employer: Road Development Authority, “Sethsiripaya”, Sri Jayawardenepura Kotte, Battaramulla, Sri Lanka.

- (b) The Engineer: Pacific Consultants International, 1-7-5 Sekido, Tamashi, Tokyo, Japan.

Sub-Clause 68.3: Change of Address

Between the words “executed” and “by prior notice” inserts “or in outside the country”

Clause 69

Sub-Clause 69.1: Default of Employer

In Sub-Clauses 69.1, 69.4 and 69.5, substitute “Sub-Clause 60.8” for “Sub-Clause 60.10”.

Sub-Clause 69.1(a): Default of Employer

In Sub-Clause 69.1 (a), substitute “56 days” for “28 days”.

Sub-Clause 69.4: Contractor’s Entitlement to Suspend Work

Substitute “Sub-Clause 60.8” for Sub-Clause 60.10” in both places.

Substitute “within 56 days” for “within 28 days”

Sub-Clause 69.5: Resumption of Work

Substitute “Sub-Clause 60.8” for “Sub-Clause 60.10”

Clause 70: Changes in Cost and Legislation

Delete Clause 70 in its entirety and substitute:

NOTE: In Clause 70 Sub-Clause numbers incorporating “(L)” refer to the proportion of the Contract Price payable in Local Currency. Sub-Clause numbers incorporating “(F)” refer to the proportion of the Contract Price payable in Foreign Currency.

“Sub-Clause 70.1 (L): Price Adjustment (Local Currency Component)

The amount payable in Sri Lanka Rupees to the Contractor and valued at base rates and prices in any Interim Payment Certificate issued by the Engineer pursuant to Sub-clause 60.2 of these Conditions of Contract shall be adjusted, in respect of the rise or fall in the costs of labour, materials and construction plant, and other inputs to the works, on the basis of the following formula;

$$F = \frac{0.966 (V - V_{na})}{100} \times \sum_{\text{all inputs}} \frac{P_x (I_{xc} - I_{xb})}{I_{xb}}$$

Where:

- F = Price adjustment for the period concerned
- V = Current valuation of the work done as described in (f) below
- V_{na} = Valuation of non-adjustable element for the proportion of the contract which is payable in local currency
- P_x = Input percentage of Input named x
- I_{xc} = Current Index of Input named x
- I_{xb} = Base Index of Input named x

The above formula for price adjustment of the local currency payments is agreed to be the full and only measure of any additions and deductions from the Contract Price caused by variations in the costs of labour, materials, equipment and other input costs to the Works.

- (a) Contract Price Adjustment computed on the basis of this formula may be either an

addition to or a deduction from the Contract Price.

(b) Source of Indices

The indices applicable to the operation of this formula are those compiled and published by the Institute for Construction Training and Development (ICTAD), Sri Lanka, in the ICTAD Bulletin of Construction Statistics.

(c) Input Percentage

“Input Percentage” means the proportionate percentage contribution of any input in terms of the cost of construction of the Works, computed at the time of design. For detailed %, see Volume I, Instructions to Bidders, Part 4-4, “Appendix to Bid”.

(d) Non-adjustable Elements

“Non Adjustable Elements” shall consist of the work done under the following items which shall not be considered for computation of price adjustment:

(i) All items of work listed in Bill No.1: Preliminary and General Items:

(ii) Extra works and Additional works done by order of the Engineer and valued in items of Clause 52.1 based on prices prevailing at the time such works were executed: and

(iii) All work on Provisional items or sums for work valued using prices prevailing at the time such works were executed.

(e) Current Valuation

“Current Valuation” means the portion to be paid in local currency of the value of work duly executed during the valuation period being reviewed.

(f) Base indices

“Base indices” means the indices applicable to the calendar month preceding the calendar month in which the date fixed for submission of Tender falls.

(g) Current Indices

“Current indices applicable in respect of any Interim Payment Certificate or the Final Payment Certificate shall be the indices prevailing for the calendar month following the month when the work relating to the payment certificate was performed.

Sub-Clause 70.2 (L) Adjustment after the Due Date for Completion

Adjustment to the amount payable under the Contract in respect of work done after the Due Date for Completion of the whole of the Works pursuant to Clause 43 hereof or after the taking over certified pursuant to Clause 48 hereof of shall be computed on the basis of Current Rates, Current Indices or Current Price as applicable, pertaining to the Due Date for Completion or the date of taking over, whichever is the earlier.

If the Contractor fails to complete the Works within the Time for Completion, thereafter and until the completion of the Works, price adjustments shall be made based upon the indices and prices pertaining at the Due Date for Completion, as may be adjusted pursuant to Clause 44.

Sub-Clause 70.3 (L) Determination of Adjustment to Contract Price

The amount of any adjustment to the amount payable under the Contract pursuant to this Clause shall be determined by the Engineer in accordance with the foregoing method of adjustment.

Sub-Clause 70.4 (L) Adjustment to be made in Interim Payments

Unless the parties otherwise agree any adjustment to the amount payable under the Contract as aforesaid shall be included in the monthly payments made to the Contractor under the provisions of Clause 60 hereof.

Sub-Clause 70.5 (L) Subsequent Legislation

If after the date of 28 days prior to the latest date for submission of Tenders for the Works, any changes or introduction occurred in Sri Lanka to any National or State Statute, Ordinance, Decree or other Law or any regulation or by-law of any local or other duly constituted authority and caused additional or reduced cost to the Contractor, other than those changes and effects which are redeemable by the Contractor under Sub-Clause 70 in the execution of the Contract, such additional or reduced cost:

- 1) shall be determined by the Engineer after a claim by the Contractor pursuant to the Contract and due consultation with the Employer and the Contractor,
- 2) shall be added to or deducted from the Contract Price and
- 3) the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

Sub-Clause 70.1 (F) Price Adjustment (Foreign Currency Component)

The amounts payable to the Contractor in foreign currency for permanent works executed but not including the percentage value payable for goods and materials at Site valued at base rates and prices pursuant to Sub-Clause 60.1 (d), (e) and (f) shall be adjusted in respect of the rise or fall in the foreign currency cost of Labour, Materials and Contractor's Equipment and Plant, by the addition or subtraction of the amounts determined by the formulae prescribed in this Clause.

Sub-Clause 70.2 (F) Other Changes in Cost

To the extent that full compensation for any rise or fall in foreign currency costs to the Contractor is not covered by the provisions of this or other Clauses in the Contract, the unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall of costs.

Sub-Clause 70.3 (F) Adjustment Formulae

The amount to be added to or deducted from the Adjusted Interim Payment Certificates in respect of changes in foreign currency cost and legislation shall be determined from formulae for each of the types of construction work to be performed and Plant to be supplied. The formulae will be of the following general type:

$$P_n = a + b \frac{L_n}{L_o} + c \frac{M_n}{M_o} + d \frac{E_n}{E_o}$$

Where:

“**P_n**” is adjustment factor to be applied to the proportion to be paid in foreign currency of the estimated value of the work carried out in month “**n**”, determined in accordance with Sub-Clause 60.1 (d), (e) and (f);

“**a**” is a fixed coefficient, specified in the Appendix to Bid, representing the nonadjustable portion in contractual payments;

“**b**”, “**c**”, “**d**”, etc., are coefficients representing the estimated proportion of each cost element (labour, materials and Contractor’s Equipment and Plant) in the Works or sections thereof, net of Provisional Sums, as specified in the Appendix to Bid;

“**L_n**”, “**M_n**”, “**E_n**”, etc., are the current cost indices or reference prices for month “**n**”, determined pursuant to Sub-Clause 70.5(F), applicable to each cost element; and

“**L_o**”, “**M_o**”, “**E_o**”, etc., are the base cost indices or reference prices corresponding to the above cost elements at the date specified in Sub-Clause 70.5(F).

A separate calculation of **P_n** shall be made for each currency of payment using the appropriate indices of the country of supply.

If the price adjustment is made in a currency other than that of the country of supply, a correction factor of the form Z_o/Z_n will be applied to the adjustment factor **P_n** for the formula of the relevant currency of payment. Payment in each foreign currency shall be made in accordance with the following formula:

$$P_n = a + b \frac{L_n}{L_o} \times \frac{Z_{L_o}}{Z_{L_n}} + c \frac{M_n}{M_o} \times \frac{Z_{M_o}}{Z_{M_n}} + d \frac{E_n}{E_o} \times \frac{Z_{E_o}}{Z_{E_n}}$$

Where:

“a”, “b”, “c”, “d”, “Ln”, “Mn”, “En”, “Lo”, “Mo” and “Eo” are as specified above.

“ZLo”, “ZMo” and “ZEo” are the numbers of unit of currency of the country or countries of the cost indices for Labour, Materials and Contractor’s Equipment and plant respectively, equivalent to one unit of the currency of payment on the date of the base index; and

“ZLn”, “ZMn” and “ZEn” are corresponding numbers of such currency units on the date of the current index.

Non Adjustable Elements

“Non Adjustable Elements” shall consist of the work done under the following items, which shall not be considered for computation of price adjustment:

- (i) All items of work listed in Bill No.1 – Preliminary and General items
- (ii) Extra works and additional work done by order of the Engineer and valued in terms of Clause 52(1) based on prices prevailing at the time such works were executed; and
- (iii) All works on Provisional Sums.

Sub-Clause 70.4 (F) Sources of Indices

The sources of indices shall be proposed in the Appendix to Bid by the bidder. Those shall be reviewed and agreed by both the Employer and the successful bidder.

Sub-Clause 70.5 (F) Base, Current and Provisional Indices

The base cost indices or prices shall be those Base indices prevailing on the 28 days prior to the closing date for submission of bids. Current indices or prices shall be those prevailing on the 28 days prior to the last day of the period to which a particular Interim Payment Certificate is related. If at any time the current indices are not available, provisional indices as determined by the Engineer will be used, subject to subsequent correction of the amounts paid to the Contractor when the current indices become available.

Sub-Clause 70.6 (F) Adjustment after the Date of Completion

If the Contractor fails to complete the whole of the Works within the time for completion prescribed under Clause 43, adjustment of prices thereafter until the date of completion of the Works shall be made using either the indices, or prices relating to the prescribed time for completion, or the current indices or prices, whichever is more favourable to the Employer, provided that if an extension of time is granted pursuant to Clause 44, the above provision shall apply only to adjustments made after the expiry of such extension of time.

Sub-Clause 70.7 (F) Weightings

The weightings for each of the factors of cost to be given in the Appendix to Bid shall be adjusted if, in the opinion of the Engineer, they have been rendered unreasonable, unbalanced or inapplicable as a result of varied or additional work already executed or ordered under Clause 51 or for any other reason.

Sub-Clause 70.8 (F) Subsequent Legislation

If, after the date 28 days prior to the latest date for submission of bids for the Contract there occur in the Country in which the Works are being or are to be executed changes to any National or State Statute, Ordinance, Decree or other Law or any regulation or by-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or by-law which causes additional or reduced cost to the Contractor, other than under the preceding Sub-Clauses of this Clause, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same shall already have taken into account in the indexing of any inputs to the Price Adjustment Formulae in accordance with the provisions of Sub-Clauses 70.1(F) to 70.7(F) of this Clause.”

Clause 72

Sub-Clause 72.2: Currency Proportions

Delete the words “and the Contractor has stated in the Appendix to Bid the proportions or amounts of other currency or currencies in which he requires payment to be made.”

Add second paragraph as follows:

“The foreign currency proportion of payments to the Contractor shall be as specified in the Appendix to Bid, except in the case of:

- (i) payments for Provisional Sums valued in accordance with Sub-Clause 58.2, when any foreign currency expenditure by the Contractor will be reimbursed in the foreign currency specified in the Appendix to Bid converted at the exchange rate applicable at the time when payment was made, and
- (ii) varied works as specified in Clause 52,
- (iii) the Employer accepting that there has been a substantial change to the Contractor’s foreign exchange proportions.

In the case of (iii) above, the foreign and local currency portions paid to the Contractor may be amended by the Employer to reflect any substantial changes to the expected foreign and local currency requirements of the Contractor during the execution of the Works, provided that:

- (a) the Contractor shall inform the Employer and the Engineer whenever it wishes to make a claim pursuant to this Sub-Clause detailing any such substantial change that it believes has occurred; or
- (b) the Engineer may recommend a review of such expected requirements if in his judgement there is evidence of a change in the country of origin of materials, Contractor's Plant or services to be provided under the Contract which should result in any substantial change of such expected requirements."

After Sub-Clause 72.3 add the following Clauses 73 to 81:

Clause 73: Taxation

Sub-Clause 73.1: Foreign Taxation

The Contract Price shall include all taxes, tariffs, duties and other charges imposed outside Sri Lanka on the personnel, production, manufacture, sale and transport of the Contractor's Equipment, Plant, materials and supplies to be used on or furnished under the Contract, and on the services performed under the Contract. No tax exemptions assumed in the Contract.

Sub-Clause 73.2: Local Taxation

The prices bid by the Contractor shall include all customs duties, import duties, business taxes, income and other taxes excluding VAT that may be levied in accordance to the laws and regulations in being as of the date 28 days prior to the closing date for submission of bids in the Employer's country on the Contractor's Equipment, Plant, materials and supplies (permanent, temporary and consumable) acquired for the purpose of the Contract and on the services performed under the Contract. Nothing in the Contract shall relieve the Contractor from his responsibility to pay any tax that may be levied in the Employer's country on profits made by him in respect of the Contract. The Contractor shall be deemed to be familiar with the tax laws in the Employer's country. No tax exemptions assumed in the Contract.

Sub-Clause 73.3: Income Tax on Contractor's Employees

The Contractor's Employees both local and foreign will be liable to pay personal income tax in Sri Lanka in respect of such of their salaries and wages as are chargeable under the laws and regulations for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws and regulations.

Sub-Clause 73.4: Duties on Contractor's Equipment

In addition to Sub-Clause 73.2, Contractor's Equipment, including essential spare parts thereof, imported by the Contractor for the sole purpose of executing the Contract shall not be exempt from the payment of import duties and taxes upon initial importation. Upon export of individual items of Contractor's Equipment or spare parts, or upon completion of the Contract, the Contractor shall prepare, for approval by the customs authorities, an assessment of the residual value of the Contractor's Equipment and spare parts to be exported, based on the depreciation scale(s). Taxes shall

be due and payable to the customs authorities by the Contractor on:

- (a) the difference between the initial imported value and the residual value of the Contractor's Equipment and spare parts to be exported; and
- (b) the initial imported value of that Contractor's Equipment and spare parts remaining in the Employer's country after the issue of the Defects Liability Certificate.

Clause 74: Bribes

Sub-Clause 74.1: Bribes

If the Contractor, or any of his Subcontractors, agents or servants gives or offers to give to any person any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any action in relation to the Contract or any other contract with the Employer, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or to any other contract with the Employer, then the Employer may enter upon the Site and the Works and terminate the employment of the Contractor and the provisions of Clause 63 hereof shall apply as if such termination had been made pursuant to that Clause.

Clause 75: Termination of Contract for Employer's Convenience

Sub-Clause 75.1: Termination of Contract for Employer's Convenience

The Employer shall be entitled to terminate this Contract at any time for the Employer's convenience after giving 56 days prior notice to the Contractor, with a copy to the Engineer. In the event of such termination, the Contractor:

- (a) shall proceed as provided in Sub-Clause 65.7; and
- (b) shall be paid by the Employer as provided in Sub-Clause 69.3.

Clause 76: Restrictions on Eligibility

Sub-Clause 76.1: Restrictions on Eligibility

There are no restrictions on eligibility of origin or nationality for the supply of any plant, materials or services to be incorporated into or used for the performance of the Works.

Clause 77: Joint and Several Liability

Sub-Clause 77.1: Joint and Several Liability

If the Contractor is a joint venture of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfilment of the terms of the Contract and shall designate one of such persons 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 Employer.

Clause 78: Details to be Confidential

Sub-Clause 78.1: Details to be Confidential

The Contractor shall treat the details of the Contract as private and confidential, save insofar as may be necessary for the purposes thereof, and shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere without the previous consent in writing of the Employer or the Engineer. If any dispute arises as to the necessity of any publication or disclosure for the purpose of the Contract the same shall be referred to the decision of the Employer whose award shall be final.

Clause 79: Customs and Security Requirements

Clause 79.1: Customs and Security Requirements

The Contractor shall comply with all regulations for the time being imposed by the Customs and Port Security Authorities in respect of the passage of Equipment, vehicles, materials, explosives, personnel through Customs and National Security barriers.

Clause 80: Media Releases

Clause 80.1: Media Releases

The Contractor shall not issue any information to any media nor issue any publication, document or article for publication concerning the project in any media without prior written approval of the Employer.

Clause 81: Damage to Services

Sub-Clause 81.1: Damage to Services

The Contractor shall be held liable for all damage and interference to drains and pipes, to electric cables or lines of any kind either above or below ground caused by him or his subcontractors in the execution of the Works. Should any damage be done to drains, pipes, wires, telegraph or electric light services etc., the Contractor must make good the same without delay and do any further work considered necessary by the Engineer.

When the utility agency (the nominated contractor) damaged the services due to his default, even with his reasonable care, the Engineer shall evaluate the repair cost and shall include it into the Provisional Sum, whether they are shown or not shown on the Drawings,

ANNEX A

DISPUTE ADJUDICATION BOARD

TERMS OF APPOINTMENT FOR A BOARD OF THREE MEMBERS

NOTE. Text in square brackets, viz. [], provides alternative wording for consideration of the signatories in the context and circumstance of the Project. The signatories should consider whether such alternatives are appropriate or require deletion or amendment.

These Terms of Appointment of a Board Member are made between:

- (1) Road Development Authority, 1st Floor “Sethsiripaya”, Battaramulla, Sri Lanka. (hereinafter called the “Employer”)

- (2) _____ (name of Contractor)
of _____
_____ (address of Contractor)
(hereinafter called the “Contractor”).

- (3) _____ (name of Board Member) of

_____ (address of Board Member)
(hereinafter called the “Board Member”).

WHEREAS

A. The Employer and the Contractor (hereinafter jointly referred to as the “Parties”) have on the day of _____ entered into a Contract (hereinafter called the “Contract”) for the execution of the construction and completion of the JBIC funded:

**Colombo Outer Circular Highway Project,
Northern Section-1,
Kadawatha (STA. 8+200) to Kaduwela (Sta.16+500)** (hereinafter called the “Project”).

B. By Sub-Clause 67.1 of the Conditions of Contract (hereinafter called the “Conditions”) provision is made for the constitution of a Dispute Adjudication Board (hereinafter called the “Board”) which shall comprise three suitably qualified persons as stated in the Appendix to Bid.

C. The Board Member has agreed to serve as [*one of the members of*] [*chairman of*] the Board on the terms set out herein.

NOW IT IS HEREBY AGREED as follows:

- 1. The Board Member:
 - (a) hereby accepts this appointment to the Board which is a personal appointment and agrees

to be bound by these Terms of Appointment and Sub-Clauses 67.1 and 67.2 of the Conditions as if they were set out herein; and

- (b) shall be entitled notwithstanding such acceptance to resign this appointment on giving reasonable notice to the Parties.
2. These Terms of Appointment when executed by the Parties and the Board Member shall take effect when the Parties and the last of the three members of the Board have executed terms of appointment.
3. The Board Member shall be and remain impartial and independent of the Parties and shall be under a continuing duty to disclose in writing to each of them and to the other members of the Board any fact or circumstance which might be such as to call into question his impartiality or independence.

Without prejudice to the generality of the foregoing, the Board Member:

- (a) shall have no interest financial or otherwise in either of the Parties or the Engineer as described in the Contract, or financial interest in the Contract except for payment for services on the Board;
 - (b) shall not previously have been employed as a consultant or otherwise by either of the Parties or the Engineer except in those circumstances which have been disclosed in writing to the Parties prior to this appointment.
 - (c) shall have disclosed in writing to the Parties and to the other members of the Board, prior to this appointment and to his best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Parties or the Engineer, and any prior involvement in the Project;
 - (d) shall not while a Board Member be employed as a consultant or otherwise by either of the Parties or the Engineer without the prior written consent of the Parties and the other members of the Board;
 - (e) shall not give advice to either of the Parties or to the Engineer concerning the conduct of the Project other than in accordance with the Procedural Rules annexed hereto as Appendix A (the "Rules"); and
 - (f) shall not while a Board Member enter into discussions or make any agreement with either of the Parties or the Engineer regarding employment by any of them whether as a consultant or otherwise after ceasing to be a Board Member.
4. The Board Member warrants that he is experienced in the type of work involved in the Project and the interpretation of contract documents and is, as well, fluent in the language of the Contract. The Board Member shall:

- (a) ensure his availability for all site visits and hearings as are necessary and shall observe the provisions of the Rules;
 - (b) become conversant with the Contract and the progress of the Project by studying all documents received which shall be maintained in a current working file;
 - (c) treat the details of the Contract and all activities and hearings of the Board as private and confidential and shall not publish or disclose the same without the prior written consent of the Parties;
 - (d) not assign, delegate or subcontract any of the tasks under these Terms of Appointment or the Rules;
 - (e) be available to give advice and opinions in conjunction with other members of the Board on any matter relevant to the Project not being a dispute when requested so to do by the Parties.
5. Neither the Employer, the Contractor nor the Engineer shall seek advice from or consultation with the Board Member regarding the Project otherwise than in the normal course of the Board's activities under the Contract and the Rules. The only exception to this prohibition shall be where the Parties jointly agree to do so and the other Board Members also agree. The Employer shall be responsible for ensuring the compliance by the Engineer with this Clause.
6. The Board Member will be paid as follows:
- (a) a retainer fee of _____ per calendar month, which shall be considered as payment in full for:
 - i. being available on 28 days' notice for all site visits and hearings;
 - ii. becoming and remaining conversant with all Project developments and maintaining relevant files;
 - iii. all office and overhead expenses such as secretarial services, photocopying and office supplies incurred in connection with his duties; and
 - iv. all services performed hereunder except those referred to in Sub-Clauses (b) and (c) below.

Beginning with the month following that in which the Taking-Over Certificate referred to in Sub-Clause 48.1 of the Conditions (or if there is more than one, the one last issued) has been issued, the Board Member shall receive *[only one half of the monthly retainer fee]*. *[Beginning with the next month after expiry of the defects liability Period as defined in the Conditions the Board Member shall no longer receive a monthly retainer fee]*;

- (b) a daily fee of _____ which shall be considered as payment in full for:
 - i. each day or part of a day up to a maximum of two days travel time in each

- direction for the journey between the Board Member's home and the Site or other location of a Board meeting;
- ii. each working day on site visits, hearings or preparing decisions; and
 - iii. each day spent reading the Parties' submissions in preparation for a hearing.
- (c) cost of telephone calls, courier charges, faxes and telexes incurred in connection with his duties; all reasonable and necessary travel expenses including [less than] first class airfare, subsistence and other direct travel expenses. These costs shall be reimbursed in the same currency as that in which fees are payable. Receipts shall be required for all expenses in excess of _____ percent of the daily fee referred to in Sub-Clause (b) above;
- (d) any taxes properly levied in the Country of the Site on payments made to the Board Member (unless a national or permanent resident of the country of the site) pursuant to this Clause 6. Such reimbursement will be in the same currency as that in which the fees are payable.

The retainer and daily fee shall remain fixed for the [initial] period of tenure of the Board Member [of twelve months]. [Thereafter they shall be adjusted by agreement between the Parties and the Board Member at each anniversary of the execution of these Terms of Appointment].

Payments to the Board Member shall be shared equally by the Employer and the Contractor. The Board Member shall submit invoices for payment of the monthly retainer quarterly in advance. Invoices for daily fees and expenses shall be submitted following the conclusion of a site visit or hearing. All invoices shall be accompanied by a brief description of activities performed during the relevant period and shall be addressed to the Contractor.

The Contractor shall pay Board Members' invoices within 56 calendar days after receipt of such invoices and shall invoice the Employer (through the monthly statements to be submitted in accordance with Sub-Clause 60.1 of the Conditions) for one-half of the amounts of such invoices.

The Employer shall pay such Contractor's invoices within the time period specified in the Contract for other payments to the Contractor by the Employer.

Failure of either the Employer or the Contractor to make payment in accordance with these Terms of Appointment shall constitute an event of default under the Contract, entitling the non-defaulting party to take the measures set forth, respectively, in Clause 63 or Clause 69.

Notwithstanding such event of default, and without waiver of rights therefrom, in the event that either the Employer or the Contractor fails to make payment in accordance with these Terms of Appointment, the other party may pay whatever amount may be required to maintain the operation of the Board. The party making such payment, in addition to all other rights arising from such default, shall be entitled to reimbursement of all sums paid in excess of one-half of the amount required to maintain operation of the Board, plus all costs of obtaining such sums and interest thereon.

In the event of non-discharge of Board Members' invoices in accordance with the previous paragraphs the Board Member may either suspend his services until the invoices are discharged or resign his appointment.

7. The Parties may jointly terminate the Board Member's appointment hereunder by reasonable notice in writing. Such termination shall be without prejudice to any accrued rights of either of the Parties or the Board Member.
8. The Parties undertake to each other and to the Board Member that the Board Member shall in no circumstances:
 - (a) be appointed as an arbitrator in any arbitration between the Parties in connection with the Contract unless the Parties agree otherwise in writing;
 - (b) be called as a witness to give evidence concerning any dispute before an arbitrator appointed under the Conditions unless he accepts such assignment in writing addressed to both Parties; or
 - (c) be liable for any claims for anything done or omitted in the discharge of such Board Member's functions unless the act or omission is shown to have been in bad faith.

The Parties hereby jointly and severally indemnify the Board Member against all or any such claims.

9. If the Board Member shall breach any of the provisions of Clause 3 he shall not be entitled to any fees or expenses hereunder he shall reimburse each of the Employer and the Contractor for any fees and expenses properly paid to him and to any other Board Member if as a consequence of such breach any proceedings or decisions of the Board are rendered void or ineffective.
10. These Terms of Appointment shall be governed by the law of Sri Lanka.
11. Any dispute or claim arising out of in connection with these Terms of Appointment or the breach, termination or invalidity thereof, shall be finally settled in accordance with the provisions of the Arbitration Act No.11 of 1995 of Sri Lanka.
12. The Employer will select a Board Member from the list nominated by ICTAD.

SIGNED by _____

SIGNED by _____

SIGNED by _____

OCH Northern Section-1

for and on behalf
of the Employer
in the presence of:

for and on behalf
of the Contractor
in the presence of:

by the Board Member
in the presence of:

Witness _____

Witness _____

Witness _____

Name: _____

Name: _____

Name: _____

Address: _____

Address: _____

Address: _____

Date: _____

Date: _____

Date: _____

ANNEX B

Procedural Rules of the Dispute Adjudication Board (of three members)

- i. The Board shall visit the Site at regular intervals [and/or at times of critical construction events] at the request of either the Employer or the Contractor, and in any event not less than [three] times in any twelve month period.
- ii. The timing of an agenda for each site visit shall be as agreed jointly by the Board, the Employer and the Contractor, or in the absence of agreement, shall be decided by the Board.
- iii. The purpose of site visits is to enable the Board to become and remain acquainted with the progress of the Project and of any actual or potential problems or claims.

Site visits shall be attended by the Employer, the Contractor and the Engineer and shall be coordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services.

At the conclusion of each site visit and before leaving the Site the Board shall prepare a report on its activities during the visit and shall send copies to those parties who attended.

- iv. The Employer and the Contractor shall furnish to each Board Member one copy of all documents which the Board may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract.
- v. If any dispute is referred to the Board in accordance with Sub-clause 67.2 of the Conditions, the Board shall proceed as described therein. The Board may in its discretion, among other things, conduct a hearing on the dispute in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing. Subject to the time imparted to the Board to give notice of a decision and other relevant factors, the Board shall afford to each of the Employer and the Contractor reasonable opportunity to present its case in relation to a dispute referred to the Board for decision.

The Board shall act as a Board of impartial experts, not arbitrators, and shall have full authority to conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those set out herein. [Without limiting the foregoing, the Board shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than the Employer, the Contractor and the Engineer and to proceed in the absence of any party who the Board is satisfied received notice of the hearing].

The Board shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. After a hearing is concluded the Board shall convene in private to formulate its decision.

[If a member fails to attend a meeting or hearing, or to fulfil any required function, the other two

members may nevertheless proceed and make decisions unless the absent member is the chairman and instructs the other two members not to proceed, or the Parties otherwise agree].

- vi. The Board shall give notice of its decision in writing to the Employer and the Contractor in accordance with Sub-clause 67.2 of the Conditions or as otherwise agreed by the Employer and the Contractor in writing.

The Board shall endeavour to reach decisions unanimously, but if this is impossible decisions shall be by a majority and the minority member may prepare a written report for submission to the Employer, the Engineer and the Contractor.

- vii. All communications between either of the Parties and a Board Member and all hearings shall be in the English language. All such communications shall be copied to the other Party and to other members of the Board.

