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SECTION I. INSTRUCTIONS TO BIDDERS

A. INTRODUCTION

1. Scope of Bid

- 1.1. The Purchaser, as specified in the Bid Data Sheet and in the Special Conditions of Contract (SCC), invites bids for the supply of Pharmaceuticals Raw Materials described in the Schedule of Requirements. The name and invitation for Bid number (IFB) of the Contract is provided in the Bid Data Sheet and in the SCC.
- 1.2. Throughout these bidding documents, the terms "writing" means any handwritten, typewritten, or printed communication, including facsimile transmission and "day" means calendar day. Singular also means plural.

2. Source of Funds

Goods will be financed as specified in **Bid Data Sheet**.

B. THE BIDDING DOCUMENT

3. Content of the Bidding Documents

- 3.1 The Bidding Documents are those stated below and should be read in conjunction with any Addendum issued in accordance with ITB Clause 6.
 - Section I. Instructions to Bidders (ITB)
 - Section II. Bid Data Sheet (BDS)
 - Section III. General Conditions of Contract (GCC)
 - Section IV. Special Conditions of Contract (SCC)
 - Section V. Sample Forms (including Contract Agreement & Supplier Approval Questionnaire)
 - Section VI. Schedule of Requirements
- 3.2 The Purchaser is not responsible for the completeness of the Bidding Document and its Addenda, if they were not obtained directly from the Purchaser.
- 3.3 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document, may result in the rejection of the Bid.

4. Eligibility

4.1 Except as provided in ITB Sub-Clause 4.2, this bidding process is **open to**:

- a. those prequalified firms, as defined in the Bid Data Sheet or schedule of requirement, where a prequalification process has been undertaken for the Contract(s) for which these Bidding Documents have been issued, or
- b. **all** firms, as defined in the edition specified by the Bid Data Sheet or schedule of, where a prequalification process has not been undertaken for the contract(s) for which these Bidding Documents have been issued.

4.2 Except suppliers who are black listed by the Purchaser or Purchaser's country are eligible for the bidding as mention in Bid Data sheet or schedule of requirement.

5. Clarification of Bidding Document

A Prospective Bidder requiring any clarification of the Bidding Document shall contact the Purchaser in writing at the Purchaser's address indicated in the **BDS**. The Purchaser will respond in writing to any request for clarification, provided that such request is received no later than twenty-one (21) days prior to the deadline for submission of Bids. The Purchaser shall forward copies of its response to all Bidders who have acquired the Bidding Document directly from it, including a description of the inquiry but without identifying its source. Should the Purchaser deem it necessary to amend the Bidding Document as a result of a clarification, it shall do so following the procedure under ITB 6 and 16.2

6. Amendment of Bidding Document

- 6.1 At any time prior to the deadline for submission of the Bids, the Purchaser may amend the Bidding Document by issuing Addenda.
- 6.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document directly from the Purchaser. Bidders are required to immediately acknowledge receipt of any such amendment, and it will be assumed that the information contained in the amendment will have been taken into account by the Bidder in its bid.
- 6.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Purchaser may, at its discretion, extend the deadline for the submission of the Bids, pursuant to ITB 16.2

C. PREPARATION OF BIDS

7. Cost of Bidding

The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Purchaser shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

8. Language of Bid

The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Purchaser, shall be written in the language specified in the **BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the **BDS**, in which case, for purposes of interpretation of the Bid, such translation shall govern.

9. Documents Constituting the Bid

9.1. The bid submitted by the Bidder shall comprise the following:

- (a) Duly filled Bid form & Statement of compliance, in accordance with the forms indicated in Section V; (This statement of compliance must be completed without any alteration to its format and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.)
- (b) original form of bid security in accordance with the provisions of ITB 13(Bid Security);
- (c) Duly filled Manufacturer Authorization Form
- (d) alternative offers, at the Bidder's option, when permitted;
- (e) written power of attorney or letter of authorization with a copy of Certified Resolution by the board of directors of the bidding company authorizing the signatory of the bid to commit the Bidder;
- (f) In the case of New Bidders including those who have not previously supplied the bidding item to the purchaser successfully – Duly filled "Supplier Approval Questionnaire" should be forwarded with the Bids. Also new Bidders must submit Raw material samples as per requested in the **Bid Data Sheet**

Or

In case of prequalified bidder, the Bidder shall submit related updated information between the date of pre-qualification up to the submission of bids in accordance with supplier approval questionnaire. (Only If happen major changes in Manufacturer)

- (g) any other documentation as requested in the **Bid Data Sheet**.

10. Alternative Bids

Unless otherwise indicated in the **BDS**, alternative bids shall not be considered.

11. Currencies of Bid

- 11.1 Bidder may express their bid price in any fully convertible currency. If a Bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but shall use no more than three currencies in addition to the currency of the Purchaser's country.
- 11.2 Bidders for the supply of goods manufactured in the purchaser's Country shall be quoted in currency of the Purchaser's country.

12. Period of Validity of Bids

- 12.1 Bids shall remain valid for the period specified in the **BDS** after the bid submission deadline date prescribed by the Purchaser. A Bid valid for a shorter period shall be rejected by the Purchaser as nonresponsive.
- 12.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Purchaser may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB 13, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its Bid.

13. Bid Security

- 13.1 Unless otherwise specified in the **Bid Data Sheet**, the Bidder shall furnish, as part of its bid, a bid security (as per format in section V) in the amount stipulated in the **Bid Data Sheet & Schedule of requirement** in the currency of the Purchaser's country, or the equivalent amount in a freely convertible currency.
- 13.2 The bid security shall remain valid for a period of 28 days beyond the validity period for the bid.
- 13.3 Bid security mentioned by **Bid Data Sheet** are acceptable.
- 13.4 The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract Agreement and furnished the required Performance Security.
- 13.5 The Bid Security may be forfeited :
 - a. If a Bidder withdraws its Bid during the period of bid validity specified by the Bidder on the Bid Submission Sheet, except as provided in ITB 12.2; or

- b. If the successful Bidder fails to:
 - I. Sign the Contract in accordance with ITB 29
 - II. Furnish a performance Security in accordance with ITB 30; or.
 - III. Accept the arithmetical correction in accordance with ITB 22.

14. Format and Signing of Bid

- 14.1 The Bidder shall prepare an original and the number of copies/sets of the bid indicated in the **Bid Data Sheet**, clearly marking each one as "ORIGINAL BID" and "COPY OF BID," as appropriate. In the event of any discrepancy between them, the original shall govern.
- 14.2 The original and all copies of the bid, each consisting of the documents listed in ITB Sub-Clause 9.1, shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the Contract. The later authorization shall be indicated by written power of attorney or letter of authorization, which pursuant to ITB Sub-Clause 9.1 (e) shall accompany the bid.
- 14.3 Any interlineation, erasures, or overwriting to correct errors made by the Bidder should be initialed by the person or persons signing the bid.
- 14.4 The Bidder shall furnish in the Bid Form (a sample of which is provided in the Sample Forms Section-V of the Bidding Documents) information regarding commissions or gratuities, if any, paid or to be paid to agents relating to this bid and to the execution of the Contract if the Bidder is awarded the Contract.

D. SUBMISSION AND OPENING OF BIDS

15. Sealing and Marking of Bids

- 15.1 The Bidder shall enclose the original and each copy of the bid including alternative bids, if permitted in accordance with ITB Clause 10, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." The envelopes containing the original and copies shall then be enclosed in another envelope.
- 15.2 The inner and outer envelopes shall:
 - a) bear the name and address of the Bidder;
 - b) be addressed to the Purchaser at the address given in the **Bid Data Sheet**;
 - c) bear the specific identification of this bidding process indicated in the **Bid Data Sheet**, the Invitation for Bids (IFB) title and number indicated in the **Bid Data Sheet**; and

- d) bear a statement "DO NOT OPEN BEFORE [date and time]" to be completed with the time and date specified in the Bid Data Sheet relating to ITB Sub-Clause 16.1.

- 15.3 If the outer envelope is not sealed and marked as required by ITB Sub-Clause 15.2, the Purchaser will assume no responsibility for the misplacement or premature opening of the bid.

16. Deadline for Submission of Bids

- 16.1 Bids must be received by the Purchaser at the address specified in the **Bid Data Sheet** relating to ITB Sub-Clause 15.2 (b) no later than the time and date specified in the **Bid Data Sheet**.
- 16.2 The Purchaser may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with ITB Sub-Clause 6.3, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline will thereafter be subject to the deadline as extended.

17. Late Bids

Any bid received by the Purchaser after the deadline for submission of bids prescribed by the Purchaser in the **Bid Data Sheet** pursuant to ITB Clause 16 will be rejected and returned unopened to the Bidder.

18. Withdrawal, Substitution, and Modification of Bids

- 18.1 Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written Notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 14.2 (except that Withdrawal Notices do not require copies). The corresponding substitution or modification of the Bid must accompany the respective written Notice. All Notices must be:
 - a. submitted in accordance with ITB Clauses 14 and 15 (except that Withdrawal Notices do not require copies), and in addition, the respective envelopes shall be clearly marked "Withdrawal," "Substitution," "Modification"; and
 - b. received by the Purchaser prior to the deadline prescribed for submission of bids, in accordance with ITB 16.
- 18.2 Bids requested to be withdrawn in accordance with ITB 18.1 shall be returned unopened to the Bidders.

19. Bid Opening

- 19.1 The Purchaser will open all bids, including withdrawal notices and modifications, in public, in the presence of Bidders' representatives who choose to attend, at the time, on the date, and at the place specified in the **Bid Data Sheet**. Bidders' representatives shall sign a register as proof of their attendance.
- 19.2 First, envelopes marked "WITHDRAWAL" shall be opened, read out, and recorded, and the envelope containing the corresponding Bid shall not be opened, but returned to the Bidder. If the withdrawal notice is not accompanied by a copy of the valid authorization pursuant to ITB 14.2, the withdrawal shall not be permitted and the corresponding Bid will be opened. Next, envelopes marked "SUBSTITUTION" shall be opened, read out, recorded, and exchanged for the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid shall be substituted unless the corresponding Substitution Notice contains a valid authorization to request the substitution and is read out and recorded at bid opening. Envelopes marked "MODIFICATION" shall be opened, read out, and recorded with the corresponding Bid. No Bid shall be modified unless the corresponding Modification Notice contains a valid authorization to request the modification and is read out and recorded at bid opening. Only envelopes that are opened, read out, and recorded at bid opening shall be considered further.
- 19.3 All other envelope shall be opened at a time, and the Officer who opens the Bids will read out (or cause to be read out) to those present, the name of each Bidder as well as the amount quoted together with discounts, if any. Whether a Bid security has been submitted or not shall also be announced. Details of the make-up of any Bid will not be read out.

E. EVALUATION AND COMPARISON OF BIDS

20. Confidentiality

- 20.1 Information relating to the examination, evaluation, comparison, and post qualification of Bids, and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until notification of contract award is made to all bidders.
- 20.2 Any attempt by a Bidder to influence the Purchaser in the examination, evaluation, comparison, and post qualification of the Bids or Contract award decisions may result in the rejection of its Bid.
- 20.3 From the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Purchaser on any matter related to its bid, it may do so in writing.

21. Clarification of Bids

To assist in the examination, evaluation, comparison and post-qualification of the Bids, the Purchaser may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder with regard to its Bid and that is not in response to a request by the Purchaser shall not be considered. The Purchaser's request for clarification and the response shall be in writing. No change in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the evaluation of the Bids, in accordance with ITB 22.

22. Correction of Arithmetical Errors

- 22.1. The Purchaser will examine the bids after opening, in order to ensure the correctness of the Bids. Arithmetical errors if any, will be corrected on the following basis. If a Bidder does not accept the correction of errors, its bid will be rejected and its bid security may be forfeited.
- (a) If discrepancy is between unit price and total price, then the unit price shall prevail and the total price will be corrected. Unless there is an obvious gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern, and the unit rate will be corrected.
 - (b) If discrepancy is between word and figures, the amount in word will prevail.
 - (c) If a discrepancy appears between the original bid and the duplicate, the original will prevail.

23. Conversion to Single Currency

- 23.1 To facilitate evaluation and comparison, the Purchaser will convert all bid prices expressed in the various currencies in to the currency of the Purchaser's country at the selling exchange rate established for similar transactions by the Central Bank in the Purchaser's country.

24. Evaluation of Bids

In addition to the price, conformity with the specifications, test results of the samples, nature and the quality of the past supplies and performance, Bid security, which are the current criteria, time schedule and responsiveness to the terms and conditions of the bid will also be taken into consideration with regard to the evaluation of bids.

F. AWARD OF CONTRACT

25. Award Criteria

Purchaser keeps the right to award partial quantities, request extra certificates from independent laboratories, extra samples, pre-shipment samples, and or may request 60 days DA terms without a price change for "Critical Items" from the bidders who had not been 'previous successful suppliers'. E.g.-If a supplier had been successful in supplying item 'A' that supplier is considered as a 'previous successful supplier' only for item 'A'

26. Purchaser's Right to Accept Any Bid and to Reject Any or All Bids

The Purchaser reserves the right to accept or reject any bid, or to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to the affected Bidder or Bidders.

For various reasons Purchaser may have to cancel orders placed by fax or indent or letter. Therefore, Purchaser reserves the right to cancel order or indents for quantities where a firm L/C has not been established.

27. Purchaser's Right to Vary Quantities at Time of Award

- 27.1 The Purchaser reserves the right at the time of Contract award to increase or decrease, by the percentage indicated in the **Bid Data Sheet**, the quantity of goods and services beyond that originally specified in the Schedule of Requirements without any change in unit price or other terms and conditions.

28. Notification of Award

- 28.1 Prior to the expiration of the period of bid validity, the Purchaser shall notify the successful Bidder, in writing, that its Bid has been accepted.
- 28.2 Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.

29. Signing of Contract

- 29.1 Promptly after the Purchaser notifies the successful Bidder that its bid has been accepted, the Purchaser will send the Bidder the Contract Form provided in the Bidding Documents, incorporating all agreements between the parties.
- 29.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Purchaser.

30. Performance Security

- 30.1 Within twenty-eight (28) days of the receipt of notification of award from the Purchaser, the successful Bidder shall furnish the performance security in accordance with the Conditions of Contract, using the Performance Security Form provided in the Bidding Documents, or in another form acceptable to the Purchaser.
- 30.2 Failure of the successful Bidder to comply with the requirement of ITB Clause 29 or ITB Sub-Clause 30.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security, in which event the Purchaser may make the award to the next-lowest evaluated bid submitted by a qualified Bidder or call for new bids.

SECTION II. BID DATA SHEET

Bid Data Sheet

The following specific data for the Goods to be procured shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions in the Bid Data Sheet (BDS) shall prevail over those in the ITB.

A. General	
ITB 1.1	<p>Name of Purchaser: State Pharmaceuticals Manufacturing Corporation</p> <p>About Purchaser: The State Pharmaceuticals Manufacturing Corporation of Sri Lanka (SPMC) is a fully Sri Lanka government owned organization engaged in the manufacturing of Pharmaceuticals for its own stock and distribution in the private sector, and for use in all government hospitals of the Department of Health. The procurement of pharmaceutical raw materials and laboratory chemicals etc, is done by the SPMC for the manufacturing of pharmaceuticals. Sealed Bids are invited from foreign and local manufacturers /suppliers or their accredited agents for the supply of the items indicated in schedule of Supply.</p> <p>Bidders could quote for one or more items indicated in the Schedule of requirement.</p>
ITB 1.1	Name of the contract : Supply of Pharmaceutical Raw Materials
ITB 1.1	IFB Number : SPMC/01/2021
ITB 2	Goods will be financed by the State Pharmaceuticals Manufacturing Corporation.
ITB 3	This Bidding process is open to : All the suppliers (International Competitive Bidding) as mentioned in Schedule of Requirement .
B. Biding Document	
ITB 5	<p>For clarification purposes only, the Purchaser's address is:</p> <p>Attention: DGM- Planning & Procurement</p> <p>Address: State Pharmaceuticals Manufacturing Corporation</p> <p style="padding-left: 40px;">No. 11, Sir John Kotalawala Road,</p> <p style="padding-left: 40px;">Kandawala Estate</p> <p style="padding-left: 40px;">Ratmalana.</p> <p>Country: Sri Lanka</p> <p>Telephone: +94-11-2637574,+94-11-2635353</p>

	<p>Facsimile number: +94-11-2626621</p> <p>Electronic mail address: spmclanka@sltnet.lk</p>
C. Preparation of Bids	
ITB 8	<p>The language of the Bid is: The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the SPMC, shall be written in English language.</p>
ITB 9 (g)	<p>In addition to the documents stated in Paragraphs 9 (a) through (f), the following documents must be included with the Bid : N/A</p>
ITB 9 (f)	<p><u>SAMPLES</u></p> <ul style="list-style-type: none"> (i) Representative samples in respect of items offered should be submitted to reach us on or before the deadline of submission of Bids. (ii) All prospective bidders are advised to submit their samples through their local agents to ensure compliance with this request. (iii) If the Bidder does not have a local agent then samples should be sent to "STATE PHARMACEUTICALS MANUFACTURING CORPORATION OF SRI LANKA, 11 ,Sir John Kotalawala Mawatha, Kandawala Estate, Ratmalana, Sri Lanka. A "No-Commercial Value Invoice" (indicating nominal value for custom's purpose only) together with analytical certificates should be attached to the consignee's copy of Air Waybill and a copy should also be sent direct to the State Pharmaceuticals Manufacturing Corporation, 11 Sir John Kotalawala Mawatha, Kandawala Estate, Ratmalana, Sri Lanka. All these documents and all sample packs should bear the IFB number (without which the Customs will not permit clearance.) (iv) Two samples in equal quantities (sufficient quantity for analysis) to be submitted for each item with the offer as one will be tested and the other be kept as a reference sample. Such samples submitted for each item should be from the same batch. (v) All samples should be properly labeled in the English language and the label must specify only the "IFB Number", and "Name of the item". Please submit samples along with a "Covering Letter" and the relevant "Original Certificate of Analysis". The name of the item, batch number, date of manufacture, date of expiry, shelf life and name and address of the manufacturer should be indicated in the "Original Certificate of Analysis" in addition to other relevant details. Samples without "Original Certificate of Analysis" may not be tested and such offer may not be considered. Any of the above details should not be inserted in to the sample material. (vi) Sample shall not be submitted enclosed in the Bid package. Sample shall submit separately before the deadline of submission of the Bids.

ITB10	<p>Alternative Bids permitted</p> <p><i>(Note: If alternative offers are permitted, the Bidder should mark the Bids as "Original Offer" and "Alternative Offer". Each individual offer should carry a separate bid Security. If these requirements are not met, bid that covered by the Bid Security will be accepted and scheduled. (Only the lower priced Bid).</i></p>
ITB 12	The bid validity period shall be 91 days after the deadline for bid submission.
ITB 13.1	<p>The Bidders shall furnish an unconditional bid security either in the form of a guarantee encashable on first written demand to the value stated against each item, as per the schedule of requirement. No foreign Government Organizations are exempted from this requirement. Bid security shall be submitted either together with the bid or to reach us on or before the closing of Bid. Bids without bid security, (where necessary) will be rejected. The bid security shall be in the form of an unconditional guarantee issued by an approved commercial bank operating in Sri Lanka. The bid security should be valid for at least 28 days beyond the validity of the offer.</p>
ITB 13.3	<p>Bid security issued by the following Institutions are acceptable:-</p> <ol style="list-style-type: none"> A Commercial bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka. A bank based in another country but the security or guarantee "Confirmed" by a commercial bank operating in Sri Lanka mentioned in "a" above. A letter of credit issued by a foreign bank, but "Confirmed" by a Commercial Bank operating in Sri Lanka mentioned in "a" above. Any other agency approved by the treasury from time to time. <p>Securities and guarantees shall be unconditionally encashable, on the receipt of first written request from the executing agency (on demand securities and guarantees)</p> <p>In addition to the above, the following can also be accepted.</p> <ol style="list-style-type: none"> Cash deposit Bank draft <p>Personal cheque or company cheque are not accepted as bid security.</p>
ITB 14.1	In addition to the original of the Bid, the number of copies is: 01

	D. Submission and Opening of Bids
ITB 15	<p>Bids shall be submitted in one original and one Copy sealed separately and marked as 'Original' and 'Copy' respectively. Both envelopes shall together be enclosed in one envelope sealed and addressed to Chairman – Procurement Committee, State Pharmaceuticals Manufacturing Corporation, No.11, Sir John Kothalawala Mw, Kandawala Estate, Ratmalana, Sri Lanka. Offers which are not accompanied by Copy and not giving item numbers are liable to be rejected. In the event of any discrepancy between the original and the copies, the original shall prevail.</p> <p>Bidder may always submit their bids by Post or by hand delivery. Bidders, if sent through the Post should be sent under registered cover. The Bidder or his agent may also personally deposit sealed Bids in the Tender Box kept for this purpose at the State Pharmaceuticals Manufacturing Corporation, Ratmalana.</p> <p>The left-hand top-corner of the envelope should indicate the IFB number and the closing date of Bid. Bids should be received on or before the closing date & time of Bid. Late Bids will not be entertained under any circumstances and will be unopened & returned to Bidders. The SPMC shall NOT accept responsibility for the Bid misplacement or premature opening of offers if the cover has not been marked as given above.</p>
ITB 15.2(b)	<p>For bid submission purposes only, the Purchaser's address is :</p> <p>Attention: : Chairman – Procurement Committee, State Pharmaceuticals Manufacturing Corporation,</p> <p>Street Address : No.11, Sir John Kothalawala Mw, Kandawala Estate, City: Ratmalana,</p> <p>Country: Sri Lanka</p>
ITB16.1	<p>The deadline for bid submission is:</p> <p>Date : 06.04.2021 Time : 10.00 a.m.</p>
ITB 19.1	<p>The bid opening shall take place at:</p> <p>Place: State Pharmaceuticals Manufacturing Corporation, Street Address : No.11, Sir John Kothalawala Mw, Kandawala Estate, City: Ratmalana, Country: Sri Lanka Date : 06.04.2021 Time: 10.00 a.m.</p>
	E. Evaluation, and Comparison of Bids
ITB 23	<p>Bid prices quoted in different currencies shall be converted into :</p> <p>The source of the selling exchange rate shall be :</p>

	The date for the selling exchange rate shall be :
	F. Award of Contract
ITB 27	The corporation reserves the right, at time of award to increase or decrease the quantity required, by 25% without any change in price or other terms and conditions. Where a supplier is Bidding for a product which has not been supplied before, the Procurement Committee reserves the right to purchase only part of the quantity from such supplier, and to purchase the balance quantity from another manufacturer who has successfully supplied same item previously. However, in such cases the price offered by such supplier for the total amount should be maintained for the smaller quantity.

SECTION III. GENERAL CONDITIONS OF CONTRACT

1. Definitions

1.1 Unless the context otherwise required, capitalized terms used in this Contract and the ancillary documents, shall have the meaning ascribed to each of them herein below:

- (a) "The Contract" means the agreement entered into between the Purchaser and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) "The Contract Price" means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations.
- (c) "Day" means calendar day.
- (d) "GCC" means the General Conditions of Contract contained in this section.
- (e) "The Goods" means all of the pharmaceuticals raw materials that the Supplier is required to supply to the Purchaser under the Contract.
- (f) "The Purchaser" means the organization purchasing the Goods, as **named in the SCC**.
- (g) "The Purchaser's country" is the country **named in the SCC**.
- (h) "SCC" means the Special Conditions of Contract.
- (i) "The Supplier" means the individual or firm supplying the Goods and Services under this Contract, as **named in the SCC**.
- (j) "SPMC" means the State Pharmaceuticals Manufacturing Corporation of Sri Lanka.

2. Application

2.1. These General Conditions shall apply to the extent that they are not superseded by provisions of other parts of the Contract.

3. Standards

3.1. The Goods supplied under this Contract shall conform to the standards & Specifications mentioned in the schedule of requirement and, when no applicable standard is mentioned, to the authoritative standards appropriate to the Goods' country of origin. Such standards shall be the latest issued by the concerned institution.

4. Patent Rights.

4.1. The Supplier shall indemnify the Purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in the Purchaser's country.

5. Performance Security

5.1. Within twenty-eight (28) days of receipt of the notification of Contract award, the successful Bidder shall furnish to the Purchaser the performance security in the amount **specified in the SCC.**

5.2. The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

5.3. The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Purchaser, and shall be in one of the following forms:

- a. A bank guarantee or Letter of credit issued by a Commercial bank located in the Purchaser's country approved by the Central Bank of the Purchase's or a foreign bank, but "confirmed" by a Commercial bank operating in purchaser country, acceptable to the Purchaser, in the format provided in the Bidding Documents (Section -V) or another format acceptable to the Purchaser; or
- b. A cashier's or certified cheque. (Personal cheque or company cheque are not accepted as performance security.)

5.4. The performance security will be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless **specified otherwise in the SCC.**

6. Inspections and Tests

6.1. The Purchaser or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications. The SCC and the Technical Specifications shall specify what inspections and tests the Purchaser requires and where they are to be conducted. The Purchaser shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.

- a. Said inspection and testing is for the Purchaser's account. In the event that inspection and testing is required prior to dispatch, the Goods shall not be shipped unless a satisfactory inspection and quality control report has been issued in respect of those Goods.
- b. The Supplier may have an independent quality test conducted on a batch ready for shipment. The cost of such tests will be borne by the Supplier.
- c. Upon receipt of the Goods at place of final destination, the Purchaser's representative shall inspect the Goods or part of the Goods to ensure that they conform to the condition of the Contract.

6.2. Where the Supplier contests the validity of the rejection by the Purchaser or his representative, of any inspection as required by 6.1 above conducted before shipment or at ultimate destination, whether based on product or packing grounds, a sample drawn jointly by the Supplier and Purchaser or his or her representative and authenticated by both, within 30 calendar days after giving the notice by buyer, if the supplier fail to do so within the stipulated time buyer will draw the sample and, will be forwarded for analysis to NDQAL (National Drug Quality Assurance Laboratory) of Sri Lanka. If the item cannot be tested by the NDQAL supplier contests to an independent agency mutually agreed by the purchaser and supplier. The umpire's finding, which will be promptly obtained, will be final and binding on both parties. The cost of umpire analysis will be borne by the losing party.

7. Packing

- 7.1. The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt, and precipitation during transit and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.
- 7.2. The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, **specified in the SCC**, Technical Specifications or Schedule of requirement, and in any subsequent instructions ordered by the Purchaser.

8. Delivery and Documents

- 8.1. Delivery of the Goods shall be made by the Supplier in accordance with the terms specified in the Schedule of Requirements. The details of shipping and/or other documents to be furnished by the Supplier are **specified in the SCC**.
- 8.2. For purposes of the Contract, "EXW," "FOB," "FCA," "CIF," "CIP," and other trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current edition of *Incoterms* published by the International Chamber of Commerce, Paris.
- 8.3. Documents to be submitted by the Supplier are **specified in the SCC**. *Incoterms* provides a set of international rules for the interpretation of the more commonly used trade terms.

9. Insurance

- 9.1. The Goods supplied under the Contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery in the manner **specified in the SCC**.
- 9.2. Where delivery of the Goods is required by the Purchaser on a CIF or CIP basis, the Supplier shall arrange and pay for cargo insurance, naming the Purchaser as beneficiary. Where delivery is on an FOB, C&F, CPT or FCA basis, insurance shall be the responsibility of the Purchaser.

10. Warranty

- 10.1. All goods must be of fresh manufacture and must bear the dates of manufacture and expiry.

The Supplier further warrants that all Goods supplied under the Contract will have remaining a minimum of two-third (2/3) of the residual shelf life at the time of receipt in Sri Lanka, unless otherwise **specified in the SCC**; have "overages" within the ranges set forth in the Technical Specifications, where applicable; are not subject to recall by the applicable regulatory authority due to unacceptable quality or an adverse drug reaction; and in every other respect will fully comply in all respects with the Technical Specifications and with the conditions laid down in the Contract.

- 10.2. The Purchaser shall have the right to make claims under the above warranty for three months after the Goods have been delivered to the final destination indicated in the Contract. Upon receipt of a written notice from the Purchaser, the Supplier shall, with all reasonable speed, replace the defective Goods without cost to the Purchaser. The Supplier will be entitled to remove, at his own risk and cost, the defective Goods once the replacement Goods have been delivered.

- 10.3. In the event of a dispute by the Supplier with regard to defective Goods, a counter analysis will be carried out on the manufacturer's retained samples by an independent neutral laboratory agreed by both the Purchaser and the Supplier. If the counter analysis confirms the defect, the cost of such analysis will be borne by the Supplier as well as the replacement and disposal of the defective goods. In the event of the independent analysis confirming the quality of the product, the Purchaser will meet all costs for such analysis.
- 10.4. If, after being notified that the defect has been confirmed pursuant to GCC Sub-Clause 10.2 above, the Supplier fails to replace the defective Goods within the period **specified in the SCC**, the Purchaser may proceed to take such remedial action as may be necessary, including removal and disposal, at the Supplier's risk and expense and without prejudice to any other rights that the Purchaser may have against the Supplier under the Contract and by law. The Purchaser will also be entitled to claim for storage in respect of the defective Goods for the period following notification and deduct the sum from payments due to the Supplier under this Contract.
- 10.5. *Recalls.* In the event any of the Goods are recalled, the Supplier shall notify the Purchaser within fourteen (14) days, providing full details of the reason for the recall and promptly replace, at its own cost, the items covered by the recall with Goods that fully meet the requirements of the Technical Specification and arrange for collection or destruction of any defective Goods. If the Supplier fails to fulfill its recall obligation promptly, the Purchaser will, at the Supplier's expense, carry out the recall.

11. Payment

- 11.1. The method and conditions of payment to be made to the Supplier under this Contract shall be **specified in the SCC**.

12. Prices

- 12.1. Prices charged by the Supplier for Goods delivered and Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any price adjustments **authorized in the SCC** or in the Purchaser's request for bid validity extension, as the case may be.

13. Change Orders

13.1. The Purchaser may at any time, by a written order given to the Supplier pursuant to GCC Clause 26, make changes within the general scope of the Contract in any one or more of the following:

- (a) specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
- (b) the method of shipment or packing;
- (c) the place of delivery; and/or

13.2. If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or delivery schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this clause must be asserted within thirty (30) days from the date of the Supplier's receipt of the Purchaser's change order.

14. Contract Amendments

14.1. Subject to GCC Clause 13, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

15. Assignment

15.1. The Supplier shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Purchaser's prior written consent.

16. Delays in the Supplier's Performance

16.1. Delivery of the Goods and performance of Services shall be made by the Supplier in accordance with the time schedule prescribed by the Purchaser in the Schedule of Requirements.

16.2. If at any time during performance of the Contract, the Supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods and performance of Services, the Supplier shall promptly notify the Purchaser in writing of the fact of the delay, its likely duration, and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of Contract.

16.3. Except as provided under GCC Clause 19, a delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 17, unless an extension of time is agreed upon pursuant to GCC Clause 16.2 without the application of liquidated damages.

17. Liquidated Damages

- 17.1. Subject to GCC Clause 19, if the Supplier fails to deliver any or all of the Goods or to perform the Services within the period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage **specified in the SCC** of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage **specified in the SCC**. Once the maximum is reached, the Purchaser may consider termination of the Contract pursuant to GCC Clause 18.

18. Termination for Default

- 18.1. The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate this Contract in whole or in part:
- (a) if the Supplier fails to deliver any or all of the Goods within the period(s) specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 16; or
 - (b) if the Goods do not meet the Technical Specifications stated in the Contract; or
 - (c) if the Supplier fails to provide any registration or other certificates in respect of the Goods within the time specified in the Special Conditions.
 - (d) if the Supplier, in the judgment of the Purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this clause:

“corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in Contract execution.

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a Contract to the detriment of the Purchaser, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial noncompetitive levels and to deprive the Purchaser of the benefits of free and open competition.

- (e) if the Supplier fails to perform any other obligation(s) under the Contract.
- 18.2. In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 18.1, the Purchaser may procure from a third party, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Purchaser for any excess costs for such similar Goods or Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

19. Force Majeure

- 19.1. Notwithstanding the provisions of GCC Clauses 16, 17, and 18, the Supplier shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 19.2. For purposes of this clause, "Force Majeure" means an event beyond the control of the Supplier and not involving the Supplier's fault or negligence and not foreseeable. Such events may include, but are not restricted to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 19.3. If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

20. Termination for Insolvency

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

21. Termination for Convenience

- 21.1. The Purchaser, by 30 days prior written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time without cause. The notice of termination shall specify, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- 21.2. The Goods that are complete and ready for shipment within thirty (30) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
 - (a) to have any portion completed and delivered at the Contract terms and prices; and/or
 - (b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Services and for materials and parts previously procured by the Supplier.

22. Settlement of Disputes

- 22.1. If any dispute or difference of any kind whatsoever shall arise between the Purchaser and the Supplier in connection with or arising out of the Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 22.2. If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Purchaser or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.
- 22.2.1. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract.
- 22.2.2. Arbitration proceedings shall be conducted in accordance with the rules of procedure **specified in the SCC**.
- 22.3. Notwithstanding any reference to arbitration herein,
- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
 - (b) the Purchaser shall pay the Supplier any monies due the Supplier.

23. Limitation of Liability

- 23.1. Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 4,
- (a) the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser and
 - (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

24. Governing Language

- 24.1. The Contract shall be written in the language **specified in the SCC**. Subject to GCC Clause 25, the version of the Contract written in the specified language shall govern its interpretation. All correspondence and other documents pertaining to the Contract that are exchanged by the parties shall be written in the same language.

25. Applicable Law

- 25.1. The Contract shall be interpreted in accordance with the laws of the Purchaser's country, unless otherwise **specified in the SCC**.

26. Notices

- 26.1. Any notice given by one party to the other pursuant to this Contract shall be sent to the other party in writing or by facsimile and confirmed in writing to the other party's address **specified in the SCC**.
- 26.2. A notice shall be effective when delivered or on the notice's effective date, whichever is later.

SECTION IV. SPECIAL CONDITIONS OF CONTRACT

Special Conditions of Contract

The following Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract. The corresponding clause number of the GCC is indicated in parentheses.	
1. Definitions (GCC Clause 1)	
GCC1.1 (f)	The Purchaser is: State Pharmaceutical Manufacturing Corporation
GCC1.1(g)	The Purchaser's country is: Democratic Socialist Republic of Sri Lanka
2. Application (GCC Clause 2)	
GCC 2	<i>"There are no Special Conditions of Contract applicable to GCC 2."</i>
3. Standards (GCC Clause 3)	
GCC 3	<i>"There are no Special Conditions of Contract applicable to GCC 3."</i>
4. Patent Rights (GCC Clause 4)	
GCC 4	<i>"There are no Special Conditions of Contract applicable to GCC 4."</i>
5. Performance Security (GCC Clause 5)	
GCC 5	<p>The successful bidder shall within 28 days from the notification of award submit an unconditional Performance security upto 10% of the total value of award. Failure to comply with this request shall constitute sufficient grounds for the SPMC to cancel such award and forfeit the bid security. Letters forwarding the performance security should be addressed to the Chairman – Procurement Committee, State Pharmaceuticals Manufacturing Corporation No. 11, Sir John Kotalawala Mw, Kandawala Estate, Ratmalana.</p> <p>The validity of the performance security Shall be ninety (90) calendar days from the date of goods received by SPMC or as indicated in the indent. whichever is higher.</p> <p>Claims on the performance security will be made by us in the very first instance the supplier fails to comply with the terms and conditions of contract and/or L/C.</p>
6. Inspection and Tests (GCC Clause 6)	
GCC6.1 (b)	We reserve the right to nominate independent competent authorities for the issue of pre-shipment Inspection certificate (Certificate of quality, quantity & loading). In such event, the cost of such certificate must be borne by the supplier
7. Packing (GCC Clause 7)	
GCC7.1	<p>PACKING AND STORAGE CONDITIONS</p> <p>(i) Pack size offered should conform to SPMC requirements. Bids for alternate pack sizes may be rejected. Export-worthy packing which will prevent damage in transit should be used. Details of nature of packing should be given.</p> <p>(ii) Packing of all items should be suitable for storage and use under tropical conditions. Final export packing should indicate the required storage temperature for goods which require refrigeration / cool room / freezer storage enable the cargo handling staff at the Port of Colombo or transshipment Port to arrange proper storage for such goods immediately on arrival.</p>