

BIDDING DOCUMENT FOR SUPPLY OF COAL



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FOR

**LAKVIJAYA POWER PLANT
CEYLON ELECTRICITY BOARD**



October 2022 – January 2023

Spot Tender (ST-1) No: LCC/22-23/ST/29/1

SECTIONS

- SECTION 1 - INVITATION FOR BIDS**
- SECTION 2 - INSTRUCTIONS TO BIDDERS**
- SECTION 3 - CONDITIONS OF CONTRACT**
- SECTION 4 - COAL SUPPLY AGREEMENT (DRAFT)**
- SECTION 5 - SCHEDULES**
- SECTION 6 - ANNEXURES**
- SECTION 7 - DEFINITIONS**

FOR INFORMATION PURPOSE ONLY

CONTENTS

1.0 INVITATION FOR BIDS	8
1.1 INVITATION.....	8
1.2 INTRODUCTION.....	8
1.3 BIDDING DOCUMENTS.....	8
1.4 SUBMISSION OF BIDS.....	8
1.5 LATE BIDS.....	8
1.6 BID SECURITY.....	8
1.7 BID OPENING.....	9
1.8 BIDDING PROCEDURE	9
2.0 INSTRUCTIONS TO BIDDERS (ITB)	11
2.1 BID DATA SHEET (BDS).....	11
2.2 INTRODUCTION.....	12
2.2.1 SOURCE OF FUNDS	12
2.2.2 QUANTITY AND PRICE	12
2.2.3 PAYMENT TERMS	12
2.2.4 QUALITY	12
2.2.5 DELIVERY SCHEDULE	12
2.2.6 COST OF BIDDING	13
2.3 THE BIDDING DOCUMENTS	13
2.3.1 LIST OF BIDDING DOCUMENTS	13
2.3.2 CLARIFICATIONS OF BIDDING DOCUMENT AND PRE-BID MEETING	14
2.3.2.1 CLARIFICATIONS OF BIDDING DOCUMENT	14
2.3.2.2 PRE-BID MEETING	14
2.3.3 AMENDMENT OF BIDDING DOCUMENTS	14
2.4 PREPARATION OF BID	14
2.4.1 LANGUAGE OF BID	14
2.4.2 CONFIDENTIALITY OF BIDDING	15
2.4.3 DOCUMENTS TO BE SUBMITTED BY BIDDERS	15
2.4.4 FORM OF BID AND PRICE PROPOSAL	15
2.4.5 BID PRICE	16
2.4.6 BID CURRENCY	16
2.4.7 BID SECURITY	16
2.4.8 VALIDITY OF BIDS	17
2.4.9 FORMAT AND SIGNING OF BID	17
2.5 SUBMISSION OF BIDS.....	17
2.5.1 SUBMISSION, SEALING AND MARKING OF BIDS	17
2.5.2 DEADLINE FOR SUBMISSION OF BIDS	18
2.5.3 LATE BIDS	18

2.5.4	MODIFICATONS AND WITHDRAWALS	18
2.6	BID OPENING AND EVALUATION	19
2.6.1	OPENING OF BIDS	19
2.6.2	CLARIFICATIONS OF BID	19
2.6.3	EVALUATION OF BID	19
2.6.3.1	CORRECTION OF ARITHMETICAL ERRORS:	20
2.6.3.2	CURRENCY CONVERSION (for evaluation purpose only)	20
2.6.4	MAJOR DEVIATION	21
2.6.5	CONTRACTUAL AND COMMERCIAL ALTERNATIVES – NOT APPLICABLE	21
2.6.6	CONTACTS WITH LCC	21
2.7	AWARD OF CONTRACT	21
2.7.1	ACCEPTABILITY –BUYER’S RIGHTS TO ACCEPT ANY BIDS AND TO REJECT ANY OR ALL BIDS	21
2.7.1.1	AWARD CRITERIA TO SUCCESSFUL BIDDER	21
2.7.1.2	INTIMATION TO UNSUCCESSFUL BIDDERS AND APPEAL CRITERIA	22
2.7.1.3	CRITERIA FOR AWARDING OF FREIGHT COMPONENT	22
2.7.2	NOTIFICATION OF AWARD AND SIGNING OF THE CONTRACT	22
2.7.3	PERFORMANCE SECURITY	22
2.8	COMPETENCY AND QUALIFICATIONS CRITERIA	23
2.8.1	JOINT VENTURE of COMPANIES including PARTNERSHIPS and/or ASSIGNEES	23
2.8.2	INDIVIDUAL / JOINT VENTURE BIDDERS	23
2.8.3	QUALIFICATION OF BIDDERS (INDIVIDUAL / JOINT VENTURE)	23
3.0	CONDITIONS OF CONTRACT	28
3.1	SHIPPING AND TRANSPORT ARRANGEMENTS AND PLACE OF ORIGIN	28
3.2	WEIGHT DETERMINATION AND COST OF DRAFT SURVEYING	28
3.3	TRANSFER OF TITLE AND RISK OF LOSS	28
3.3.1	FOB TRIMMED (LOADING PORT) AND CFR (PUTTALAM ANCHORAGE) BASIS	28
3.3.2	INCOTERMS	28
3.4	QUALITY	29
3.4.1	UNIFORM QUALITY; NO FOREIGN MATTER	29
3.4.2	HANDLING CHARACTERISTICS	29
3.4.3	FAILURE TO MEET SPECIFICATION	29
3.4.4	ORGANIC CONTAMINANTS	29
3.5	DETERMINATION OF QUALITY OF COAL DELIVERED	30
3.5.1	STANDARDS OF THE ANALYSIS AND SELECTION OF INDEPENDENT SURVEYOR AT PORTS ... 30	
3.5.2	DETERMINATION OF QUALITY AND ACCEPTENCE OF COAL FOR UNLOADING	31
3.5.3	TESTING OF THE REFERENCE SAMPLE	31
3.5.4	COST OF SAMPLING	31
3.5.5	PROVISION OF ANALYSIS	31
3.6	INVOICING	32

3.6.1	PAYMENT	33
3.7	FORCE MAJEURE.....	34
3.7.1	DEFINITION	34
3.7.2	EFFECTS OF FORCE MAJEURE	34
3.7.3	CERTAIN DELAYS NOT EXCUSED	34
3.7.4	NOTICE OF FORCE MAJEURE; PROCEDURE	35
3.8	FAILURE TO DELIVER	35
3.8.1	LIQUIDATED DAMAGES DUE TO DELAYS AND FAULRE TO DELIVER COAL	35
3.8.2	SUBSTITUTE COAL	36
3.8.3	ADDITIONAL COSTS	36
3.9	WARRANTIES AND COVENANTS	36
3.9.1	WARRANTIES BY BUYER	36
3.9.2	WARRANTIES BY SELLER	36
3.10	EVENTS OF DEFAULT	37
3.10.1	SELLER EVENTS OF DEFAULT	37
3.10.2	BUYER EVENTS OF DEFAULT	38
3.11	TERMINATION.....	38
3.12	CONSEQUENCES OF DEFAULT	39
3.13	LIMITS OF LIABILITY	39
3.13.1	NO CONSEQUENTIAL LOSS	39
3.14	SITE VISITS.....	39
3.15	CONFIDENTIALITY.....	39
3.16	ENVIRONMENTAL CONSIDERATIONS	40
3.17	PERFORMANCE SECURITY.....	40
3.18	NO ASSIGNMENT.....	40
3.19	MUTUAL COLLABORATION	40
3.20	DISPUTES AND ARBITRATION	40
3.21	GOVERNING LAW.....	41
3.22	NO WAIVER; CUMULATIVE REMEDIES.....	41
3.23	JOINT VENTURE / PARTNERSHIP OR AGENCY.....	41
3.24	COSTS.....	42
4.0	COAL SUPPLY AGREEMENT (DRAFT)	44
4.1	CONDITIONS PRECEDENT	44
4.2	TERMS OF THE AGREEMENT.....	44
4.3	DOCUMENTS CONSTITUTING THE COAL SUPPLY AGREEMENT.....	44
4.4	DETERMINATION AND ADJUSTMENT OF PRICE OF COAL	45
4.5	DELIVERY SCHEDULE REFERENCE – AS MENTIONED IN CLAUSE 2.2.5	45

4.6	NOTICES.....	45
4.7	ENTIRE AGREEMENT	46
4.8	SEVERABILITY.....	46
4.9	SURVIVAL.....	46
5.0	SCHEDULES.....	49
5.1 :	LCC STANDARD VALUES FOR COAL.....	49
5.2:	LCC REJECT VALUES FOR COAL	50
5.3:	APPROVED MEASUREMENT STANDARDS.....	51
5.4:	PRICE VARIATION – NOT APPLICABLE.....	52
5.5:	QUALITY PRICE ADJUSTMENTS	53
5.6:	METHOD OF QUALITY PRICE ADJUSTMENT IN CASE OF REJECTION OF COAL QUALITY ANALYSIS REPORT OF A SHIPMENT AT THE DISCHARGE PORT AS PER CLAUSE 3.4.3 (B).	57
5.7:	GENERAL SHIPPING TERMS	61
5.8:	SHIPPING TERMS ON CFR BASIS UP TO THE DISCHARGING ANCHORAGE	65
5.9	: SHIPPING TERMS ON FOB TRIMMED BASIS	69
5.10:	FORM FOR SELLERS PERFORMANCE SECURITY	74
5.11:	: DOCUMENTS REQUIRED FOR OPENING NRRA AND EA.....	75
5.12:	DOCUMENTS REQUIRED FOR LETTER OF CREDIT (LC): NOT APPLICABLE	75
5.13 :	ADDITIONAL CONDITIONS FOR LETTER OF CREDIT (LC): NOT APPLICABLE.....	75
5.14:	DOCUMENTS REQUIRED FOR CERTIFICATE OF UNLOADING AT PUTTALAM ANCHORAGE ..	76
5.15:	DOCUMENTS REQUIRED FOR PAYMENT (CFR/FOB).....	77
5.16:	DRAFT SPECIMEN FOR CERTIFICATE OF UNLOADING (COU).....	78
5.17:	DRAFT SPECIMEN LETTER OF CONFIRMATION FOR THE PAYMENT (FOB/CFR)	79
6.0	ANNEXURE	81
6.1. ANNEXURE 1	: FORM OF BID.....	81
6.2. ANNEXURE 2	: SPECIMEN FORM OF BID SECURITY.....	82
6.3. ANNEXURE 3A	: FORM OF POWER OF ATTORNEY.....	83
6.3. ANNEXURE 3B	: FORM OF POWER OF ATTORNEY FOR A AFFILIATE/JV PARTNER/PARTNER / ASSIGNEE TO PARTICIPATE PERFORM THE TENDER LCC/22-23/ST/29/1	84
6.4. ANNEXURE 4	: REMEDY FOR FALSE STATEMENT	85
6.5. ANNEXURE 5	: PRICE PROPOSAL	86
6.6. ANNEXURE 6	: ADDENDA RECEIPT	88
6.7. ANNEXURE 7	: STATEMENT OF BIDDER.....	89
6.8. ANNEXURE 8	: EXPERIENCE OF COAL SUPPLY	91

6.9. ANNEXURE 9 : FINANCIAL STATUS AND BANKING INFORMATION OF BIDDER 95

6.10. ANNEXURE 10 : LITIGATION AGAINST THE BIDDER..... 97

7.0 DEFINITIONS.....99

FOR INFORMATION PURPOSE ONLY

SECTION 1	-	INVITATION FOR BIDS
SECTION 2	-	INSTRUCTIONS TO BIDDERS
SECTION 3	-	CONDITIONS OF CONTRACT
SECTION 4	-	COAL SUPPLY AGREEMENT (DRAFT)
SECTION 5	-	SCHEDULES
SECTION 6	-	ANNEXURES
SECTION 7	-	DEFINITIONS

FOR INFORMATION PURPOSE ONLY

1.0 INVITATION FOR BIDS

DATE OF ISSUE : **29/09/2022**

TENDER NUMBER : **LCC/22-23/ST/29/1**

TITLE : **Supply of 300,000 MT +/- 10% of Coal for Lakvijaya Power Plant, Sri Lanka for October 2022 – January 2023**

1.1 INVITATION

Chairman, Special Standing Cabinet Appointed Procurement Committee (hereinafter referred to as "SSCAPC") of Ministry of Power invites bids for the supply of coal (Spot Tender at fixed price) for the 900MW Lakvijaya Coal Power Plant (the Plant) from registered coal suppliers and any other prospective coal suppliers (Local or international) who is able to meet the qualifications criteria set out in clause 2.8 of this to submit a Bid. This invitation is extended by the Lanka Coal Company (Private) Limited (hereinafter referred to as "LCC") on behalf of SSCAPC.

1.2 INTRODUCTION

LCC is the authorized agency for supply of coal for 3x300MW Lakvijaya Coal Power Plant located in the west coast of Sri Lanka. LCC was incorporated in January 2008 for the procurement of coal to meet full requirement of coal for all coal-fired power stations in the Country. Shares of the Company are held by the Ceylon Electricity Board, Ministry of Finance and Planning, Sri Lanka Ports Authority and Ceylon Shipping Corporation Ltd. LCC is a fully Government owned company.

1.3 BIDDING DOCUMENTS

In addition to this Invitation for Bids, please find enclosed the Bidding Documents: Section 2, Instruction to Bidders (ITB), Section 3, Conditions of Contract, Section 4, Proposed Coal Supply Agreement, Section 5 its Schedules, Section 6, Annexures and Section 7, Definitions.

1.4 SUBMISSION OF BIDS

Bids shall be submitted by hand or sent by courier to:

Chairman and Managing Director
C/O Chairman SSCAPC
Lanka Coal Company (Private) Limited
51/3, Suranimala Place, Off-Dutugemunu Street,
Dehiwala 10350, Sri Lanka.

Bids will be received up to 10.00 A.M. on the date mentioned in the Bid Data Sheet (BDS) in Section 2 – "Instruction to Bidders"(ITB).

1.5 LATE BIDS

Bids received after the deadline for submission of bids stipulated in Clause 1.4 will be returned unopened to the bidder.

1.6 BID SECURITY

Each Bid shall be accompanied by a Bid Security to the value stipulated in the item 4 of Clause 2.1 of the Bid Data Sheet.

The Bid Security in the form of a bank guarantee shall be issued by:

- a bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka, or

- a bank in another country and the Bid security confirmed by a bank operating in Sri Lanka approved by the Central Bank of Sri Lanka.

1.7 BID OPENING

Bids will be opened in the presence of the bidders or their representatives at the time, date and at the address named in the Bid Data Sheet (BDS) as detailed in Section 2, Instruction to Bidders.

1.8 BIDDING PROCEDURE

A single envelope, bidding procedure will be adopted. Bidding Procedure applicable to this invitation is given in Section 2, Instructions to Bidders.

End of Section 1

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FOR INFORMATION PURPOSE ONLY

2.0 INSTRUCTIONS TO BIDDERS (ITB)**2.1 BID DATA SHEET (BDS)**

This Bid Data Sheet provides information in a tabular form to assist Bidders with Bid preparation, and which shall be attached to the Bid.

Name of Contract: Supply of Coal for Lakvijaya Power Plant, Sri Lanka for October 2022 January 2023

Tender Number: LCC/22-23/ST/29/1

Awarded quantity: Estimated Quantity of Coal to be purchased under this Contract: 300,000 MT +/- 10% at Buyer's option.

Vessel Type / Size: Geared: 60,000 MT +/- 10% at buyer's option

Period of Supply: delivery shall be as per the Delivery Schedule mentioned in Clause 2.2.5.

Item No.	Reference Clause	Data	
1		Name of the Buyer	Lanka Coal Company (Private) Limited
		Address of the Buyer	Chairman and Managing Director C/O Chairman SSCAPC Lanka Coal Company (Private) Limited 51/3, Suranimala Place, Off-Dutugemunu Street, Dehiwala 10350, Sri Lanka.
		Telephone No.	+94 11 2824681/+94 11 2824682
		Telefax. No.	+94 11 2824689
		Email Address:	sujantha.pm@lankacoal.lk
2	2.3.2	Pre-bid Meeting	A Pre-Bid meeting at the address mentioned in Item 1 above at 14.00 hrs on 10/10/2022.
3	2.4.5	Price	Price shall be quoted as per the ANNEXURE 5, per MT basis in USD/LKR
4	2.4.7	Amount of Bid Security	USD 900,000 (United States Dollars Nine Hundred Thousand only) or LKR 330 million (Sri Lankan Rupees Three Hundred Thirty million).
5	2.4.7	Period of validity of Bid Security	4 weeks from the closing date of the Bid (Up to 17/11/2022)
6	2.4.8	Period of Validity of Bids	2 weeks from the closing date of the Bid (Up to 03/11/2022)
7	2.5.1	The Bid and any modifications shall be submitted in 1 Original and 1 Copy	
8	2.5.2	Deadline for Bid Submission	10.00 am. (Sri Lanka Standard Time) on 20/10/2022
		Place at which Bids will be received	At the address mentioned in Item 1 above.
9	2.6.1	Time, Date and Location for Bid Opening	Immediately after the closing of the Bids at the address mentioned in Item 1 above
10	2.7.3	Performance Security	10% of the Awarded Price X 300,000 MT in USD or equivalent LKR.
		Period of Validity	As per the clause 2.7.3

2.2 INTRODUCTION**2.2.1 SOURCE OF FUNDS**

LCC will utilize funds allocated by CEB which is a body incorporated by Act No. 17 of 1969 by Parliament of Sri Lanka, for eligible payments under the coal supply contract. Provisions of Public Contract Act No.3 of 1987 shall be applicable for this procurement.

2.2.2 QUANTITY AND PRICE

This tender is to select one (01) coal supplier for the Ceylon Electricity Board Lakvijaya Coal Power Plant of 900 MW. Quantity to be supplied as per the Bid Data Sheet (clause 2.1) and the details of delivery schedule (clause 2.2.5).

2.2.3 PAYMENT TERMS

Payment will be made, 180 days after BL date of each vessel, at sellers' option as per the payment method selected by the bidder in accordance with Clause 3.6.1 of the Conditions of Contract. All bank charges outside Sri Lanka, if any, will be for the account of the Seller. (Based on the awarded price as per the Annexure 05, Price proposal after adjusting the quality and quantity as per the clause 3.6.1)

2.2.4 QUALITY

LCC's Standard Values and Reject Values for Coal to be supplied to the Plant can be found in 5.1 and 5.2 in this document. LCC's Standard Values are given for the purpose of all Bidders to quote for coal of one specific quality for the comparison of prices. However, Bidders are not restricted to supply coal only to the quality specified in the LCC's Standard Values but allowed to supply coal within the range of LCC specifications and shall be accepted by the Buyer at an adjusted price in accordance with clause 5.4 and 5.5. The Coal, with specifications beyond the "LCC Reject Values for Coal" shall be liable for rejection by LCC.

2.2.5 DELIVERY SCHEDULE**a) On FOB Basis**

In the event the award is made on FOB basis, Laycan Schedule for LCC's Coal Requirement will be finalized with selected bidder for the relevant season from the relevant Load Port. It is the responsibility of the supplier to do the loading and trimming of the coal as per the buyer's option. The Bidder shall be responsible to supply the balance quantity in the immediate next season. Supplier is liable for the demurrages/dispatch at the port of loading as described in clauses 5.7 , 5.8 and 5.9

Supplier shall liaise with LCC in respect of confirmation of laycans and nomination of ships and shall responsible for any changes made by the supplier of the load port laycans after the confirmation.

In consultation with the Seller, shipments of Coal will be scheduled by LCC over the duration of contract period by considering the restriction at Port of Puttalam as below.

- i. When nominating performing vessels at load port, supplier should take every effort to maintain, sufficient gaps in order to avoid unnecessary discharge port demurrage ensuring vessels are reaching to discharging Anchorage accordingly.

- ii. The minimum unloading rate of 10,000 MT pwwd.
- iii. It is anticipated that about 38 vessels of package size 60,000 MT \pm 10% should be unloaded within 210 days (a coal season) at the Puttalam Anchorage by maintaining about 3 days' gaps.

b) On CFR Basis

In the event the award is made on CFR basis, vessels arrival schedule (ETA) to the Puttalam (discharge) Anchorage will be given to the supplier by LCC at the time of awarding of the contract for the season 2022-2023 and schedule for the next seasons shall be given one month prior to the commencement of each coal season. Same conditions stipulated above in a) i. to iii. under FOB basis shall prevail.

- c) Arrival/departure formalities at the port of Puttalam shall be carried out between 06:00 hrs to 16:00 hrs local time.
- d) Details on Shipping Terms are specified in clause 5.7, 5.8 and 5.9.
- e) Vessels Receiving Schedule (ETA) at Puttalam Anchorage

No of shipments	Quantity MT (+/-10% MT)	ETA at Puttalam Anchorage
1/9	60,000	4-Dec-22
2/10	60,000	9-Dec-22
3/11	60,000	14-Dec-22
4/12	60,000	19-Dec-22
5/13	60,000	24-Dec-22

Note : The Parcel size of a vessel was determined as 60,000 MT +/-10% at buyer's option was based on the requirement of having a minimum tonnage of 60,000 MT per vessel and by considering the fact that the most freely available geared vessels in the market was capable of handling the tonnage of 60,000 MT.

2.2.6 COST OF BIDDING

The Bidder shall bear all costs associated with the preparation and submission of its Bid and LCC will not be responsible or liable for these costs, regardless of the conduct or outcome of the Bidding process. By participating in the bidding, each Bidder agrees and acknowledges that in no event shall it be entitled to make a claim of any kind against LCC or LCC's officers, employees, or consultants arising out of, relating to, or in any way connected with the Bidder's bid or LCC's consideration thereof.

2.3 THE BIDDING DOCUMENTS

2.3.1 LIST OF BIDDING DOCUMENTS

The Bidding Documents include:

- ❖ SECTION 1, INVITATION FOR BIDS
- ❖ SECTION 2, INSTRUCTIONS TO BIDDERS

- ❖ SECTION 3, CONDITIONS OF CONTRACT
- ❖ SECTION 4, COAL SUPPLY AGREEMENT (DRAFT)
- ❖ SECTION 5, SCHEDULES 5.1 TO 5.17
- ❖ SECTION 6, ANNEXURES 6.1 TO 6.10
- ❖ SECTION 7, DEFINITIONS

The Bidder is expected to examine Invitation for Bids, Instructions to Bidders, Annexures 6.1 to 6.10, Conditions of Contract, and Proposed Coal Supply Agreement, Schedules, Specifications and other information in the Bidding Document. Failure to furnish all information required by the Bidding Document or submission of a Bid not substantially responsive to the Bidding Document will be at the Bidder's risk and may result in rejection of Bid.

2.3.2 CLARIFICATIONS OF BIDDING DOCUMENT AND PRE-BID MEETING

2.3.2.1 CLARIFICATIONS OF BIDDING DOCUMENT

A prospective bidder requiring any clarification of the Bidding Document may notify LCC in writing or electronically by email or telefax to LCC's address indicated in the Bid Data Sheet. The LCC will respond in writing to any request for clarification, provided that such request is received nine (9) days prior to the deadline for submission of bids, indicated in the BDS. The LCC shall, five (5) days before the bid closing date, forward its responses, including a description of the inquiry but without identifying its sources, to all eligible suppliers who have been invited for Bidding.

2.3.2.2 PRE-BID MEETING

All registered suppliers and those who have purchased the bidding document by 10/10/2022 will be notified for the pre-bid meeting as per item 2 of BDS.

2.3.3 AMENDMENT OF BIDDING DOCUMENTS

At any time prior to the deadline for submission of Bids, LCC may, in response to a clarification requested by a prospective bidder, amend the Bidding Document by issuing an Addendum. Notice of any amendments will be made available in writing and electronically by email or telefax to all prospective bidders who have been invited, for Bidding and will be binding on them. Bidders are required to acknowledge receipt of addendum using the Addendum Receipt provided in ANNEXURE 6 of Section 6 for any such amendment. It will be assumed that the information contained therein will have been taken into account by the Bidder in their Bid.

In order to allow prospective bidders a reasonable time to take the amendment into account in preparing their Bid, LCC may at its discretion, extend the deadline for the submission of Bids to provide maximum period of three (3) days from the date of last amendment, if required.

2.4 PREPARATION OF BID

2.4.1 LANGUAGE OF BID

The Bid prepared by the Bidder and all correspondence and documents related to the Bid exchanged by the Bidder and LCC, shall be written in the English language, provided that any printed literature furnished by the Bidder may be written in

another language so long as accompanied by an English translation. For purposes of interpretation of the Bid, the English translation shall govern. Any document submitted in another language without accompanying English translation shall not be considered for the evaluation of the bid.

2.4.2 CONFIDENTIALITY OF BIDDING

The prices in the Bidder's PRICE PROPOSAL must be determined independently, without consultation, communication, or agreement with any other Bidder or potential Bidders.

The prices that have been quoted in the Bidder's PRICE PROPOSAL must not and will not knowingly be disclosed by the Bidder directly, or indirectly, to any other Bidder or potential Bidder prior to the time of Bid opening. Bidder warrants that no attempt has been made, directly or indirectly, to induce any other persons or firms to submit or not to submit a Bid for the purpose of restricting competition.

The Bidder shall not disclose the Bid Documents to any third party who is not directly related with the preparation of the Bid proposal.

2.4.3 DOCUMENTS TO BE SUBMITTED BY BIDDERS

When submitting a Bid in accordance with Clause 2.5, the Bidder shall submit the following documents in the format and manner prescribed in Clauses 2.4.9 and Clauses 2.5.1 respectively and all pages of the bid shall be initialled or signed by the person or persons signing the Bid.

- (i) BID DATA SHEET (2.1 - ITB) - duly signed by the Bidder
- (ii) FORM OF BID (ANNEXURE 1) - duly completed and signed by the Bidder;
- (iii) BID SECURITY (ANNEXURE 2, specimen form attached) as per clause 2.4.7
- (iv) POWER OF ATTORNEY (ANNEXURE 3A and 3B as applicable) as per clause 2.4.9 and 3.23
- (v) REMEDY FOR FALSE STATEMENT (ANNEXURE 4)
- (vi) PRICE PROPOSAL (ANNEXURE 5) - duly completed and signed by the Bidder as per clause 2.4.5
- (vii) ADDENDA RECEIPT (Annexure 6) - duly completed and signed by the Bidder as per clause 2.3.3
- (viii) CONDITIONS OF CONTRACT - duly signed by the Bidder
- (ix) COAL SUPPLY AGREEMENT (Draft) – duly signed by the Bidder
- (x) **PCA 3 Form** - The LCC will update the relevant tender information to the “Registrar of Companies” (ROC) website along with the list of prospective bidders, which will then notify the bidders of the reference number via their designated email address. The bidder can then obtain the PCA 3 form after paying the relevant fee to the ROC. (<http://www.drc.gov.lk/>)
- (xi) All mandatory documents specified in clause 2.8
- (xii) A copy of receipt to acknowledge the purchase of bidding document.

2.4.4 FORM OF BID AND PRICE PROPOSAL

The Bidder shall complete the FORM OF BID, ANNEXURE 1 of Section 6 attached, and the PRICE PROPOSAL, ANNEXURE 5 of Section 6 attached, in the manner and details indicated therein, following the requirements of Clause 2.4.5 and Clause 2.4.6.

2.4.5 BID PRICE

The bidders are required to quote CFR (Puttalam Anchorage) in USD or LKR* per MT of coal as per the format given in ANNEXURE 5 of Section 6.

*In the event bidders quote in LKR, Payment will be made only in LKR.

Bidders are not allowed to quote FOB Trimmed price only (at Load Port). Such bids will be rejected.

The evaluation of the Bid price shall be based on the CFR (Puttalam Anchorage) price including finance cost (interest) percentage for 180 days credit quoted for LCC Standard Values for coal given in clause 5.1 and the price adjustments pursuant to the quality of coal will not be considered in evaluation of Bids. The price given by the bidders in the Annexure 5 of Section 6 shall stand as quoted final prices and for award of contract as per the clause, 2.7.1.

No adjustment/s according to the quality parameters or changes in price shall be allowed in evaluation and award of contract.

The Bidder shall adhere to the coal quality requirements / parameters mentioned in LCC Standard Values specified in clauses 5.1 and within the range of LCC reject values of coal specified in clause 5.2. The offers for alternative specifications for coal with different quality standards shall not be considered for further evaluation and shall be rejected if it is beyond the reject values specified in clause 5.2.

2.4.6 BID CURRENCY

Bidder's PRICE PROPOSAL shall be made in United State Dollar (USD) or Sri Lankan Rupees (LKR).

PRICE PROPOSALS based on any other currencies will be rejected.

2.4.7 BID SECURITY

All Bids must be accompanied by a Bid Security in the amount and currency and validity as specified in the Bid Data Sheet. The Bid Security, in the form provided in ANNEXURE 2, shall be a Bank Guarantee issued by

- A Bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka, or
- A Bank in another country and the Bid security "confirmed" by a Bank operating in Sri Lanka approved by the Central Bank of Sri Lanka.

Any Bid not secured as aforesaid shall be rejected as non-responsive.

Unsuccessful Bidder's Bid Security will be discharged/returned as promptly as possible following provision of performance security by the successful Bidder. The successful Bidder's Bid Security will be discharged upon the signing the Coal Supply Agreement, pursuant to Clause 2.7.2, and fulfilling the conditions precedent of the Conditions of Contract.

The Bid Security may be forfeited:

- (a) If a Bidder:

- i) Withdraws its Bid during the period of Bid Validity specified in Clause 2.4.8;
 - ii) Refuses to accept the arithmetical correction made according to Clause 2.6.3.1;
 - iii) Found at fault as per ANNEXURE 4, REMEDY FOR FALSE STATEMENT
 - iv) is found to have submitted any false or fraudulent document
 - v) is found to have made any false statement in the Bid Document
 - vi) is in breach of utmost good faith
- or
- (b) In case of a successful Bidder, if the Bidder fails:
 - (i) To sign the Contract in accordance with Clause 2.7.2;
 - (ii) To furnish Performance Security in accordance with Clause 2.7.3.

2.4.8 VALIDITY OF BIDS

Bids shall remain valid for a period as specified in Bid Data Sheet. A Bid valid for a shorter period shall be rejected as non-responsive.

In exceptional circumstances, LCC may solicit Bidder's consent to an extension of the period of validity of their Bids. The request and responses thereto shall be made in writing or by email or telefax. If a Bidder accepts to prolong the period of validity, the Bid Security shall also be extended accordingly. A Bidder may refuse the request without affecting his Bid Security. Any Bidder accepting the request will not be required nor permitted to modify its Bid.

2.4.9 FORMAT AND SIGNING OF BID

The Bidder shall prepare one original and one copy of the Bid, clearly marking each one as "Original" and "Copy", as appropriate. In the event of any discrepancy between the Original and Copy, the Original shall govern.

The Original and the copy of the Bid, each consisting of the documents listed in Clause 2.4.3 above, shall be typed, written or otherwise reproduced 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 letter of authorization shall be indicated by written power-of-attorney accompanying the Bid and submitted as ANNEXURE 3A to the Bid. All pages of the Bid shall be initialled by the person or persons signing the Bid.

The Bid shall not contain any interlineations, erasures or overwriting except as necessary to correct errors made by the Bidder, in which case such corrections shall be initialled by the person or persons signing the Bid.

2.5 SUBMISSION OF BIDS

2.5.1 SUBMISSION, SEALING AND MARKING OF BIDS

Both "Original" and the "Copy" shall be sealed and:

- (a) Addressed to Chairman SSCAPC on behalf of Lanka Coal Company
51/3, Suranimala Place, Off-Dutugemunu Street, Dehiwala 10350, Sri Lanka.

- (b) Bear the Tender Name, the TENDER number, and the Words "DO NOT OPEN BEFORE (Time of Bid Opening) HOURS ON (Date of Bid Submission)" in accordance with Bid Data Sheet and Clause 2.5.2.

The envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in the case it is declared as "late". If the envelopes are not sealed and not marked as mentioned above, LCC will assume no responsibility for the misplacement or premature opening of the Bid.

2.5.2 DEADLINE FOR SUBMISSION OF BIDS

SSCAPC may at its discretion extend this deadline for submission of Bids by amending the Bid Documents in accordance with Clause 2.3.3, in which case all rights and obligations of LCC and Bidders previously subject to deadline will thereafter be subject to the deadline as extended.

2.5.3 LATE BIDS

Any Bid received by LCC after the deadline for submission of Bids as specified in Bid Data Sheet will be rejected and returned unopened to the Bidder.

2.5.4 MODIFICATIONS AND WITHDRAWALS

The Bidder may modify or withdraw their Bid after submission, provided that written notice of the modification or withdrawal is received by SSCAPC prior to the deadline prescribed for submission of Bids.

The Bidder's modifications shall be prepared, sealed, marked, and dispatched as follows:

- a) The Bidders shall provide an Original and a Copy, of any modifications to its Bid, clearly identified as such, in two inner envelopes, duly marking the envelopes as "Bid Modifications - Original" and "Bid Modifications - Copy". The inner envelopes shall be sealed in an outer envelope, duly marking the envelope as "Bid Modifications".
- b) Other provisions concerning the marking and dispatch of Bid modifications shall be in accordance with Clause 2.5.1.

A Bidder wishing to withdraw its Bid shall notify SSCAPC in writing prior to the deadline prescribed for the submission of Bids.

The notice of withdrawal shall:

- (a) Be addressed to SSCAPC at the address named in the Bid Data Sheet, and
- (b) Bear the Contract Name, the TENDER number, and the words "Bid Withdrawal Notice". Bid Withdrawal Notices, received after the deadline for submission of Bid will be ignored and the submitted Bid will be deemed to be a validly submitted Bid.

No Bid may be withdrawn in the interval between the deadline for submission of Bids and the expiration of the period of Bid validity specified in Clause 2.4.8. Withdrawal of a Bid during this interval will result in the Bidder's forfeiture of their Bid Security, pursuant to Clause 2.4.7.

2.6 BID OPENING AND EVALUATION**2.6.1 OPENING OF BIDS**

Original Bids will be opened at the time of Bid Opening and at the location stated in the Bid Data Sheet.

Bidder's representatives may attend the opening and those who are present shall sign a register evidencing their attendance.

The Bidder's name, Bid Price, Discounts if any, availability of Bid Security and such other details considered as important, will be announced and recorded at the opening. No alternative offers will be accepted. The Bidder's representatives who are present shall be requested to sign the schedule prepared by the opening committee.

2.6.2 CLARIFICATIONS OF BID

To assist in the examination, evaluation and comparison of Bids the LCC may, at its discretion and at any time, ask the Bidder for a clarification of its Bid.

The request for clarification and the response shall be in writing and no change in the price or substance of the Bid shall be sought, offered or permitted.

2.6.3 EVALUATION OF BID

SSCAPC will determine whether each Bid is complete and substantially responsive to the Bidding Documents. SSCAPC will also determine whether the required Bid Security has been furnished, whether any computational errors have been made, whether the documents have been properly signed, and whether the Bids are for the specifications of Coal given in the clause 5.1.

The evaluation will be based on the CFR price quoted for Specifications given in the schedule clause 5.1 and criteria stipulated in clause 2.8. The offers for alternative specifications for coal with different quality standards shall not be considered for further evaluation and shall be rejected. Reject values for Coal are given in 5.2 in Section 5. The Bids will be evaluated as above and compared on the basis of CFR (Puttalam Anchorage) is given in the price proposal submitted as Annexure 5 as explained below.

The price adjustments pursuant to the quality of coal will not be considered in evaluation of Bids. The price given by the bidders in the Annexure 5 will stand as quoted final price for award of contract. Adjustments are not allowed to be made in terms of quality parameters or price changes when evaluating and awarding the contract.

A Bid may be disqualified and excluded from further consideration for any valid reason including but not limited to, the reasons listed below:

- I. Failure to submit under the required package or envelope as described in Clause 2.5 above.
- II. Bids submitted after the Closing Time and Date (deadline) specified in sub clause 2.5.

- III. Failure to submit all documents, including the supporting documents listed in sub clause 2.4.3 and any other clarifications and documents requested within the required time frame.
- IV. Failure to provide the Bid Security as per the clause 2.4.7.
- V. Wilful misrepresentations in the Bid.
- VI. Illegal conduct or attempts to influence the Government of Sri Lanka, LCC, CEB, Technical Evaluation Committee or SSCAPC in evaluation of a Bid.
- VII Major Deviations as per the sub clause 2.6.4.
- VIII Conditional Bids

Bids which are in accordance with above conditions shall be deemed as qualifying for evaluation.

2.6.3.1 CORRECTION OF ARITHMETICAL ERRORS:

The quantities should be same as that stated in the bidding documents. The total bid price should be the total of the breakdown of the components (Freight and FOB). If there is a discrepancy, a correction has to be done and the corrected price as describe below is considered as the bid price.

The correction of arithmetical errors shall be done as follows:

- (i) where there is a discrepancy between the amounts in figures and in words, the amount in words will prevail;
- (ii) where there is a discrepancy between the unit rate and the breakdown of the components (Freight and FOB) total resulting from adding the unit rates, the unit rate as quoted will govern, unless in the opinion of the PE that there is an obviously gross mis-placement 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;
- (iii) If the bid price changes by the above procedure, the amount stated in the Form of Bid shall be adjusted with the concurrence of the bidder and shall be considered as binding upon the bidder.

After the correction of arithmetical errors, Procurement entity (PE) shall notify in writing each bidder of the detailed changes. A bidder shall agree for such arithmetical corrections made to his bid. If the bidder refuses to accept, its bid shall be rejected, and action is taken against the bid security submitted.

The Bids will be evaluated and compared on the basis of CFR (Puttalam Anchorage) and finance costs for 180 days credit facility as given in the price proposal submitted as Annexure 5 of Section 6.

2.6.3.2 CURRENCY CONVERSION (for evaluation purpose only)

All prices quoted in foreign currencies will be converted to Sri Lanka Rupees at the Official Indicative Exchange Rate determined by the Central Bank of Sri Lanka, prevailing on the day of opening of Bids.

2.6.4 MAJOR DEVIATION

The following events, the list of which is not meant to be exhaustive should be considered as major deviations:

- (a) non-submission of bid security as per the clause 2.4.7;
- (b) insufficient amount and period of the bid security as per the item 4 and 5 of BDS;
- (c) failure to provide sufficient validity period of the bid as per the item 6 of BDS;
- (d) unsigned Bid or not signed by an authorized person/s;
- (e) failure to bid on specified documents as per the clause 2.4.3;
- (f) bidder requires price fluctuation whereas bidding document specifies otherwise;
- (g) deviation from bid documents which affects the bid price but cannot be given monetary value;
- (h) departure from technical specifications of critical nature as per the clause 5.2;
- (i) absence of documents intended to substantiate the legitimacy of the bid (i.e. that the Bid is not a ‘speculative’, ‘exploratory’ or ‘wait-and-see’ Bid) or proof of reliability of the equipment (as applicable) offered;
- (j) conditional bids, including but not limited to, prior sale, availability of components in the market etc...;
- (k) unacceptable technical features as per the clauses 5.1 and 5.2;
- (l) bids which are not responsive to critical, technical or commercial requirements in the Bidding Document.
- (m) Non availability of PCA 3 form.
- (n) Noncompliance to criteria stipulated in clause 2.8.

2.6.5 CONTRACTUAL AND COMMERCIAL ALTERNATIVES – NOT APPLICABLE

2.6.6 CONTACTS WITH LCC

Subject to Clause 2.6.2, no Bidder shall contact LCC, or any other person or organization involved on any matter relating to its Bid, from the time of the opening of Bids to the time the Contract is awarded.

Any effort by a Bidder to influence LCC in LCC's Bid evaluation, Bid comparison or Contract Award decisions may result in rejection of the Bid.

2.7 AWARD OF CONTRACT

2.7.1 ACCEPTABILITY –BUYER’S RIGHTS TO ACCEPT ANY BIDS AND TO REJECT ANY OR ALL BIDS

SSCAPC reserves the right to accept or reject any Bid, and to cancel the Bidding process and reject all Bids at any time prior to the issuance of the letter of award, without thereby incurring any liability to the Bidders or any obligation to inform the Bidders of the grounds for SSCAPC’s action.

2.7.1.1 AWARD CRITERIA TO SUCCESSFUL BIDDER

The purchaser shall award the contract to the bidder whose offer has been determined to be the lowest evaluated bids and is substantially responsive to the bidding document, provided further that the bidder is determined to be qualified to perform the contract satisfactorily

<p><i>Spot Tender (ST-1) Bidding Document LCC/22-23/ST/29/1</i></p>	<p><i>Shall be initialled by Authorised Signatory</i></p>	<p>Page 21 of 102</p>
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2.7.1.2 INTIMATION TO UNSUCCESSFUL BIDDERS AND APPEAL CRITERIA

The appeal criteria is not applicable since this is a Spot Tender.

2.7.1.3 CRITERIA FOR AWARDING OF FREIGHT COMPONENT

Ceylon Shipping Corporation Ltd. (CSC) will be given 3 working days after SSCAPC approval to match the successful Bidder's Freight component.

- a) In the event that Ceylon Shipping Corporation Ltd. is able to match the above, then the award shall be made to the successful Bidder based on FOB Trimmed (Port of Loading) basis.
- b) In the event that Ceylon Shipping Corporation Ltd. (CSC) is unable to match the above then the award shall be made to the successful Bidder based CFR basis up to the Puttalam Anchorage.

2.7.2 NOTIFICATION OF AWARD AND SIGNING OF THE CONTRACT

After determining the successful Bidder in accordance with the Clause 2.7.1 and prior to the expiration of the period of Bid validity, LCC will notify the successful Bidder by way of a Letter of Award by registered letter or electronically by email or telefax and confirmed in writing by registered letter, that his Bid has been accepted.

Until the formal coal supply agreement is prepared and executed, the notification of award shall constitute a binding contract.

Promptly after notification, LCC shall send the successful Bidder, the dully filled proposed Coal Supply Agreement provided in the Section 4 of the Bid Document

Upon receipt of the Letter of Award and the proposed Coal Supply Agreement, the successful Bidder shall enter into an agreement with LCC and the date for signing the Agreement will be notified. The date and venue for signing the Agreement shall be agreed between the Parties within 7 days after submission of performance security as stipulated in clause 2.7.3 below.

2.7.3 PERFORMANCE SECURITY

Within seven (7) days of receipt of the Letter of Award, the successful Bidder shall furnish the Performance Security in the form of Bank Guarantee for amount given in the Bid Data Sheet.

A Specimen Form is given as clause 5.10.

The Performance Security in the form of a bank security shall be issued by:

1. A bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka, or
 2. A bank in another country, but the security confirmed by a bank operating in Sri Lanka approved by the Central Bank of Sri Lanka.
- The validity of the performance Security shall be valid for be ninety (90) days from the date of successful completion of the final delivery of last shipment of the contract.
 - Performance Security shall be forfeited due to any breach of the contractual conditions of the Agreement by the Seller even though the seller has delivered the full quantity of Coal ordered by the Buyer.

Failure of the successful Bidder to comply with the requirements of Clause 2.7.2 or Clause 2.7.3 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security.

2.8 COMPETENCY AND QUALIFICATIONS CRITERIA

2.8.1 JOINT VENTURE of COMPANIES including PARTNERSHIPS and/or ASSIGNEES

A joint venture shall be required to be qualified according to the criteria stated in this Section. All individual members of the joint venture must qualify according to the criteria stated in sub-clause 2.8.3.3 for the joint venture to qualify to submit a Bid.

If a joint venture includes a member who is not qualified, then the whole joint venture shall be disqualified as prospective bidder, even if the other members of the joint venture are individually qualified.

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

- a) Bidder shall include all the information listed in the sub-clause 2.8.3.2, Paragraph (a) to Paragraph (g) for each joint venture partner and Paragraph (h) for the joint venture;
- b) One of the partners shall be nominated as Lead Partner of the Joint Venture (The “Lead Partner”); and this authorization shall be evidenced by submitting a Power of Attorney signed by legally authorized signatories of all the partners;
- c) The Lead Partner shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture and the entire execution of the Contracts including payments, which shall be done exclusively with the Lead Partner;
- d) All partners of a joint venture shall be jointly and severally liable for the execution of the Contracts in accordance with the contract terms, and a statement to this effect shall be included in the authorization mentioned under (c) above, as well as in the Bidding Document;
- e) A copy of the agreement entered into by the joint venture partners attested by an attorney at law shall be submitted with the Bidding Document.

2.8.2 INDIVIDUAL / JOINT VENTURE BIDDERS

No Bidder may submit more than one Bid and no joint venture member may submit or participate in more than one Bid for this Coal Supply tender. If a Joint Venture indicates a member who participates in more than one bid, then such J / V shall be disqualified even if the other members of the J / V individually qualified.

2.8.3 QUALIFICATION OF BIDDERS (INDIVIDUAL / JOINT VENTURE)

2.8.3.1 Bidder shall provide evidence satisfactory to LCC of the capability and adequacy of resources to carry out the coal supply contract effectively. Bidders shall provide the information requested hereunder with the Bid.

2.8.3.2 Bidders shall meet the following minimum qualification criteria and Bidders who fail to provide evidence as below to prove that they meet with the minimum qualification criteria shall be rejected:

- a) Average annual turnover of USD 50 million or equivalent, over the last three (3) financial years (2018/19,2019/20 and 2020/21).

Audited financial statements for the immediate last three years and draft/management account for the rest of the period up to the one month prior the bid closing date shall be submitted. The annual average turnover of the company should be more than USD 50 Million or equivalent.

In the event of the commencement of Bidder’s financial years do not coincide with calendar years, the Bidders are requested to submit these statements with respect to last three years according to the respective financial year for their companies.

- b) Have experience in supplying at least one (01) Million Metric Tons of coal having Gross Calorific Value (As Received Basis) of 5900 kCal / kg or higher in last 36 months, i.e from 1st April 2018 to 31st March 2021. Any transactions of supplying coal between the partners of a Joint Venture formed will not be taken for consideration for the purposes of assessing experience of the Joint Venture.

Similarly, any transactions of supplying coal between the parents and/or subsidiaries and/or associates of a Bidder or a partner of a Joint Venture will not be taken for consideration for the purposes of assessing experience of the Bidder or Joint Venture, as the case may be.

Bidder is required to provide the following supporting information from all the Purchasers indicated in Part 1 of Annexure 8 in the bidding document duly certified by the respective Purchaser.

- c) The Contract numbers and Contract dates and Coal actually supplied to the indicated Purchaser by the Bidder’s Company during the period 1st April 2018 to 31st March 2021 in Part 2 of Annexure 8 in the bidding document. The Purchasers need to clearly indicate the name of the supplier and any discrepancy in the name cannot be accepted.

- d) The Bill of Lading (BL) / Goods Receipt Notice (GRN) reference numbers, and quantity of Coal received under each BL/GRN in Part 3 of Annexure 8 in the Bidding Document together with copies of all such BLs/GRNs and any other relevant document such as invoices along with the customs entries for coal supplied under the contracts indicated in Part 2 of Annexure 8 in the Bidding Document. If the BLs/GRNs do not provide any references to the applicable Coal Supply Contracts as indicated in Part 2 of Annexure 8 in the Bidding Document or names of the purchaser and shipper as appear in the BLs/GRNs do not exactly match with the name of the respective Purchaser and the company, the Purchaser is required to specifically certify that all BLs/GRNs referred to by him are related to the Coal delivery under the respective Coal Supply Contracts.

Further In order to prove that the Bidder has supplied one (01) Million Metric Tons of coal having Gross Calorific Value (As Received Basis) of 5900 kCal / kg or higher as

<p><i>Spot Tender (ST-1) Bidding Document LCC/22-23/ST/29/1</i></p>	<p><i>Shall be initialled by Authorised Signatory</i></p>	<p>Page 24 of 102</p>
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required herein above, Bidder shall provide Test Certificate issued by an independent testing authority and/or a certificate from his purchaser specifying that the coal received has Gross Calorific Value (As Received Basis) of 5900 kCal / kg or higher. Such certificate shall clearly identify the consignment of coal for which such certificate is applicable by way of reference to the vessel name and date (to establish that the coal consignment meets with minimum Gross Calorific Value criteria). The quantity of coal meeting these criteria shall be established by providing the documents and information specified in the paragraph above. It is the responsibility of the Bidder to prove that certificates specified above and BL/GRN are both applicable for the same consignment of coal.

- e) Working Capital and or evidence of access to or availability of Credit Facility for not less than USD 15 Million (Annexure 9)
 - i) In case of Working Capital, it will be derived by using the following formula based on the values represent the latest balance sheet.

 Working Capital = Total Current Assets – Total Current Liabilities
 - ii) Bidder shall provide original letter of confirmation from the Bidder’s bank(s) as evidence of availability of Credit Facilities. Photocopies, faxes, email shall not be acceptable.
- f) The coal from mines proposed by the Bidder shall have quality within the LCC Standard Value and Rejects Value for coal as per Clause 5.1 and 5.2.
- g) Shall provide accurate information, under the Annexure 10, on any litigation or arbitration resulting from contract completed or under execution by him over the last three (3) years. A consistent history of arbitration decisions opposing the claim of the Bidder or any partner of a joint venture will result in disqualification. Any Bidder who is already on litigation process or has failed to supply coal as per the contractual terms or breached the contracts relating to supply of coal to LCC shall be disqualified.
- h) The figures for each of the partners of a Joint Venture shall be added together to determine the Joint Venture’s compliance with the minimum qualifying criteria set out in (a) to (g) above; however, in order for a Joint Venture to qualify, each of its partners must individually meet at least one of the minimum criteria listed in this clause (a), (b), and (c) for an individual company and the Lead Partner should also individually meet at least 50% of one of minimum criteria set out in (a), (b), and (c). Failure to comply with this requirement will result in the disqualification of a Joint Venture.

2.8.3.3 The following additional prerequisites for qualification shall be fulfilled by the Bidder in order to be qualified.

The Bidder shall be,

- a. A properly constituted firm, company, partnership or enterprise duly organized and existing and registered under the laws of its country of registration. **Copies of company registration and/or incorporation certificate shall be provided with certification by respective foreign authority.**
- b. No criminal or civil case in court pending or finally decided against him or it, involving non-payment of tax, duty, or undertaking with the government or any of its sub-divisions, branches or instrumentality, including government-owned or

controlled corporations, in Sri Lanka or the Bidder’s country.

Confirmation of status in the form of statement signed by the authorized signatory shall be provided.

- c. Not been involved in or not currently be involved in bankruptcy.

Confirmation of status in the form of statement signed by the authorized signatory shall be provided.

- d. Good bank references, duly confirmed, and full financial support.

Original letter(s) issued by the bank shall be provided and copies, emails or faxes shall not be acceptable.

The Copy of Business Registration or copy of Certificate of Incorporation should be endorsed by an acceptable authorized entity of Bidder’s country in order to prove the authenticity of the original document

End of Section 2

FOR INFORMATION PURPOSE ONLY

- SECTION 1 - INVITATION FOR BIDS**
- SECTION 2 - INSTRUCTIONS TO BIDDERS**
- SECTION 3 - CONDITIONS OF CONTRACT**
- SECTION 4 - COAL SUPPLY AGREEMENT (DRAFT)**
- SECTION 5 - SCHEDULES**
- SECTION 6 - ANNEXURES**
- SECTION 7 - DEFINITIONS**

FOR INFORMATION PURPOSE ONLY

3.0 CONDITIONS OF CONTRACT

3.1 SHIPPING AND TRANSPORT ARRANGEMENTS AND PLACE OF ORIGIN

Coal shall be supplied FOB Trimmed/CFR basis, upon the terms more particularly set out in Clause 5.7.

A certificate of origin shall be issued to confirm the origin of each shipment of coal. This document will be part of the shipping documents described in Clause 5.7.2, sent by courier within Five (5) working days after departure of each vessel from the load port.

3.2 WEIGHT DETERMINATION AND COST OF DRAFT SURVEYING

The weight of each shipment of Coal shall be determined at the Port of Loading and the Discharging Anchorage.

The draft survey for weight determination shall be carried out by an Independent Marine Surveyor acceptable to both the Buyer and the Seller and shall be binding on both parties. The cost of weight determination at the Port of Loading shall be for the Seller's account and the cost of such weight determination at the discharging anchorage shall be on the buyer's account.

The Independent Marine Surveyor shall also inspect all holds of the vessel at the Port of Loading to ensure that they have been thoroughly cleaned and are suitable for carrying that shipment of Coal and shall issue a hold cleaning inspection certificate also.

The Seller shall promptly provide via electronic transmission to the Buyer certificates of weight determination issued by the Independent Marine Surveyor within seven (7) working days from the date of BL. The originals shall accompany each invoice prepared and submitted in accordance with Clause 3.6

However, any cost incurred due to delay in receipt of Load Port shipping documents shall be on account of the seller.

The weight determined at the Puttalam Anchorage (Discharging Anchorage) shall be taken as the final weight for the purpose of invoicing.

3.3 TRANSFER OF TITLE AND RISK OF LOSS

3.3.1 FOB TRIMMED (LOADING PORT) AND CFR (PUTTALAM ANCHORAGE) BASIS

FOB - Risk of loss of Coal shall pass from the seller to the buyer when the goods have passed over the ship's rail and trimmed at the named port of shipment.

CFR- Risk of loss of Coal shall pass from the Seller to the Buyer when the Coal is loaded and trimmed on board the nominated carrying vessel at the Port of Loading and title to the Coal shall pass from the Seller to the Buyer upon receipt by the Buyer the shipping documents more particularly described in clause 5.7.2.

3.3.2 INCOTERMS

Incoterms 2010 or the latest edition currently available at the date of the relevant shipment shall apply to each shipment of Coal. However, for the purpose of interpretation, priority shall be always given to the Agreement.

3.4 QUALITY

The Coal supplied by the Seller shall meet the specifications set out in clause 5.1 of this document or shall be better than such quality specifications. Coal not conforming to the standard values in clause 5.1 but not falling within the reject values in clause 5.2 shall be accepted by the Buyer at an adjusted Price in accordance with Clause 5.4 and 5.5.

3.4.1 UNIFORM QUALITY; NO FOREIGN MATTER

The Seller shall ensure that the Coal is within LCC Standard value stipulated in clause 5.1 throughout each shipment delivered to Jetty coal stockpiles and is free from foreign matter, which might damage or interfere to a material extent with the operation of Vessels or the Plant's (Ceylon Electricity Board) Coal Unloading and Handling Facilities.

3.4.2 HANDLING CHARACTERISTICS

The Seller shall ensure that all Coal has appropriate handling characteristics, which enable reasonable discharge and transport to coal yard of the plant.

3.4.3 FAILURE TO MEET SPECIFICATION**(a) AT LOAD PORT**

Within 72 hours after receiving, the certificate of analysis of load port provided pursuant to Clause 3.5.2. If the parameters listed in the "Clause 5.2": LCC REJECT VALUES FOR COAL" (GCV, Total Moisture, Ash, Volatile Matter, Size, Hardgrove Grindability Index, Sulphur and Ash Fusion Temperature), of the coal shipment falls within the LCC reject values stated in "Clause 5.2", LCC shall Reject such coal. In this event, the Seller shall promptly recall such coal shipment at the Seller's cost and the Seller shall be obliged to offer Substitute Coal with the quality as per "clause 2.2.4".

(b) AT DISCHARGE PORT (JETTY OF THE PLANT)

Upon receiving the discharge port analysis certificates, provided by discharge port independent surveyor pursuant to Clause 3.5.2 and 3.5.3, If the parameters listed in the Clause 5.2 LCC REJECT VALUES FOR COAL" falls within the LCC reject values stated in Clause 5.2 of this document, LCC shall reduce the price as per "Clause 5.6 of this Document" for the deviation from the LCC standard value for coal as per the "Clause 5.1".

(c) In the event that the coal is rejected, and the Seller provides substitute coal, then the Seller is not exempted from paying any Liquidated Damages on account of any delays, then the provisions of Clause 3.8.1 shall be applicable, considering the delay till such substitute Coal is loaded and trimmed on board the nominated carrying vessel at the Port of Loading.

3.4.4 ORGANIC CONTAMINANTS

The Buyer reserves the right to randomly request that shipments be analysed by the Independent Surveyor to determine with presence of organic contaminants including but not limited to petroleum coke, pitch, pitch coke, tar sludge or other petroleum by-product-related solids. Seller's approval to have shipments undergo such testing shall not be unreasonably withheld. Testing shall be performed in accordance with the relevant ASTM standard and results of such testing shall be final, conclusive and binding on the Parties.

If the results of such testing report the presence of such organic contaminants, the cost of testing shall be for the Seller's account and Buyer reserves all remedies available under law including, but limited to, termination of the Agreement.

If the results of such testing are negative regarding the presence of organic contaminants, the cost of testing shall be for the Buyer's account.

3.5 DETERMINATION OF QUALITY OF COAL DELIVERED

3.5.1 STANDARDS OF THE ANALYSIS AND SELECTION OF INDEPENDENT SURVEYOR AT PORTS.

A. STANDARDS OF THE ANALYSIS

Each shipment of Coal will be sampled at the Port of Loading and at the Jetty of the Plant in accordance with the ASTM standards (American Society for Testing Materials Standards) as specified in Clause 5.3.

B. SELECTION OF INDEPENDENT SURVEYOR AT THE PORT OF LOADING

At the Port of Loading, the analysis of samples shall be carried out by an accredited and internationally recognised Independent Surveyors appointed by the seller, acceptable to buyer in accordance with the ASTM Standards.

Sample of Coal taken at the port of loading shall be divided into two (2) parts, with one (1) such part to be used for the analysis of the sample by the Independent Surveyor. **The second (2nd Part)** sample shall be retained in a suitable airtight container, properly labelled and sealed, for not less than ninety (90) days from the date of B/L of each vessel. The Buyer may appoint another Independent Surveyor, acceptable to the Seller, who shall be permitted to supervise the sampling at the Port of Loading. Two (2) authorized representatives of the buyer shall be permitted to supervise the sampling & analysis process at the Port of Loading at random approximately 1 visit in every 5 shipments basis and the Seller shall facilitate to the above process.

The Seller shall provide via electronic transmission to the Buyer certificates of analysis, from the Independent Surveyor, within five (05) working days after date of BL. In the event of the vessel arrived before receiving the load port certificates, unloading shall not be permitted, then the seller shall be responsible for all the expenses incurred due to the delay.

At the time of signing the Agreement both parties shall agree the list of such accredited laboratories.

C. SELECTION OF INDEPENDENT SURVEYOR AT THE JETTY OF THE PLANT.

Similarly, At the Jetty of the Plant, the analysis of samples shall be carried out by an accredited and internationally recognised Independent Surveyors appointed by the Buyer, in accordance with the Approved Measurement Standards.

The Seller may appoint another Independent Surveyor, acceptable to the Buyer, who shall be permitted to supervise the sampling at the Port of Jetty of the Plant.

Two (2) authorized representatives of the seller shall be permitted to supervise the sampling & analysis process at the Jetty of the Plant at random and the buyer shall facilitate to the above process.

Sample of Coal taken at the Jetty of the Plant shall be divided into two (2) parts, one (1) such part to be used for the analysis by the appointed Independent Surveyor. The

remaining part shall be available as a Reference Sample and shall be retained by the appointed Independent Surveyor. The second (2nd Part) sample will be kept in a suitable airtight container, properly labelled, and sealed, for not less than ninety (90) days from the date of unloading completion of each and every vessel under the joint lock and joint custody of both buyer and seller.

The Buyer shall provide discharge port Draft Surveying, Sampling and Analysis certificates via electronic transmission to the Seller, from the Independent Surveyor, within 4 working days after receipt of such certificates from the independent surveyor at discharge port. The Independent Surveyor is obliged to issue the discharge port certificates within 10 days from the date of completion of each vessel's discharge.

3.5.2 DETERMINATION OF QUALITY AND ACCEPTANCE OF COAL FOR UNLOADING.

In the event the coal shipment, does not fall within the LCC's reject values stated in clause 5.2, LCC shall accept such coal. The Certificate of Unloading (COU) as clause 5.16, shall be issued by the buyer to seller, within 72 hours after receiving the Draft Surveying, Sampling and Analysis certificates issued at the port of loading along with the custom purpose, provisional invoice.

The above certificates shall be accepted only for the sampling and analysis made as per the American society for Testing and Materials (ASTM) Standards clause 5.3 for the all parameters given in Clause 5.1.

3.5.3 TESTING OF THE REFERENCE SAMPLE

In the event of the seller is not in agreement with the results of analysis at the Discharge Port, the seller has the right to request re-testing of the reference sample. In this event, the results of the analysis of the Reference Sample taken at the Discharge Port shall be considered as binding and conclusive for payment, except the size parameter. The results of size parameter derived from the discharge port sample shall be final and there shall be no reference sample to re-analysis size parameter.

In such event, the cost of analysis of the reference sample is for the account of the seller. Two (2) authorized representatives of the buyer shall be permitted to supervise the analysis process of the reference sample.

3.5.4 COST OF SAMPLING

The cost of sampling and analysis at the Port of Loading will be on the Seller's account. The cost of sampling and analysis at the Discharging Jetty of the Plant will be on the Buyer's account. In the event of a further analysis by the Independent Surveyor, the cost shall be borne by the party requesting such analysis. The cost of Independent Surveyors appointed by the Buyer or Seller for the purpose of sealing and retaining Reference samples shall be for the account of the respective party.

3.5.5 PROVISION OF ANALYSIS

The Seller shall provide to the Buyer copies of the results of the Analysis of samples taken at the Port of Loading. Such provision shall be made electronically; however, originals of the relevant test such shall accompany each Commercial Invoice prepared and submitted in accordance with Clause 3.6. as applicable to the country of origin.

3.6 INVOICING

Invoices for Coal which has been delivered to the Buyer and has not been rejected by the Buyer pursuant to Clause 3.4.3 shall be issued in the manner hereinafter set out for each shipment in required number of copies;

There shall be two invoices (Provisional invoice for custom purposes and the commercial invoice for the Final Payment). All Invoices shall contain the following details:

A. ALL INVOICES SHALL CONTAIN THE FOLLOWING DETAILS:

- i. Name of the Seller
- ii. Invoice No. and date
- iii. Contract Year/ Shipment Number
- iv. Identification of the Coal
- v. Date(s) of delivery
- vi. Vessel Name / Number or Voyage Name / Number
- vii. Tonnage for the relevant shipment
- viii. Price per MT FOB/CFR Puttalam anchorage with finance costs for 180 days credit facility as per clause 2.6.3
- ix. Price of the Coal /Amount due per MT (quality adjustment)
- x. Freight cost per MT
- xi. Total invoice value
- xii. The Buyer contract reference number
- xiii. NRRA/EA LC reference No.
- xiv. BL No. and Date

The Invoice shall be set out as follows:

Total = (Tonnage) x (Applicable Awarded Price per MT - Price Adjustments on Quality + Freight cost per MT+ Financing Costs for 180 days credit facility)

The two invoices for each shipment as below

B. PROVISIONAL INVOICE FOR CUSTOMS PURPOSES

The seller shall prepare the Provisional Invoice as per the clause 3.6 A. above and submit to the buyer, indicating CFR Puttalam Anchorage basis and Load Port analysis reports after calculating the coal price and weight and quality price adjustments as per the clause 5.5. such provisional invoice shall be sent electronically.

C. PROVISIONAL INVOICE FOR PAYMENT

The seller shall prepare the Commercial Invoice as per the clause 3.6 A above and submit to the buyer, indicating CFR Puttalam Anchorage/FOB Trimmed basis on Discharge Port analysis reports after calculating the Coal price, and weight and quality price adjustments as per the clause 5.5. and financing costs for initiating payments process, such commercial invoice shall be sent electronically.

Each invoice shall be accompanied by all supporting documents stated in clause 5.14 and 5.15 of this document enabling all relevant parties including the buyer to establish the accuracy of the amounts claimed in the relevant Commercial Invoice.

3.6.1 PAYMENT

The Bidder has the option of selecting any one of the following three (3) payment methods.

3.6.1.1 Non-Residents Rupee Account (NRRRA)

The account should be opened at the Peoples bank, Sri Lanka by the one of the authorised directors of the seller more fully described in 3.6.1.4.

3.6.1.2 Escrow Account (EA)

The account should be opened at the Peoples bank, Sri Lanka by the seller's or seller's nominated company registered in Sri Lanka, more fully described in 3.6.1.4.

3.6.1.3 LKR Account

The payment will be done in LKR directly to be suppliers account specified at any Sri Lankan Bank.

3.6.1.4 For the two payment methods set out in 3.6.1.1 and 3.6.1.2 above, accounts will be opened at the Peoples Bank of Sri Lanka by following the relevant banking procedures within seven (7) days from the Expected Time of Arrival (ETA) of the carrying vessel at the Port of Loading. The value of the NRRRA or Escrow will be determined based on the Pro-forma invoice issued by the seller seven (7) days prior to the first date of Laycan scheduled at the Port of Loading.

In both cases, the seller, the LCC, the CEB, and the Peoples Bank all need to sign a quadripartite agreement. The agreement will be negotiated by all four parties using the Peoples Bank's specimen.

All Payments under the NRRRA or Escrow account, quadripartite agreement shall be made to the seller by means of telegraphic transfer (TT) after 180 days from the date of B/L, for the price after adjustment for quality of the coal including finance cost as agreed by the parties as applicable. All bank charges outside Sri Lanka, if any, will be on account of the Seller.

The date on which a NRRRA or Escrow account is opened by the seller should be treated as the date of Expected Time of the vessels to the port of loading.

The mandatory documents required for opening NRRRA and EA are as stipulated 5.11 of this bidding documents. A specimen format of NRRRA and EA is also attached in Section 5.11.

All Payments done in LKR directly to the supplier's account shall be made to the seller by means of cheque after 180 days from the date of B/L, for the price after adjustment for quality of the coal including finance cost as agreed by the parties as applicable

3.6.1.5 The payment value will be based on the discharge port weight and quality certificates subject to the Letter of Confirmation (LOC) of the shipment based on the weight and quality certificates as per the SCHEDULE 5.17. The Buyer is not

responsible for any delays in transmission of subsequent amendments requested by the Seller.

The adjusted total invoice value will be paid upon submission of the required documents for Payment Specified in “Clause 5.15 of the Schedules” to this bidding document. The payment will be made on Commercial invoice after issuing Letter of Confirmation (LOC) as per the Clause 5.17 of the Schedules. The payment shall be made upon submission of the required original documents for the Payment Specified in “Clause 5.15 of the Schedules” to this agreement.

3.6.1.6 ACCEPTANCE OF COAL UNLOADING AT PUTTALAM ANCHORAGE

The coal unloading shall be made after issuing **Certificate of Unloading (COU)** as per the Clause 5.16 of the Schedules, DOCUMENTS REQUIRED FOR COU is in Clause 5.15 of the Schedules.

3.7 FORCE MAJEURE

3.7.1 DEFINITION

An **Event of Force Majeure** shall mean any circumstances not within the reasonable control, directly or indirectly, of the party affected, but only if and to the extent that (i) such circumstances despite the exercise of reasonable diligence, cannot be or be caused to be prevented, avoided or removed by such party, (ii) such event materially adversely affects the ability of the affected party to perform its obligations under the Agreement, and the affected party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the affected party's ability to perform its obligations under the Agreement and to mitigate the consequences thereof, (iii) such event is not the direct or indirect result of the failure of such party to perform any of its obligations under the Agreement and (iv) such party has given the other party prompt notice describing such events, the effect thereof and the actions being taken in order to comply with this Clause provided that Events of Force Majeure shall not include strikes, lockouts or other industrial action by non-manual personnel of the party seeking to invoke that Event of Force Majeure or of such party's agents or contractors.

3.7.2 EFFECTS OF FORCE MAJEURE

Except as otherwise provided herein or may further be agreed between the parties, either party shall be excused from performance and shall not be construed to be in default in respect of any obligations hereunder for so long as failure to perform such obligations shall be due to an Event of Force Majeure.

3.7.3 CERTAIN DELAYS NOT EXCUSED

Notwithstanding that an Event of Force Majeure otherwise exists; this Clause shall not excuse:

- (a) Late payment of money;
- (b) Late delivery of Coal caused by negligent acts or omissions on the part of Seller, its contractors or any subcontractor to its contractors, except any such late delivery otherwise arising from an Event of Force Majeure shall be excused if it arose from a negligent act or omission of a contractor or a subcontractor which a reasonable and prudent business person would not have anticipated from a qualified contractor or subcontractor;

- (c) Late performance by Seller or its contractors or any subcontractor to its contractors;
- (d) Delays resulting from reasonably foreseeable unfavourable weather or reasonably foreseeable unsuitable ground or sea conditions unless the affected party has taken reasonably prudent steps to prevent or mitigate the effects of such conditions.

3.7.4 NOTICE OF FORCE MAJEURE; PROCEDURE

As soon as possible following the commencement of any Event of Force Majeure, if either party desires to invoke such Event of Force Majeure as a cause for delay in the performance of any obligation (other than the payment of money) hereunder it shall advise the other party in writing of such date and the nature and expected duration of such Event of Force Majeure. As soon as possible and in any event within twenty-four (24) hours following the termination of such Event of Force Majeure, the party having invoked such Event of Force Majeure as a cause for such delay shall submit to the other party reasonable proof of the nature of such delay and its effect upon the time of performance. The parties.

- (a) shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any Event of Force Majeure including recourse to alternate acceptable sources of coal, services, equipment, and materials; and
- (b) shall use their best efforts to ensure resumption of normal performance after the termination of any Event of Force Majeure and shall perform their obligation to the maximum extent practicable agreed between the parties.

3.8 FAILURE TO DELIVER

3.8.1 LIQUIDATED DAMAGES DUE TO DELAYS AND FAILURE TO DELIVER COAL

a) LIQUIDATED DAMAGES DUE TO DELAY IN LOADING

In the event the Seller fails to load and trim the cargo on board of the nominated performing vessel at the port of loading (excluding to the extent that such inability is caused by an Event of Force Majeure), then the Seller shall pay Liquidated Damages to the Buyer, an amount equals to the 0.5% per day based on the Performa invoice value (which was used for the relevant LC) of the consignment per day or part thereof for such delay. The duration shall be calculated as below.

Duration (No. of days) = The date/time of commencement of loading less (-) the date of NOR Load Port

b) LIQUIDATED DAMAGES DUE TO FAILURE TO DELIVER

In the event the vessel is rejected based on the load port analysis report, then the seller shall pay Liquidated Damages to the Buyer, an amount equals to USD 0.05% per day based on the rejected vessel's Performa invoice value. The duration shall be calculated as below.

Duration (No. of days) = The date/time of NOR of substitute vessel at Puttalam Anchorage less (-) ETA of the Discharge Port rejected Vessel.

In such instances, priority shall be given to the vessel already scheduled to be anchored at the discharge port anchorage and the Clause 5.8.1.3 shall not be applicable.

In the event that the delays occurred in more than two (2) occasions (shipments) exceeding seven (07) days, the Buyer reserves the right to terminate the Agreement considering it as Seller's Default under the provisions of the Clause 3.11.

The time of delay will be calculated after a grace period of 24 hours from the time of expiry of the “Turn Time” as per the governing charter party agreement and / or Rules and Regulations of the loading port.

3.8.2 SUBSTITUTE COAL

In the event the Seller is unable to meet its supply obligations under the Agreement excluding to the extent that such inability is caused by an Event of Force Majeure, the Seller shall be obliged to supply substitute coal. The quality, quantity and the payment for the coal so supplied shall be in accordance with the terms and conditions of the contract agreement.

3.8.3 ADDITIONAL COSTS

The Seller shall bear in full any additional costs of supplying coal as specified in clause 3.8.2 above. Further, if the seller is unable to substitute coal as specified in 3.8.2 then the Buyer has the right to purchase coal from an alternative source as per clause 5.1 of this document. In such situation, the Seller shall bear any additional costs reasonably incurred by the Buyer in connection with the purchase of Coal.

3.9 WARRANTIES AND COVENANTS

3.9.1 WARRANTIES BY BUYER

The Buyer hereby represents and warrants to the Seller that:

- (a) It is a duly incorporated company with limited liability and validly existing under the laws of the Democratic Socialist Republic of Sri Lanka;
- (b) The documents which contain or establish its constitution include provisions which give power, and all necessary corporate authority has been obtained and action taken, for it to sign and deliver, and perform the obligations contemplated in, the Agreement and the Agreement constitutes valid and binding obligations of it enforceable in accordance with the terms hereof except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganisation, moratorium or other similar laws affecting creditors' rights generally;
- (c) Neither the signing and delivery of the Agreement nor the performance of any of its obligations hereunder does or will contravene or constitute a default under, or cause to be exceeded any limitation on it or the powers of its directors imposed by or contained in:
 - (i) Any law by which it or any of its assets is bound or affected;
 - (ii) Any document which contains or establishes its constitution; or
 - (iii) Any agreement to which it is a party; and,

3.9.2 WARRANTIES BY SELLER

The Seller hereby represents and warrants to the Buyer that:

- a) It is a duly incorporated company with limited liability/joint venture and validly existing under the laws of country of incorporated of the company;
- b) The documents which contain or establish its constitution include provisions which give power, and all necessary corporate authority has been obtained and action taken, for it to sign and deliver, and perform the obligations contemplated in, the

Agreement and the Agreement constitutes valid and binding obligations of it enforceable in accordance with the terms hereof except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganisation, moratorium or other similar laws affecting creditors' rights generally;

- c) Neither the signing and delivery of the Agreement nor the performance of any of its obligations hereunder does or will contravene or constitute a default under, or cause to be exceeded any limitation on it or the powers of its directors imposed by or contained in:
- (i) Any law by which it or any of its assets is bound or affected;
 - (ii) Any document which contains or establishes its constitution; or
 - (iii) Any agreement to which it is a party;
- d) It will have good title to all Coal, free from all liens, security interests and adverse claims, when title to that Coal is to pass to the Buyer pursuant to Clause 8;
- e) It has obtained all licences, permits, certificates, full title and other documents necessary to sell and Deliver Coal as required by the Agreement; and
- f) It has all necessary experience and qualifications in order to perform its obligations under the Agreement.

3.10 EVENTS OF DEFAULT

3.10.1 SELLER EVENTS OF DEFAULT

Each of the following events, acts, occurrences or conditions shall constitute a **Seller Event of Default**.

- (a) A breach of any materials term(s) of the Agreement;
- (b) If coal Delivered or tendered for Delivery by two (2) consecutive Shipments; is beyond the Buyer's Range set forth in 5.2;
- (c) Any unexcused failure by the Seller to Deliver Coal for a consecutive period of ten days (10) days commencing on the scheduled Delivery date for a shipment of such Coal;
- (d) The Seller ceases to possess all necessary licences, permits and authorisations for the extraction, shipment and or sale of coal and, in any such case, the Seller fails to comply with its obligation to deliver substitute coal as referred to in Clause 3.8.2;
- (e) In case when Seller is a joint venture of two or more persons, change of the composition or constitution of the joint venture without prior consent of the Buyer; or
- (f) The ownership or control of the Seller or of an intermediate or the ultimate holding company of the Seller passes to a third party which is unacceptable to the Buyer, if in the opinion of the Buyer, that the change will impact on the seller's ability to perform the Agreement. For the purposes of this sub-paragraph (e), none of the following shall of itself constitute a change in ownership or control, which is unacceptable to the Buyer:

- I. the sale of a minority shareholding such that the acquirer obtains a total holding of not more than 20 per cent of the issued equity share capital of the relevant company;
- II. the sale of shares in the relevant company to the public by way of a public offering; or,
- III. the transfer of shares in the Seller between persons who are shareholders of the Seller at the date of the Agreement or a transfer of shares in the Seller to any affiliate of any such person, provided always that such transferee shall not cease to be an affiliate of any such person unless by not later than the time the transferee ceases to be such an affiliate it shall have retransferred the shares in the Seller to a person which is an affiliate of such person;

3.10.2 BUYER EVENTS OF DEFAULT

Each of the following events, acts, occurrences, or conditions shall constitute a **Buyer Event of Default**:

- (a) A breach of any material term(s) of the Agreement;
- (b) The Buyer fails to pay when due any amounts required to be paid to the Seller under the Agreement and such failure continues for thirty (30) days following the Seller's demand for such payment;
- (c) Plant is generally suspended or abandoned for a period of 365 consecutive days, resulting in the buyer being unable to accept the coal shipment in each case other than to the extent that such failure to commence, suspension or abandonment is attributable to an Event of Force Majeure.

3.11 TERMINATION

This Agreement may be terminated by giving fifteen (15) days' notice by either party, upon the occurrence of an Event of Default by the other party provided that any such termination may not occur if the circumstances on the basis of which the notice of termination is given is altered, cured or remedied within the termination date specific in such notice.

In the event any two different shipments of coal quality parameters are reported outside the absolute minimum/maximum tolerance limit after, testing of coal samples, at Load Port and Jetty of the Plant as indicated in "Clause 5.2, LCC REJECT VALUE OF COAL" then LCC shall terminate the contract agreement. Further, LCC reserve the right to terminate the contract, if there are any significant deviations of quality parameters reported frequently between Jetty of the Plant and Load port Test Reports and after verified by testing of the relevant Reference Samples.

In the event the Agreement is terminated due to Seller's breach, Buyer will encash the Performance Security and will cancel all the payments after the termination for products not yet delivered. In addition, the Seller shall also indemnify Buyer against any expenses or losses thus incurred.

In the event the Agreement is terminated due to Buyer's breach, Buyer shall, release the Performance Security forthwith and Seller shall not refund any payments after the termination. In addition, the Buyer shall also indemnify Seller against any direct expenses or losses thus incurred.

3.12 CONSEQUENCES OF DEFAULT

The byer may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Seller, terminate the contract in whole or part (at the option of the Buyer) if:

The Seller fails to deliver any or all the goods within the time period(s) specified in the Contract or any extension thereof granted by the Buyer; or (b) the Seller fails to perform any other obligation(s) under the Contract.

In the event the Buyer terminates the contract in whole or in part, pursuant to above, the Buyer may procure, upon such terms and in such manner as it deems appropriate, coal of similar specifications and the seller shall be liable to the Buyer for any excess costs for such similar coal. However, the seller shall continue performance of the Contract to the extent not terminated.

the aforementioned right of termination shall be without prejudice to any other rights and remedies that the Buyer has under the Contract or in law including but not limited to claiming liquidated damages on account of delay in delivery of coal to the Port of loading. Further, any termination of the Contract shall be without prejudice to any rights and remedies that have accrued prior to the termination of the Contract.

3.13 LIMITS OF LIABILITY**3.13.1 NO CONSEQUENTIAL LOSS**

The liability of either party in respect of any claim brought by the other based on a failure of the first party to fulfil its obligations under the Agreement shall be limited to liability for loss directly suffered by the party aggrieved. Such liability shall exclude loss of profit and expectation of profit and all indirect or consequential loss or damage to the party aggrieved.

3.14 SITE VISITS

The Buyer and its designated representatives shall be entitled on reasonable notice to make site visits to the Mine, Testing Laboratory, Port of Loading and each of the Seller's other facilities used in or associated with the supply of Coal to view the Seller's operations. The Seller agrees to co-operate with such site visits and provide all such assistance and information (subject always to Clause 3.18) to the personnel engaged in such site visits as those persons may reasonably expect.

3.15 CONFIDENTIALITY

The terms of the Agreement, any information provided by one party to another in the course of negotiation of the Agreement or pursuant to Clause 3.18, any further negotiations among the parties, and any further terms agreed among the parties (collectively the Confidential Information) shall remain confidential to the parties and shall not be disclosed, or used otherwise than for the performance of the parties respective obligations under the Agreement, without the specific written agreement of both parties, provided that:

- (a) A party may disclose the Confidential Information to the extent required by law;
- (b) A party may disclose the Confidential Information to persons providing (or with a view to providing) shipping services, finances, or other support to the relevant party to enable it to perform its obligations in relation to the Plant of the subject matter of the

Agreement provided that such person is subject to an equivalent obligation or confidentiality.

The provisions of this Clause 3.19 shall survive any termination of the Agreement.

3.16 ENVIRONMENTAL CONSIDERATIONS

If any change in law shall occur in the applicable environmental laws or guidelines relating to the design, construction, operation or maintenance of the Plant, the Buyer shall be entitled to review the specifications for Coal set out herein and the volume of Coal to be supplied. If, having regard to the changed environmental laws or guidelines or the revised specification for Coal, the coal to be supplied by the Seller is no longer suitable to be used as fuel for the Plant, or to be used to the same extent, on technical, environmental, or economic grounds, the Buyer shall be entitled to reduce the volume of Coal to be supplied. The Seller shall have the opportunity, prior to any such reduction, to offer, on a pricing basis to be mutually agreed between the Buyer and the Seller, suitable coal from an alternative source to permit it to continue to supply coal in the volumes originally provided for under the Agreement.

3.17 PERFORMANCE SECURITY

Within seven (7) days of receipt of the Letter of Award, the seller shall furnish a Performance Security as stipulated in item 10 of the Bid Data Sheet and the clause 2.7.3.

3.18 NO ASSIGNMENT

Except to the extent that a party may agree in writing, the other party shall not assign the Contract or any part of his obligations under the Agreement.

3.19 MUTUAL COLLABORATION

Seller and Buyer shall recognize that circumstances may arise which have not been foreseen at the signing of the Agreement and agree that they shall use their best efforts to solve any problems due to such unforeseeable circumstances in a spirit of mutual understanding and collaboration.

3.20 DISPUTES AND ARBITRATION

If a dispute of any kind whatsoever arises between the buyer and the seller, then every effort will be made by the parties to settle such dispute amicably before the commencement of Arbitration.

If amicable settlement has not been reached, then all such disputes arising out of the contract agreement shall be dealt in accordance with the provisions of Arbitration Act No. 11, 1995 of Sri Lanka. The language for the Arbitration shall be English and the place of arbitration shall be Sri Lanka. The following procedure shall be followed:

- (a) Any dispute, controversy or claim arising out of or relating to this Contract, or the breach termination or invalidity thereof ["Dispute"] may be submitted by either Party to arbitration for final settlement. Each of the Parties submits to arbitration under this Clause before a panel of three arbitrators under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) as then in force (the "Rules"), as modified by this Clause. The proceedings shall be conducted, and the award shall be rendered, in the English language. The seat and place of arbitration shall be Colombo, Sri Lanka unless any other location is agreed to by the Parties.
- (b) Each Party shall appoint one arbitrator, and the two arbitrators, so appointed shall appoint a third arbitrator. The third arbitrator shall be the chairman of the arbitral tribunal. If either

Party fails to appoint an arbitrator or if the two Party-appointed arbitrators fail to agree upon a third arbitrator, then such arbitrator shall be appointed in terms of the Arbitration Act No. 11 of 1995 or such other law that governs Arbitration proceedings as in force in Sri Lanka.

- (c) Any award rendered by a majority of the arbitral tribunal shall be final and binding and judgment thereon may be entered and may be enforced in any court of competent jurisdiction. Any monetary award shall be made in reasonable time and as the arbitral tribunal may consider appropriate. The arbitral tribunal shall be authorized in its discretion to grant pre-award and or post-award interest as the case may be. Any costs, fees, or taxes incidental to enforcing the award shall, to the maximum extent permitted by law, be charged against the Party resisting such enforcement.
- (d) Subject to right of any Party to obtain any appropriate interim relief from any court of competent jurisdiction, an arbitration award under this Clause shall be a condition precedent to the commencement of action, suit, or claim in any court or other judicial forum.
- (e) Except, as expressly provided in this Contract, pending the award in any arbitration proceeding hereunder (i) this Contract and the rights and obligations of the Parties shall remain in full force and effect and (ii) each of the Parties shall continue to perform their respective obligations, including payment obligations, under this Contract. The termination of this Contract shall not result in the termination of any arbitration proceeding pending at the time of such termination nor otherwise affect the rights and obligations of the Parties under or with respect to such pending arbitration.

3.21 GOVERNING LAW

The Agreement shall be governed by and construed in accordance with the laws of Sri Lanka.

3.22 NO WAIVER; CUMULATIVE REMEDIES

The failure of either Party to enforce at any time any of the provisions of the Agreement, or to require at any time performance by the other Party of any of the provisions thereof, shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of the Agreement, or any part thereof, or the right of either Party thereafter to enforce each and every provision of the Agreement.

All remedies afforded under the Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for in the Agreement or otherwise available to a Party.

3.23 JOINT VENTURE / PARTNERSHIP OR AGENCY

LCC registered coal suppliers are allowed to join with another partner or any other company on behalf of them being linked or otherwise, to submit bids. However, quality and quantity of coal supply and payments for same shall be fully secured by the Registered coal supplier and or their joint venture partner and or their assignee (assigns). The following mandatory documents shall be submitted along with the bid as per Annexure 3B of this bid document.

- a) A Board resolution by the registered supplier
 - i. Authorising affiliate/JV partner/Partner/assignee to participate and perform the tender, LCC/22-23/ST/29/1, on behalf of the registered supplier.

<p><i>Spot Tender (ST-1) Bidding Document</i> LCC/22-23/ST/29/1</p>	<p>Shall be initialled by Authorised Signatory</p>	<p>Page 41 of 102</p>
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ii. Authorising the issuance of the power of attorney as indicated below

b) A power of attorney

Duly executed power of attorney from the registered supplier empowering affiliate/JV partner/partner/assignee to sign the form of bid, to make an offer, to enter in to a valid agreement to fulfil the terms and conditions of the contract. Such a power of attorney shall be signed by an authorised signatory of the registered supplier in front of two witnesses and certified by a notary public. Under any circumstances a letter of authorization from the registered supplier will not be accepted instead of a duly executed power of attorney.

3.24 COSTS

Each of the parties shall pay its own costs, charges and expense incurred in connection with the preparation and implementation of the Agreement and the transactions contemplated by it.

End of Section 3

FOR INFORMATION PURPOSE ONLY

SECTION 1	-	INVITATION FOR BIDS
SECTION 2	-	INSTRUCTIONS TO BIDDERS
SECTION 3	-	CONDITIONS OF CONTRACT
SECTION 4	-	COAL SUPPLY AGREEMENT (DRAFT)
SECTION 5	-	SCHEDULES
SECTION 6	-	ANNEXURES
SECTION 7	-	DEFINITIONS

FOR INFORMATION PURPOSE ONLY

4.0 COAL SUPPLY AGREEMENT (Draft)

This AGREEMENT (“the Agreement”) is made and entered into, for the supply of 300,000 +/- 10% MT of Coal at buyer’s option, on this..... day of, 2022 between

LANKA COAL COMPANY (PRIVATE) LIMITED, a company duly incorporated and registered under the Companies Act, No 7 of 2007 and bearing registration Number PV 62636 and having its registered office at No 51/3, Dutugemunu Street, Dehiwala, Sri Lanka (hereinafter sometimes known and referred to as "Buyer " which term shall where the context so required and admits mean and include the said LANKA COAL COMPANY (PRIVATE) LIMITED its successors and permitted assigns) of the FIRST PART

and

....., a company incorporated and registered under and by virtue of the law of (country), bearing company No. and having its registered/principal office at (.....address.....) (hereinafter sometimes known and referred to as "Seller " which term shall where the context so required and admits mean and include the said its successors and permitted assigns) of the second PART

WITNESSETH

In consideration of the mutual covenants and agreements made by and between them, the Parties hereby agree as follows:

4.1 CONDITIONS PRECEDENT

The obligations of the seller to sell and deliver and for the buyer to purchase coal pursuant to this Agreement shall become effective on the date when the seller has furnished the Performance Security in accordance with Clause 2.7.3 in document.

4.2 TERMS OF THE AGREEMENT

The term of the Agreement shall be for a period commencing on the date of the Agreement and ending(120 days), unless terminated earlier in accordance with the provisions of this Agreement.

Extension beyond the end of the Agreement shall be subject to the mutual agreement of both Parties.

4.3 DOCUMENTS CONSTITUTING THE COAL SUPPLY AGREEMENT

The Following documents shall be deemed to form this agreement and the priority of the documents shall be in accordance with the following sequence.

- (a) This Contract Agreement and the Addendums hereto.
- (b) Performance Security for this contract
- (c) The Letter of Award dated *dd mm 2022*
- (d) The Power of Attorney given the contractor to authorize the personal to represent the company for signing the Contract.

- (e) Pre-bid meeting minutes
- (f) The complete set of Bidding Document invited through email by the LCC on dd mm YYYY
- (g) the bids including Price proposal submitted by you (Bidders name) dated dd mm yyyy dully signed by your authorized signatory including Amendments & Clarification issued, if any.

These documents collectively shall be referred to as the Agreement.

If one document constituting part of the Agreement (as such may have been modified, Amended or superseded) conflicts with another, the conflict shall be resolved by giving precedence to the documents in the order in which they are listed above unless otherwise specified, addenda to documents shall, in the event of conflict, prevail over the documents themselves and later addenda shall prevail over earlier ones.

4.4 DETERMINATION AND ADJUSTMENT OF PRICE OF COAL

The initial fixed Price of Coal shall be:

FOB Trimmed/CFR (up to the PUTTALAM ANCHORAGE) rate of USD / LKR per MT

(In words:)

(Against LCC’s Standard Value for Coal as defined in clause 5.1 of Schedules)

The initial fixed Price shall be adjusted if the quality of the Coal varies resulting in deviations from the standard values set out in Clause 5.1 of Schedule with respect to GCVar, Ash content, Sulphur content, Moisture content, Volatile Matter and Size consist. Price adjustment for quality variation shall be made as set out in Clause 5.5 and 5.6 of Schedules

4.5 DELIVERY SCHEDULE REFERENCE – As Mentioned in Clause 2.2.5

4.6 NOTICES

Unless mutually agreed or specifically provided otherwise, all notices given or to be given by a Party shall be in writing and sent to the other Party's address specified below or to such other address as the other Party may specify, and shall be deemed to be properly given: (i) if delivered by hand, upon receipt; (ii) if sent by registered mail (air mail, if international), postage prepaid, upon receipt; and (iii) if given by electronic transmission telefax, telegram, Email, on the day (which is a business day at place of addressee) immediately following the date on which the electronic transmission, telefax, telegram is sent; provided that, in the case of notice by, it was given with confirmed answerback.

To Seller

.....

.....

.....

To Buyer: Chairman and Managing Director,

<p><i>Spot Tender (ST-1) Bidding Document LCC/22-23/ST/29/1</i></p>	<p><i>Shall be initialled by Authorised Signatory</i></p>	<p>Page 45 of 102</p>
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Lanka Coal Company (Private) Limited
51/3, Suranimala Place, Off-Dutugemunu Street,
Dehiwala 10350, Sri Lanka
Telefax: +94 112 824689
Email: chairman@lankacoal.lk

4.7 ENTIRE AGREEMENT

This Agreement, its schedules and appendices constitute the entire agreement of the Parties with respect to the subject matter thereof and supersede any prior expression of intent or understanding with respect to the transactions contemplated in the Agreement. The Agreement may be amended or modified only by a writing signed by the duly authorized representatives of the Parties.

4.8 SEVERABILITY

If any of the provisions of the Agreement shall held to be illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired thereby

4.9 SURVIVAL

The parties' rights and obligations under this Agreement a crude during the subsistence of the Agreement shall survive any form of termination of this Agreement or the expiry of this Agreement.

FOR INFORMATION PURPOSE ONLY

IN WITNESS WHEREOF, the Parties have caused this Coal Supply Agreement to be duly executed by their respective authorized representatives.

FOR BUYER:

FOR SELLER:

1. **LANKA COAL COMPANY (PVT) LTD.**

2.

By:

By:

Name:

Name:

Title: **Secretary, Ministry of Power and Energy**

Title:

Date:

Date:

Place:

Place:

WITNESSED:

WITNESSED:

By:

By:

1.

1.

Name:

Name:

2.

2.

Name:

Name:

FOR INFORMATION PURPOSE ONLY

End of Section 4

SECTION 1	-	INVITATION FOR BIDS
SECTION 2	-	INSTRUCTIONS TO BIDDERS
SECTION 3	-	CONDITIONS OF CONTRACT
SECTION 4	-	COAL SUPPLY AGREEMENT (DRAFT)
SECTION 5	-	SCHEDULES
SECTION 6	-	ANNEXURES
SECTION 7	-	DEFINITIONS

FOR INFORMATION PURPOSE ONLY

5.0 SCHEDULES**5.1 : LCC STANDARD VALUES FOR COAL**

TENDER No. : LCC/22-23/ST/29/1

The Lakvijaya Power Plant will be operated as a base load unit, fueled by low Sulphur coal having standard properties (the LCC Standard Values) given below.

LCC STANDARD VALUES FOR COAL

PROXIMATE (%)	UNIT	As Received BASIS
GCV (kcal/kg)	kcal/kg	6,150
Total Moisture	% wt	12.0 or below
Volatile Matter	% wt	31
Fixed Carbon	% wt	49.5
Sulphur	% wt	0.5 or below
Ash	% wt	11.0 or below
HGI	° H	50
Grain Size above 50 mm	% wt	3.0% or below by weight
Grain Size below 2 mm	% wt	22.5% or below by weight
ASH FUSION (°C)		Reducing
IDT	°C	1,250
Fluid	°C	1,325

5.2: LCC REJECT VALUES FOR COAL*(as received basis)**(Proximate analysis - as received basis)*

Parameter	LCC REJECT VALUES
Gross Calorific Value	Less than 5,900 kcal / kg
Total Moisture	More than 16.0 % by weight
Ash Content	More than 16 % by weight
Volatile Matter	Less than 22 %, More than 39.9 % by weight
Sulphur Content	More than 1.0 % by weight
HGI	Less than 40, More than 59
Size Consist : a) Above 50 mm b) Below 2 mm	More than 5 % by weight More than 30 % by weight
Ash Fusion Temperature <i>R</i> <i>IDT (Deformation)</i> F.T (Fluid)	Less than 1,150°C Less than 1,250°C

Note: *R equals Reducing Atmosphere*

5.3: APPROVED MEASUREMENT STANDARDS

The American Association of Testing and Materials (ASTM) standards will be applied to sampling and testing samples for Port of Loading and Port of Discharging. The ASTM standards are as follows.

	ASTM Standard Number
Sampling	D 2013 D 2234 D 7430
Total Moisture	D 3302
Proximate Analysis	
Moisture of Analysis Sample	D 3173
Fixed Carbon	D 3172
Ash	D 3174
Volatile Matter	D 3175
Gross Calorific Value	D 5865
Hardgrove Grindability Index	D 409
Ash Fusion Characteristics	D 1857
Size Consist	D 4749
Ultimate Analysis	
Carbon	D 3178, D 5373
Hydrogen	D 3178, D 5373
Nitrogen	D 3179, D 5373
Total Sulphur	D 3177, D 4239
Oxygen	D 3176, D 5373
Ash Analysis	
Silicon	D 4326
Aluminium	D 4326
Iron	D 4326
Calcium	D 4326
Magnesium	D 4326
Sodium	D 4326
Potassium	D 4326
Phosphorus	D 4326
Titanium	D 4326
Manganese	D 4326
Sulphur	D 1757

Note: or latest revised/ equivalent test adopted by ASTM.

5.4: PRICE VARIATION – Not Applicable

FOR INFORMATION PURPOSE ONLY

<p><i>Spot Tender (ST-1) Bidding Document LCC/22-23/ST/29/1</i></p>	<p><i>Shall be initialed by Authorised Signatory</i></p>	<p>Page 52 of 102</p>
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5.5: QUALITY PRICE ADJUSTMENTS

The awarded FOB_f price shall be adjusted according to the coal quality adjustment as follows. The quality adjustment parameters are based on the proximate analysis “as received basis”.

- I. When preparing the **Provisional invoice** for custom purpose, the **Load Port Quality Analysis Certificate and Weight Certificate** should be considered.
- II. When preparing the **Commercial invoice** for the balance payment, the **Discharge port Quality Analysis Certificate and Weight Certificate** should be considered.

LCC standard values are mentioned in the **Clause 5.1 of Section 5**

5.5.1. Gross Calorific Value - (GCVar)

- (a) Price Adjustment

If the actual GCVar of a given shipment of Coal is less than the LCC Standard Value for GCVar, the Price of that shipment of Coal shall be reduced by an amount in accordance with the following formula:

$$\text{Price Adjustment} = \left\{ \left[(\text{FOB})_f \times 1.25 \right] \left(\frac{\text{LCC Standard value} - \text{Actual Value}}{\text{LCC Standard Value}} \right) \right\}$$

Specimen Calculation

Example - Assumed FOB_f is 100 USD per MT and Actual GCVar = 6000

$$\begin{aligned} (-) \text{ Price Adjustment} &= 100 \times 1.25 \times \frac{(6150 - 6000)}{6150} \\ &= \underline{\underline{3.05 \text{ USD/MT}}} \end{aligned}$$

No price adjustment shall be applied in case of measured GCVar above the LCC Standard value of 6150 kcal/kg

5.5.2. Sulphur Content

If the actual Sulphur percentage of a given shipment is greater than the LCC Standard Value for Sulphur percentage but within LCC Reject Value then the Price of that shipment of Coal shall be reduced by an amount in accordance with the following formula:

$$\text{Price Adjustment} = \left\{ \left[(\text{FOB})_f \times 0.4\% \right] \left(\frac{\text{Actual Value \%} - \text{LCC Standard Value \%}}{0.1\%} \right) \right\}$$

If Sulphur content is >1.0%, shipment or delivered Coal shall be rejected as clause 3.4.3(c)

Specimen Calculation

Example - Assumed FOB_f is 100 USD per MT and Actual Sulphur is 1%

$$(-) \text{ Price Adjustment} = 100 \times 0.4\% \times (1\% - 0.5\%) = \underline{\underline{2.0 \text{ USD/MT}}}$$

0.1 %

No price adjustment shall be applied in case of measured Sulphur percentage is less than the LCC Standard value of Sulphur 0.5%.

5.5.3. Ash Content

If the actual ash percentage of a given shipment is greater than the LCC Standard Value for ash percentage then the Price of that shipment of Coal shall be reduced by an amount in accordance with the following formula:

$$\text{Price Adjustment} = \left\{ \left[(\text{FOB})_f \times 0.8\% \right] \left(\frac{\text{Actual Value \%} - \text{LCC Standard Value \%}}{1.0\%} \right) \right\}$$

Specimen Calculation

Example - Assumed $(\text{FOB})_f$ is 100 USD per MT and Actual Ash % is 16%

$$(-) \text{ Price Adjustment} = 100 \times 0.8\% \times \frac{(16\% - 11\%)}{1.0\%} = \underline{\underline{4.0 \text{ USD/MT}}}$$

No price adjustment shall be applied in case of measured ash content below the LCC Standard Value of 11%.

5.5.4. Moisture Content (Total Moisture)

If the actual total moisture percentage of a given shipment is greater than the LCC Standard Value for total moisture percentage then the Price of that shipment of Coal shall be reduced by an amount in accordance with the following formula.

TM – Total Moisture

$$\text{Price Adjustment} = \left\{ \left[(\text{FOB})_f \times 2.0\% \right] \left(\frac{\text{Actual Value \%} - \text{LCC Standard Value \%}}{1.0\%} \right) \right\}$$

Specimen Calculation

Example - Assumed $(\text{FOB})_f$ is 100 USD per MT and Actual TM is= 16 %

$$(-) \text{ Price adjustment} = 100 \times 2.0\% \times \frac{(16\% - 12\%)}{1.0\%} = \underline{\underline{8.0 \text{ USD/MT}}}$$

No price adjustment shall be applied in case of measured total moisture content below the LCC Standard Value of 12%.

5.5.5. Grain Size.

5.5.5.1. Grain Size above 50mm

If for a given shipment of Coal, the actual percentage of grain size above 50 mm exceeds 3% by weight, then the Price shall be reduced in accordance with the following formula:

$$\text{Price Adjustment} = \left\{ \left[(\text{FOB})_f \times 0.05\% \right] \left(\frac{\text{Actual Value \%} - \text{LCC Standard Value \%}}{1.0\%} \right) \right\}$$

Specimen Calculation

Example - Assumed FOB_f is 100 USD per MT and Actual % above 50mm size is= 5%

$$(-) \text{ Price Adjustment} = 100 \times 0.05\% \times \frac{(5\% - 3\%)}{1.0\%} = \underline{0.1} \text{ USD/MT}$$

No price adjustment shall be applied in case of measured grain size 50 mm less than the LCC Standard value of 3%.

5.5.5.2. Grain Size below 2mm

If for a given shipment of Coal, the actual percentage of grain size less than 2 mm exceeds **22.5%** and less than 30% by weight, then the unit Price shall be reduced in accordance with the following formula.

$$\text{Price Adjustment} = \left\{ \left[(\text{FOB})_f \times 0.01 \right] \left(\frac{\text{Actual Value \%} - \text{LCC Standard Value \%}}{1.0\%} \right) \right\}$$

Specimen Calculation

Example - Assumed FOB_f is 100 USD per MT and Actual % of less than 2mm size is= 30 %

$$(-) \text{ Price Adjustment} = 100 \times 0.01 \times \frac{(30\% - 22.5\%)}{1.0\%} = \underline{7.50} \text{ USD/MT}$$

No price adjustment shall be applied in case of measured grain size 2mm is less than the LCC Standard Value of 22.5%.

5.5.6. Volatile Matter

If for a given shipment of coal, the actual Volatile Matter percentage between 25 and 35 by weight (including 25 and 35) there will be no penalty for a shipment of Coal.

5.5.6.1. Volatile Matter less than 25% by weight

If the actual Volatile Matter percentage of a given shipment is less than 25% by weight, then the Price of that shipment of Coal shall be reduced by an amount in accordance with the following formula.

$$\text{Price Adjustment} = \left\{ \left[(\text{FOB})_f \times 0.4\% \right] \left(\frac{25\% - \text{Actual Value \%}}{1.0\%} \right) \right\}$$

Specimen Calculation

Example - Assumed FOB_f is 100 USD per MT and Actual Volatile Matter 22 %

$$(-) \text{ Price Adjustment} = 100 \times 0.4\% \times \frac{25\% - 22\%}{1.0\%} = \underline{1.2} \text{ USD/MT}$$

5.5.6.2. Volatile Matter greater than 35% by weight

If the actual Volatile Matter percentage of a given shipment is greater than 35% by weight, then the Price of that shipment of Coal shall be reduced by an amount in accordance with the following formula.

$$\text{Price Adjustment} = \left\{ \left[(FOB)_f \times 1.0\% \right] \left(\frac{\text{Actual Value \%} - 35\%}{1.0\%} \right) \right\}$$

Specimen Calculation

Example - Assumed FOB is 100 USD per MT and Actual Volatile Matter is 39.9 %

$$(-) \text{ Price Adjustment} = 100 \times 1.0\% \times \frac{39.9\% - 35\%}{1.0\%} = \underline{4.90} \text{ USD/MT}$$

5.5.7. Freight adjustment – Not Applicable

5.6 : METHOD OF QUALITY PRICE ADJUSTMENT IN CASE OF REJECTION OF COAL QUALITY ANALYSIS REPORT OF A SHIPMENT AT THE DISCHARGE PORT AS PER CLAUSE 3.4.3 (B).

LCC STANDARD VALUES are mentioned in the **Clause 5.1** and LCC REJECT VALUES are mentioned in the **Clause 5.2**.

If the parameters listed in the “clause 5.2, LCC REJECTS VALUES FOR COAL” of the coal shipment falls in to the LCC reject values as per the Discharge Port Quality Analysis Certificates, LCC shall reduce the price as per below formulas.

Note: for the purpose of calculation

- **CFR_f = FOB_f + freight price**

5.6.1 Gross Calorific Value - (GCVar)

In the event of the actual GCV value of a given discharge port quality analysis certificate of a shipment is less than the LCC Reject Value (5900 Kcal), then the coal price shall be adjusted (reduced) according to the following formula:

$$\text{Price Adjustment} = \left\{ \left[(\text{FOB})_f \times 1.25 \right] \left(\frac{\text{LCC Standard value} - \text{LCC Reject Value}}{\text{LCC Standard Value}} \right) \right\} + \left\{ \left[(\text{CFR})_f \times 1.25 \right] \left(\frac{\text{LCC Reject Value} - \text{Actual Value}}{\text{LCC Standard Value}} \right) \right\} \times 2$$

Specimen Calculation

Example - Assumed

* FOB_f Price = 100 USD per MT

* CFR_f Price = 110 USD per MT

* Actual GCVar = 5850 Kcal

$$(-) \text{ Price Adjustment} = \left\{ 100 \times 1.25 \times \frac{(6150 - 5900)}{6150} \right\} + \left\{ 110 \times 1.25 \times \frac{(5900 - 5850)}{6150} \right\} \times 2$$

$$\text{Total} = 5.08 + 2.24 = \underline{\underline{7.32 \text{ USD/MT}}}$$

5.6.2 Sulphur Content (S)

In the event of the actual Sulphur content of a given discharge port quality analysis certificate of a shipment is greater than the LCC Reject Value (>1%), then the coal shipment shall be rejected and clause 3.4.3 (c) shall be applicable.

5.6.3 Ash Content

In the event of the actual Ash content of a given discharge port quality analysis certificate of a shipment is greater than the LCC Reject Value (16%), then the coal price shall be adjusted (reduced) according to the following formula:

$$\text{Price Adjustment} = \left\{ \left[(\text{FOB})_f \times 0.8\% \right] \left(\frac{\text{LCC Reject Value \%} - \text{LCC Standard Value \%}}{1.0\%} \right) \right\} + \left\{ \left[(\text{CFR})_f \times 0.8\% \right] \left(\frac{\text{Actual Value \%} - \text{LCC Reject Value \%}}{1.0\%} \right) \right\} \times 2$$

Specimen Calculation

Example - Assumed

* FOB_f Price = 100 USD per MT

$$\begin{aligned}
 & * \text{CFR}_f \text{ Price} && = 110 \text{ USD per MT} \\
 & * \text{Actual Ash content} && = 17\% \\
 (-) \text{ Price Adjustment} &= \left\{ 100 \times 0.8\% \left(\frac{16\% - 11\%}{1.0\%} \right) \right\} + \left\{ 110 \times 0.8\% \left(\frac{17\% - 16\%}{1.0\%} \right) \right\} \times 2 \\
 \text{Total} &= 4.00 + 1.76 = \underline{\underline{5.76 \text{ USD/MT}}}
 \end{aligned}$$

5.6.4 Moisture Content (TM)

In the event of the actual total moisture (TM) percentage of a given discharge port quality analysis certificate of a shipment is greater than the LCC Reject Value (16%), then the coal price shall be reduced according to the following formula:

$$\text{Price Adjustment} = \left\{ [(\text{FOB})_f \times 2.0\%] \left(\frac{\text{LCC Reject Value \%} - \text{LCC Standard Value \%}}{1.0\%} \right) \right\} + \left\{ [(\text{CFR})_f \times 2.0\%] \left(\frac{\text{Actual Value \%} - \text{LCC Reject Value \%}}{1.0\%} \right) \right\} \times 2$$

Specimen Calculation

Example - Assumed

- * FOB_f Price = 100 USD per MT
- * CFR_f Price = 110 USD per MT
- * Actual Moisture content = 17%

$$\begin{aligned}
 (-) \text{ Price Adjustment} &= \left\{ 100 \times 2.0\% \left(\frac{16\% - 12\%}{1.0\%} \right) \right\} + \left\{ 110 \times 2.0\% \times \left(\frac{17\% - 16\%}{1.0\%} \right) \right\} \times 2 \\
 &= 8.0 + 4.40 = \underline{\underline{12.40 \text{ USD/MT}}}
 \end{aligned}$$

5.6.5 Grain Size.

5.6.5.1 Grain Size above 50mm

In the event of the actual percentage of grain size above 50 mm of a given discharge port quality analysis certificate of a shipment is greater than the LCC Reject Value (5.0%), then the coal price shall be reduced according to the following formula:

$$\text{Price Adjustment} = \left\{ [(\text{FOB})_f \times 0.05\%] \left(\frac{\text{LCC Reject Value \%} - \text{LCC Standard Value \%}}{1.0\%} \right) \right\} + \left\{ [(\text{CFR})_f \times 0.05\%] \left(\frac{\text{Actual Value \%} - \text{LCC Reject Value \%}}{1.0\%} \right) \right\} \times 2$$

Specimen Calculation

Example - Assumed

- * FOB_f Price = 100 USD per MT
- * CFR_f Price = 110 USD per MT
- * Actual Grain Size = 7.0 %

$$(-) \text{ Price Adjustment} = \left\{ 100 \times 0.05\% \left(\frac{5.0\% - 3.0\%}{1.0\%} \right) \right\} + \left\{ 110 \times 0.05\% \left(\frac{7.0\% - 5.0\%}{1.0\%} \right) \right\} \times 2$$

$$\text{Total} = 0.1 + 0.22 = \underline{\underline{0.32 \text{ USD/MT}}}$$

5.6.5.2 Grain Size below 2mm

In the event of the actual percentage of grain size below 2 mm of a given discharge port quality analysis certificate of a shipment is greater than the LCC Reject Value (30.0%), then the coal price shall be reduced according to the following formula:

$$\text{Price Adjustment} = \left\{ \left[(\text{FOB})_f \times 0.01 \right] \left(\frac{\text{LCC Reject Value \%} - \text{LCC Standard Value\%}}{1.0\%} \right) \right\} + \left\{ \left[(\text{CFR})_f \times 0.01 \right] \left(\frac{\text{Actual Value \%} - \text{LCC Reject Value\%}}{1.0\%} \right) \right\} \times 2$$

Specimen Calculation

Example - Assumed

- * FOB_f Price = 100 USD per MT
- * CFR_f Price = 110 USD per MT
- * Actual Grain Size = 31.0 %

$$(-) \text{ Price Adjustment} = \left\{ 100 \times 0.01 \left(\frac{30.0\% - 22.50\%}{1.0\%} \right) \right\} + \left\{ 110 \times 0.01 \left(\frac{31.0\% - 30.0\%}{1.0\%} \right) \right\} \times 2$$

$$\text{Total} = 7.50 + 2.20 = \underline{\underline{9.70 \text{ USD/MT}}}$$

5.6.6 Volatile Matter (VM)

In the event of a given shipment of coal, the actual Volatile Matter percentage less than 22% or more than 39.9% by weight there will be penalty for a shipment of Coal as bellow.

5.6.6.1 Volatile Matter less than 22.0% by weight

In the event of the actual percentage of Volatile Matter (VM) of a given discharge port quality analysis certificate of a shipment is less than the LCC Reject Value (22.0%), then the coal price shall be reduced according to the following formula:

$$\text{Price Adjustment} = \left\{ \left[(\text{FOB})_f \times 0.4\% \right] \left(\frac{25\% - \text{LCC Reject Value \%}}{1.0\%} \right) \right\} + \left\{ \left[(\text{CFR})_f \times 0.4\% \right] \left(\frac{\text{LCC Reject Value \%} - \text{Actual Value \%}}{1.0\%} \right) \right\} \times 2$$

Specimen Calculation

Example - Assumed

- * FOB_f Price = 100 USD per MT
- * CFR_f Price = 110 USD per MT
- * Actual Volatile Matter = 21.0 %

$$(-) \text{ Price Adjustment} = \left\{ 100 \times 0.4\% \left(\frac{25.0\% - 22.0\%}{1.0\%} \right) \right\} + \left\{ 110 \times 0.4\% \left(\frac{22.0\% - 21.0\%}{1.0\%} \right) \right\} \times 2$$

$$\text{Total} = 1.20 + 0.88 = \underline{\underline{2.08 \text{ USD/MT}}}$$

5.6.6.2 Volatile Matter more than 39.9% by weight

In the event of the actual percentage of Volatile Matter (VM) of a given discharge, port quality analysis certificate of a shipment is greater than the LCC Reject Value (39.9%), then the coal price shall be reduced according to the following formula:

$$\text{Price Adjustment} = \left\{ \left[(\text{FOB})_f \times 1.0\% \right] \left(\frac{\text{LCC Reject Value \%} - 35\%}{1.0\%} \right) \right\} + \left\{ \left[(\text{CFR})_f \times 1.0\% \right] \left(\frac{\text{Actual Value \%} - \text{LCC Reject Value \%}}{1.0\%} \right) \right\} \times 2$$

Specimen Calculation

Example - Assumed

- * FOB_f Price = 100 USD per MT
- * CFR_f Price = 110 USD per MT

* Actual Volatile Matter = 40.9 %

$$(-) \text{ Price Adjustment} = \left\{ 100 \times 1.0\% \frac{(39.90\% - 35.0\%)}{1.0\%} \right\} + \left\{ 110 \times 1.0\% \frac{(40.90\% - 39.9\%)}{1.0\%} \right\} \times 2$$

$$\text{Total} = 4.90 + 2.20 = \underline{\underline{7.10 \text{ USD/MT}}}$$

5.6.7 Hardgrove Grindability Index (HGI)

5.6.7.1 If the actual HGI value of a given shipment's Discharge Port Sample is greater than 59, then the Price of that shipment of Coal shall be reduced by USD 0.05 per one unit incremental of the above value as per the following formula.

$$\text{Price Adjustment} = \left\{ 0.05 \times (\text{Actual Value} - \text{LCC Reject Value}) \right\}$$

Example - Assumed HGI is 60

$$\begin{aligned} (-) \text{ Price Adjustment} &= 0.05 \times (60 - 59) \\ &= \underline{\underline{0.05 \text{ USD/MT}}} \end{aligned}$$

5.6.7.2 If the actual HGI value of a given shipment's Discharge Port / Reference Sample is less than 40, then the Price of that shipment of Coal shall be reduced by USD 0.05 per one unit decrease of the above value as per the following formula.

$$\text{Price Adjustment} = \left\{ 0.05 \times (\text{LCC Reject Value} - \text{Actual Value}) \right\}$$

Example - Assumed HGI is 39

$$\begin{aligned} (-) \text{ Price Adjustment} &= 0.05 \times (40 - 39) \\ &= \underline{\underline{0.05 \text{ USD/MT}}} \end{aligned}$$

5.6.8 Ash Fusion Temperature

Initial Deformation Temperature (IDT) and Fluid Temperature (FT)

5.6.8.1 In the event of the actual value of IDT of a given discharge port quality analysis certificate of a shipment is lower than or greater than the LCC Reject Value (1,150 or 1,300), then the coal price shall be reduced according to the following formulas:

In the event, IDT Value is less than 1150:

$$\text{Price Adjustment} = \left\{ 0.1 \times (\text{LCC Reject Value} - \text{Actual Value}) \right\}$$

Example – Assumed IDT is 1,125 °C

$$\begin{aligned} (-) \text{ Price Adjustment} &= 0.10 \times (1,150 - 1,125) \\ &= \underline{\underline{2.50 \text{ USD/MT}}} \end{aligned}$$

5.6.8.2 In the event of the actual value of FT of a given discharge port quality analysis certificate of a shipment is lower than or greater than the LCC Reject Value (1,250 or 1,500), then the coal price shall be reduced according to the following formula:

In the event, FT Value is less than 1250 °C:

$$\text{Price Adjustment} = \left\{ 0.1 \times (\text{LCC Reject Value} - \text{Actual Value}) \right\}$$

Example – Assumed FT is 1,225 °C

$$\begin{aligned} (-) \text{ Price Adjustment} &= 0.10 \times (1,250 - 1,225) \\ &= \underline{2.50} \text{ USD/MT} \end{aligned}$$

5.7: GENERAL SHIPPING TERMS

Not Applicable

5.7.1. Southwest Monsoon Season (SMS)

Sri Lanka experiences annually a period of heavy rains, winds and increased wave height that can pose a potential hazard to discharging operations during the months from mid-May through mid-September. Therefore, it is expected that deliveries of Coal will be suspended during those months.

While the onset and duration of each year's SMS can vary, Buyer expects to receive the quantity ordered during an effective 7 month a year. Close cooperation between Buyer and Seller will ensure the complete and safe delivery of Coal under the Agreement.

5.7.2. Shipping Documents

Seller shall electronically send following shipping documents to the buyer within 5 working days after departure of each vessel from the Load Port. In the event that the Load ports/Anchorages are Indonesia then the above time shall be within 5 days after departure of each vessel from the Load Port/Anchorage.

- (a) Commercial Invoice
- (b) Bill of Lading
- (c) Certificate of Sampling and Analysis of Quality
- (d) Draft Survey Reports
- (e) Certificate of Weight
- (f) Certificate of Hold Cleanliness
- (g) Certificate of Origin
- (h) Beneficiary's Certificate.

The Seller shall send the originals of those documents in following numbers through the Bank to Buyer.

- | | |
|---|------------------------------|
| (a) Commercial Invoice | (2 originals + 2 copies) |
| (b) Bill of Lading | (3 originals + 3 copies) |
| (c) Certificate of Sampling and Analysis of Quality | (2 originals +2 copies) |
| (d) Draft Survey Reports | (2 originals each +2 copies) |
| (e) Certificate of Weight | (2 originals +2 copies) |
| (f) Certificate of Hold Cleanliness | (2 originals +2 copies) |
| (g) Certificate of Origin | (1 original +2 copies) |
| (h) Beneficiary's Certificate | (1 original +2 copies) |
| (i) Buyer's Letter of Confirmation / Acceptance | (1 original +2 copies) |

However, any cost (delay in issuing the NOR / delay in commencing the discharging operation / custom declaration and formalities but not limited to) incurred due to delay in receipt of shipping documents shall be on account of the seller.

5.7.3. Sales Terms

Seller shall be responsible for arrangements up to the Delivery Point in accordance with the Terms and Conditions of the Agreement FOBT basis or CFR basis by sea up to the Discharging Anchorage.

The provisions in the clause 5.8 of Section 5 shall govern the shipping arrangements on CFR basis up to the Discharging Anchorage.

The provisions in the clause 5.9 of Section 5 shall govern the shipping arrangement on FOB Trimmed basis.

5.7.4. Vessels Nomination ;

5.7.4.1. General Speciation

- (a) Vessel name (including former name/s if any)
- (b) Age of vessel
- (c) IMO number
- (d) Vessel type, Class and Classification Society, P&I Club, year built and Flag
- (e) DWT, LOA, NRT, GRT, Beam, Draught and DWLTHC (Air Draft)
- (f) Number and capacities of Cranes and Grabs. The Crane and Grab capacities shall be minimum 30 MT and 10 CBM, respectively
- (g) Number of Holds and Hatches
- (h) ETA at load port and current position
- (i) Estimated cargo intake
- (j) Demurrage / Dispatch rate

5.7.4.2. Vessels Specification ;

The Vessels to be nominated by Seller shall be single -deck and of suitable size to lift the agreed cargo parcel size (of 60,000 MT Plus (+) 10% /Minus (-) 2% at buyer's option) between the Buyer and Seller, aged less than 15 years, tight, staunch, strong and in every way fitted for the voyage, and shall be geared and grabbed (with hydraulic grab bucket or superior type). Oil/Bulk/Ore combined carrier is not acceptable. In case the Vessel has any problem incurred due to Vessel's equipment, it is the Seller's responsibility for the time / cost required to settle such problem.

5.7.4.3. Demurrage Rate

The Demurrage Rate declared by the Seller on CFR basis and by the buyer on FOB basis for each vessel / shipment at the time of nomination of the vessel shall be in par with the market rates.

Demurrage Rate shall be not exceeded the Average Trip Charter Rate per day for Supramax vessels, as reported in the **Shipping Intelligence Weekly Reports** published by the **Clarkson Research Services Limited**, as the Index for charter market, one week prior to the vessel nomination date.

5.7.4.4. Protection and Indemnity (P&I)

The performing Vessel shall have the necessary Protection and Indemnity (P&I) Insurance covering following liabilities acceptable to the Sri Lanka Ports Authority or any other relevant local authority(s);

- a) Wreck removal
- b) Port / Jetty property damages liabilities
- c) Oil pollution
- d) Crew liabilities
- e) Cargo liabilities
- f) Third-party liabilities

Failure to meet the one or many of the above conditions shall be considered as fundamental breach or default of the Agreement.

5.7.4.5. The Buyer shall, within one (01) working day after receipt of such notice, confirm the acceptance of the nominated vessel to the Seller.

In case the Buyer decides to reject the nomination, due to non-compliance with one or more of the conditions set out in clause 5.7.4, the rejection shall be informed stating the reason for such rejection of the nominated vessel, within 01 working day after the receipt of the nomination.

After the receipt of the rejection intimation from Buyer, Seller shall nominate another suitable vessel (within one (01) working day) promptly.

Buyer shall confirm acceptance of the newly nominated vessel within one (01) working day, subject to compliance with the 5.7.4 above, after receipt of such fresh nomination from the Seller.

The Seller shall have the right to substitute the vessel accepted by the Buyer, if the need arises. However, seller should ensure that the substitute vessel should meet the criteria set out in the 5.7.4 above.

5.7.4.6. The Vessel shall be capable of discharging Coal into the SPBs at a rate not less than 10,000 MT per Weather Working Day of 24 Consecutive Hours Saturdays, Sundays and Holidays included (pwwd 24ch sshinc).

5.7.4.7. The Buyer shall guarantee Discharge Rate of 10,000 MT of pwwd 24ch sshinc at the anchorage except on charter party holidays indicated below.

Charter party Holidays in Sri Lanka

- 01 (one) day for National Day 04th February
- 01 (one) day for Holy Prophet's Birth Day to be declared each year in April
- 01 (one) day for Sinhala/Tamil New Year to be declared each year in April
- 01 (one) day for May Day 01st May
- 01 (one) day for Vesak Full moon Day to be declared each year in May
- 01 (one) day for Christmas 25th December

5.7.4.8. Compliance with Marine Regulations

The Seller shall ensure that the performing Vessel shall comply with all applicable laws and regulations such as International Convention for the Prevention of Pollution (MARPOL),

International Ballast Water Management Convention etc. whether promulgated by governmental authorities or by authorized private organization (s) of the Terminals at which she calls.

If the vessel fails to comply, the Seller shall be liable for all losses, expenses and responsibilities thus incurred and shall indemnify and defend Buyer, its agents, officers and employees against, and shall hold them free and harmless from, any and all losses, expenses, liabilities and claims of any kind and character arising from the failure on the part of the Vessel, her master and crew to comply with any such laws and regulations.

FOR INFORMATION PURPOSE ONLY

5.8: SHIPPING TERMS ON CFR BASIS UP TO THE DISCHARGING ANCHORAGE

The following provisions shall govern the shipping arrangements on CFR terms up to the Discharging

Anchorage:

- (a) Delivery Terms shall be 'Free-Out' basis.
- (b) Delivery Shall be according to the Delivery schedule of the Clause 2.2.5 of the Section 2.

5.8.1 Seller's Responsibilities**5.8.1.1 Vessel Nominations**

- a) All vessel nominations by seller shall be as per specifications and conditions set out in clause 5.7.4.

5.8.1.2 Loading Arrangements at the Port of Loading

- i. In the event of a Vessel is being loaded during a time of precipitation, Seller shall ensure that the shipmaster closes all cargo holds.
- ii. Seller shall ensure that the master loads the cargo into the holds as evenly as possible as per agreed pre stowage plans and acts in accordance with the International Marine Organization (IMO) regulations, recommendations and memoranda whatsoever prepared by IMO or other international organization or Protection and Indemnity Clubs or any governmental agencies, and takes necessary measures to prevent the cargo from overheating.
- iii. Seller shall also be responsible for proper trimming and stowage of cargo to the satisfaction of the shipmaster.
 - a. As soon as possible after the completion of loading of the Vessel, Seller shall inform Buyer by email or telefax the tonnage of Coal loaded, time of completion of loading, departure time from the Port of Loading and estimated time of arrival (ETA) at the anchorage at the discharge port.
 - b. Thereafter Seller shall ensure that the master of the Vessel provides by email not less than seven (07), five (05) and three (03) days' notice, and not less than twenty four (24), eight (08), three (03) and one (01) hours' notice of the Vessel's estimated time of arrival at the discharging anchorage at the port of Puttalam.
 - c. In approaching Discharging Anchorage at the port of Puttalam the Master shall keep at least 30 km off the Western coastal line of Sri Lanka. This distance need to be maintained up to the anchoring point since Fishery Harbors are located along this line and fishermen frequently utilize this area for fishing activities.

5.8.1.3 Discharging Terms and Conditions

- a. Master of the vessel shall tender Notice of Readiness (NOR) to discharge at any time day or night Saturday, Sunday, holidays included by email / telefax, after safely anchoring at the designated anchorage and is in all respects ready to discharge the cargo, whether Customs cleared or not and whether in free pratique or not. Master shall tender the NOR to the Agent with a copy to the Buyer for making arrangements for discharging.

- b. For Notice of Readiness purposes, if a vessel tenders NOR without having the International Ship and Port Facility Security (ISPS) clearance, then the Notice of Readiness shall be re-tendered once ISPS clearance is received.
- c. Laytime shall commence after the Turn Time of twelve (12) consecutive hours after NOR is tendered by the Master. However, if discharging is commenced before the expiry of the Turn Time of 12 hour period, laytime shall commence to run count from the time of commencement of discharging proportionate to the number of Gangs worked. Prorating of the laytime used to the number of Gangs worked shall be within the Turn Time of 12 hours only.
- d. Laytime or time on demurrage shall cease to count after cargo discharging at the anchorage is completed. Time taken for the initial and final draft surveys shall not count as laytime or time on demurrage.
- e. Only two (02) ships can be anchored at the port of Puttalam at any given instance of time. Therefore, if the Master is advised by the agent to wait outside the limits of the port of Puttalam (eg. at the out port limit (OPL) anchorage of the port of Colombo), Master shall tender NOR upon anchoring at such out port limits, and the laytime shall count after the Turn Time of 12 hours from the time of tendering of NOR from out port anchorage.
- f. In the event the master tenders NOR outside the port limits as aforesaid, the time taken from anchor aweigh at such out port anchorage until the time of anchoring at the designated Discharging Anchorage at the port of Puttalam shall not count as laytime or time on demurrage.
- g. In the event the vessel is anchored at an out port anchorage (Colombo / Galle / Hambantota) solely for the purpose of supplying bunkers / lubricants / provisions / fresh water etc. to the vessel, such time shall not count as laytime or time on demurrage.
- h. In the event such supplies are made at the discharging anchorage of Puttalam concurrently during discharging of Coal without disruption to the cargo discharging operations or on the advice of the Agent to anchor the vessel at OPL anchorage of Colombo laytime or time on demurrage shall count.

5.8.1.4 Duration of breakdown of ship's cranes during discharging operations shall not count as laytime. The effect on laytime due to the breakdown of ship's cranes shall be calculated on a pro rata basis in accordance with the number of ship's cranes in breakdown in proportion to the total number of ship's cranes.

5.8.1.5 In the event shifting within the Discharging Anchorage at the port of Puttalam area is necessary at the discretion of the seller after the vessel has anchored at the point of discharge, shifting time shall not count as laytime or time on demurrage and the costs incurred for the shifting shall be borne by the Seller. However in the event shifting within the discharge anchorage is necessary at the discretion of the buyer then laytime shall continue.

5.8.1.6 In the event Vessel's discharging is interrupted due to bad weather (including typhoon, strong wind, raining, high wave etc.), any time lost shall not count as laytime Unless vessel is on Demurrage.

If the event one or more vessels are waiting at Puttalam Anchorage, weather delay periods affecting the laytime of the vessel under discharging and recorded in the SOF of the discharging vessel, can be deducted from the waiting ships' laytime, only until the time of expiry of laytimes of the respective waiting vessels.

5.8.1.7 In the event if a Vessel is Arrested or Detained by the Authorities at the load port or discharge port, laytime shall not count from the time of such Warrant for Arrest or Detention Order is served onboard the vessel until the time of releasing the vessel from the Arrest or Detention.

5.8.1.8 All charges / dues payable to Sri Lanka Port Authority, consolidated customs charges to the Sri Lanka Customs and Shipping Agency Fees at the port of discharge on Vessels and / or Coal shall be on the Seller's account. The seller shall bear all costs related to the Vessels up to the Puttalam Discharging Anchorage other than the cargo discharging expenses incurred within Sri Lanka.

5.8.1.9 Seller shall ensure that the Master / vessel shall comply with all the Regulations of the International Maritime Organization (IMO) as well as local Regulations of the Port State Control (Director General of Merchant Shipping), Sri Lanka Ports Authority (SLPA), Marine Environment Protection Authority of Sri Lanka (MEPA), Sri Lanka Navy (SLN), Sri Lanka Customs (SLC) etc.

5.8.1.10 Buyer shall be responsible for arranging arrival and departure formalities on arrivals and on the completion of discharging respectively.

5.8.1.11 All the Vessels shall vacate from the Discharging Anchorage at the port of Puttalam promptly after completion of the discharging and Departure Formalities.

In the event Seller fails to act accordingly, and such delays prevent other waiting Vessel(s) from anchoring, and which as a result adversely affects the efficient use of the Discharging Anchorage at the port of Puttalam and the Jetty, Seller shall compensate Buyer for all losses, damages, expenses and/or liability against on Buyer's prior notification and presentation of evidence of having incurred such losses, damages, expenses and/or liability caused thereby or resulting thereof. In the event the need arises to discharge other vessel(s), then without Buyer's prior notification to seller, Buyer has the right to order and to have the Vessel towed off the anchorage, at Seller's risk and expenses. Seller shall be responsible for all losses and damages incurred therefrom as a result of delay or failure.

5.8.2 Mother Vessel Demurrage

5.8.2.1 Demurrage Rate

The Demurrage Rate declared by the Seller for each vessel / shipment at the time of nomination of the vessel shall be in par with the market rates.

Demurrage Rate shall be justifiable by the Seller to the Buyer based on the Average Trip Charter Rate per day for Supramax vessels, as reported in the Shipping Intelligence Weekly

Reports published by the *Clarkson Research Services Limited*, as the Index for charter market and *Platts Monthly Bunkerwire* as the Index for bunker prices. Both indices shall be the preceding month to month, which includes the first date of each laycan.

- 5.8.2.2** In the event that the discharging of a shipment of coal is not completed before the expiry of the laytime allowed, the Buyer shall pay Demurrage to the Seller at the Demurrage Rate declared for the shipment as per the laytime calculations to be mutually agreed in accordance with the Statement of Facts (SOF) signed by the Master, Agent and the Supervisor of the Stevedoring & Lightering Contractor of the Buyer.
- 5.8.2.3** In the event that the discharging of a shipment of coal is completed before the expiry of the laytime allowed, the Seller shall pay Despatch money for the all laytime saved to the stevedores (lightering service provider) through the Buyer as per the laytime calculations to be mutually agreed in accordance with the SOF. The basis for calculation of despatch money shall be as follows. - at 50% of the agreed Demurrage rate at the time of nomination for the shipment
- 5.8.2.4** All claims for demurrage, in respect of the discharging of Vessel shall be settled and paid within thirty (30) days after receiving the invoice.

5.8.3 Compliance with Marine Regulations

- 5.8.3.1** The Seller shall ensure that the performing Vessel shall comply with all applicable laws and regulations such as International Convention for the Prevention of Pollution (MARPOL), International Ballast Water Management Convention etc. whether promulgated by governmental authorities or by authorized private organization (s) of the Terminals at which she calls.

If the vessel fails to comply, the Seller shall be liable for all losses, expenses and responsibilities thus incurred and shall indemnify and defend Buyer, its agents, officers and employees against, and shall hold them free and harmless from, any and all losses, expenses, liabilities and claims of any kind and character arising from the failure on the part of the Vessel, her master and crew to comply with any such laws and regulations.

- 5.8.3.2** Buyer's acceptance of nomination of a Vessel shall in no way relieve the Seller or his sub Sellers of responsibility for failing to comply with the requirements stipulated in this Sub-clause.

5.8.4 Agent at Discharge Port

The Seller shall appoint his shipping agent for the discharge port. If Buyer is of the opinion that the shipping agent appointed by Seller is incompetent, Buyer may, by notice to Seller, require that such agent to be replaced. Seller shall act accordingly without delay.

5.9 : SHIPPING TERMS ON FOB Trimmed BASIS

The following provisions shall govern the shipping arrangements on FOBT terms:

5.9.1 Vessel Type and Size

The Buyer shall have the right at his sole discretion to nominate vessels of suitable type and size for the agreed cargo parcel size between the Buyer and Seller to load the Coal at the Port of Loading and the Vessel shall be geared and grabbed.

5.9.2 Delivery Schedule

Seller shall Deliver Coal according to the Delivery schedule of the Buyer pursuant to Clause no. 2.2.5 of the ITB.

5.9.3 Seller's Responsibilities

Seller shall arrange Coal to be loaded, stowed and trimmed to the master's satisfaction in respect of sea-worthiness, in free of risk, expense and responsibility to the Vessel and Buyer.

5.9.4 Buyer's Responsibilities

Buyer shall be solely responsible for the ocean transportation of the Coal and shall arrange for single deck bulk carriers suitable to enter and leave the nominated anchorage / berth of the Port of Loading. Buyer shall ensure that each Vessel designated by the Buyer for the carriage of the Coal will;

- (a) Provide Seller with free use of cranes and related electricity power required by Seller during loading of the Coal on board such of Vessel; and
- (b) Have lightering facilities and crew available during the loading operation.

However, loading, stowing and trimming shall be done by the stevedores appointed by the Seller at their cost and time. Any machinery (Pay loaders) if required for trimming shall be supplied and paid for by the Seller.

5.9.5 Vessel Nominations & ETA Notices at Load Port to be Given by the Buyer to the Seller

All vessel nominations by seller shall be as per specifications and conditions set out in clause 5.7.4.

5.9.6 Notice of Readiness and the laytime at the Port of Loading

- a) Master of the vessel shall tender Notice of Readiness (NOR) at the load port at any time day or night Saturday, Sunday, holidays including, by email, after safely anchoring at the designated anchorage and is in all respects ready to load the cargo, whether Customs cleared or not and whether in free pratique or not to the vessel's agent.
- b) For Notice of Readiness purposes, if a vessel neither tenders NOR without having the International Ship and Port Facility Security (ISPS) clearance, then the Notice of Readiness is to be re - tendered once ISPS clearance is received.
- c) Laytime shall commence after the Turn Time of twelve (12) consecutive hours after NOR is tendered by the Master. However, if loading commences before the expiry of such 12 hour period, laytime shall commence to run upon commencement of loading.

- d) Laytime or time on demurrage shall cease to count after cargo loading is completed. Time taken for the initial and final draft surveys shall not count as laytime or time on demurrage.
- e) In case the vessel loads alongside a berth at a coal loading terminal, the time taken from anchor aweigh or pilot on board, whichever is earlier, until the vessel is all fast alongside, and ready in all respects to load including passing hatches, Customs clearance and free pratique, if applicable, shall not count as laytime.
- f) If the vessel is ordered by the Port Authorities or Terminal to wait for anchorage, all such time shall count as laytime or time on demurrage.
- g) Time required for loading of Vessel's bunkers and lubricants shall not be included in the laytime or time on demurrage except to the extent that the loading of the Coal is carried out concurrently.
- h) Duration of breakdown of ship's cranes during loading operation shall not be counted as laytime. The time of breakdown of ship's cranes shall be calculated on a pro rata basis in accordance with the number of Vessel's cranes in breakdown to the total number of Vessel's cranes.
- i) If shifting between anchorages or berths is necessary after the Vessel has anchored or berthed at the point of loading, the time required for shifting shall count as laytime or time on demurrage.
- j) However, if the shipmaster decides to shift the Vessel after it has anchored or berthed for any reason other than the request, order or recommendation from Buyer or the Port Authorities, the time required for shifting shall not count as laytime or time on demurrage.
- k) In the event if a Vessel is Arrested or Detained by the Authorities at the load port or discharge port, laytime shall not count from the time of such Warrant for Arrest or Detention Order is served on board the vessel until the time of releasing the vessel from the Arrest or Detention.

5.9.7 Shipments from Richards Bay Coal Terminal (RBCT) in South Africa

For shipments from RBCT, terms and conditions with regard to the vessels nominations, NOR, Turn Time, Standard Load Rates, laytime exclusions etc. shall be as per the RBCT Guidelines in force at the time of shipment.

5.9.8 Nomination of Safe Load Port / Berth / Anchorage

- a) The Seller shall nominate one (01) safe port / one (01) safe berth / one (01) safe anchorage, which shall be always accessible and always afloat for the performing ship nominated by the Buyer and accepted by the Seller to carry a parcel of 60,000 MT +/- 10%.
- b) If the vessel nominated by the Buyer and accepted by the Seller cannot be fully loaded as per the Master's Pre-stowage Plan at one (01) safe port / one (01) safe berth / one (01) safe anchorage and in the event that the Seller does not load the full quantity / intake of Coal on board the performing ship as per the Master's Pre -Stowage Plan, the Seller shall pay Dead-freight to the Buyer for the shortfall of the loaded quantity from the quantity declared in the Pre-stowage Plan of the Master. The Buyer shall declare

the applicable freight rate for the shipment as per the sea freight contract between the Buyer and its sea freight contractor - CSC.

- c) In the event it becomes essential for the Seller to load coal from more than one (01) safe berth / one (01) safe anchorage in a one (01) safe port, it shall be arranged by the Seller only with prior written consent of the Buyer.

In such an event, laytime or time on demurrage shall continue to count from the time neither of tendering NOR at the first berth / anchorage until the completion of loading at the last berth / anchorage.

All the costs of shifting and port charges and Demurrage charges at load port, and also at the discharge port due to delay in the ship at the load port, shall be on Seller's account.

5.9.9 Delay in Export Documentation Formalities (Customs and Port)

If the time taken to complete draft survey, export documentation, Port Clearance by the Customs / Port etc. after completion of loading takes more than 03 hours, such delayed period over and above 03 hours shall count as laytime or time on demurrage. For shipments from RBCT, South Africa, prevalent RBCT Guidelines shall apply.

5.9.10 Seller's Delivery Obligation and Load Rate

Seller shall cause and ensure that:

- a. The amount of Coal for each shipment under the Agreement shall be as specified by the Buyer in its notice given under Clause 2.2.5 of the ITB (subject to tolerance of +/-10% at Master's option) and shall be available and ready for loading at the nominated loading anchorage / berth; and
- b. Load Rate shall be as declared by the Seller for respective load port in his Technical and Commercial Proposal (Annex 4) or the customary load rate declared by the port/terminal, whichever is higher.
- c. However, the minimum Load Rate shall be at least 10,000 MT per weather working day of twenty-four (24) consecutive hours, Saturdays, Sundays, and holidays included.
- d. For shipments from Richards Bay Coal Terminal (RBCT) in South Africa, Standard Load Rates shall be as per the RBCT Guidelines in force at the time of shipment.

5.9.11 Vessel Demurrage and Dispatch

- a) In the event that Seller is unable to complete the loading, trimming and stowage of a shipment of Coal on board the Vessel within the laytime allowed, Seller shall pay to the Buyer Demurrage at the rate intimated by the Buyer with the Nomination of the vessel, as per the laytime calculations to be mutually agreed in accordance with the Statement of Facts (SOF) signed by the Master, Agent and the Supervisor of the Stevedoring Contractor.
- b) In the event that the loading of a shipment of coal is completed before the expiry of the laytime allowed, the Buyer shall pay to Seller Dispatch money at 50% of the demurrage rate for the all laytime saved.

- c) All claims for Demurrage or Dispatch money for the load port, as the case may be shall be settled and paid within 30 days after the completion of loading of that shipment of coal.
- d) The Statement of Facts (SOF) of the load port shall be signed by the Master of the ship, vessel Agent and the Supervisor of the Stevedores.
- e) If any amount of Demurrage less Dispatch money payable in terms of this Clause no. 10 remains unsettled by the seller, the Buyer shall have the right to deduct such amounts as per the Buyer’s laytime calculation from the earliest available invoice of the Seller, (refer the Clause 5.17 of section 5: Letter of Confirmation for the Final Payment).
If the demurrage amounts deducted as above as per the Buyer’s laytime calculation by the Buyer are higher than the the finally agreed demurrage amounts as per the laytime calculations to be mutually agreed between the Buyer and the Seller, then the amount deducted in excess of the mutually agreed demurrage amounts shall be refunded by the Buyer to the Seller.
The Performance Security submitted by the Seller shall not be released by the Buyer until the load port Demurrage less any Dispatch are remained unsettled for any reason.

5.9.12 Costs of Delivery

The Seller shall bear all of the costs and expenses of and relating to the loading of the Coal on the Vessel, wharfage, export and other taxes, imposts and other charges imposed by any government or its agencies, as well as other similar costs, which are normally considered to be for Seller's account.

The Buyer shall bear all Port charges and dues and Customs Overtime charges on account of the vessel at both load port and discharge port.

5.9.13 Seller's Shipment Default

In the event that the quantity of Coal which Seller has for any shipment under the Agreement is insufficient, as per the final Pre-stowage Plan of the Master, to meet Buyer's requirements for that shipment stated in Clause 2.2.5 of the Agreement, or in the event constituting Detention or Arrest of the Vessel due to Seller’s default, then the Seller shall pay for any and all losses, damages, and costs (including, without limitation, Dead-freight and other expenses claimed by the shipping company) suffered by Buyer arising from such insufficiency or such detention damages claimed by the shipping company (or Buyer), and Seller shall, in addition to the payment of demurrage, pay for any and all losses, damages, and costs arising from or relating to any delay by Seller in loading that shipment of Coal.

In such event, the losses, damages, and costs shall be calculated in accordance with the One Year Time Charter Rate as reported in the Shipping Intelligence Weekly Reports published by Clarkson Research Services Ltd. for the preceding moth to the month, which includes the first date of the relevant laycan or the Demurrage rate agreed for the shipment, whichever is higher.

5.9.14 Stevedore Damages to the Ships

Buyer shall not be responsible for stevedore damages, which the Vessel may sustain at the Port of Loading. Seller shall indemnify and hold the Buyer harmless against any and all

<p><i>Spot Tender (ST-1) Bidding Document LCC/22-23/ST/29/1</i></p>	<p><i>Shall be initialled by Authorised Signatory</i></p>	<p>Page 72 of 102</p>
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losses, claims, actions, costs, expenses, judgments, subrogation, or other damages resulting from injury to any person or damage to property of whatsoever nature of any person arising out of or incident to the performance of the work to load cargo onto the Vessel at the Port of Loading by Seller (including but not limited to Seller's employees, agents, sub seller, stevedore and other designated by Seller to perform the loading work or service in, about or attendant to the loading work). The Master shall inform stevedores, agents and the Buyer as soon as the damage is sustained during loading within 24 hours of such incident. The master shall endeavor to obtain stevedores' written acknowledgement of liability. Owners or Master shall give written notice to stevedores of damage claimed before the vessel sail from the loading port. Any time lost due to stevedore damage shall count as laytime or time on demurrage.

5.9.15 Asian Gypsy Moth Free Certificates

In case any shipments are loaded from the ports of Vanino or Vostochny in Russia, during high risk Asian Gypsy Moth months from 1st July 31st October every year, the costs incurred by the vessel for fumigation of the ship and for obtaining the Asian Gypsy Moth Free Certificates shall be reimbursed by the Seller on actual basis. In the event that the Seller fails to reimburse such costs, the amount shall be deducted from the final payment by the Buyer to the Seller.

5.10: FORM FOR SELLERS PERFORMANCE SECURITY

[On the letterhead of the issuing bank]

[Date]

Tender NO: LCC/22-23/ST/29/1

To: [Buyer]

Dear Sirs,

[Issuing Bank]

Account: Seller

1. We, the undersigned Issuing Bank, understand that:

- (a) You, the Buyer, has issued a letter of Award dated to ; and
- (b) as per the Bid Conditions the seller must provide to you a performance security which is the conditions precedent to the execution to the Coal supply agreement “a draft of which has been provided to us”.

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

This guarantee shall expire, no later than the 90 days beyond the scheduled date of contract completion date (for the purpose of this contract completion date is defined as the date of successful completion of the final delivery of the last shipment of the contract). and any demand for payment under it must be received by us at this office on or before that date.

[Signature]

5.11: : DOCUMENTS REQUIRED FOR OPENING NRRA AND EA

- a) Supplier, LCC, CEB and Peoples bank, quadripartite agreement.
- b) Performa invoice for the relevant shipment
- c) Relevant documents required by the Peoples Bank to open the above accounts by each parties certifying by the respective authorities.

5.12: DOCUMENTS REQUIRED FOR LETTER OF CREDIT (LC): Not Applicable

- d) Manually signed Commercial Invoice – 2 originals and 2 copies
- e) Original Clean on Board or Charter Party Bill of Lading
- f) Certificate of Origin -1 original and 2 copies
- g) Certificate of weight at Puttalam Anchorage
- h) Certificate of Analysis of Quality at the Jetty of the Plant
- i) Draft Survey Report at Puttalam Anchorage
- j) Certificate of Hold Cleanliness
- k) Beneficiary's Certificate Certifying that
- l) Copy documents have been sent direct to buyer by courier
- m) Original Statement of Facts, Ship's Stowage Plan, Cargo Manifest and Notice of Readiness have been sent to the buyer by courier
- n) Letter of Acceptance
- o) Letter of Confirmation

5.13 : ADDITIONAL CONDITIONS FOR LETTER OF CREDIT (LC): Not Applicable

- a) Quality adjustment (if any) shown on invoice allowed.
- b) Plus Ten (10) percent or minus Ten (10) percent in quantity and value is acceptable.
- c) Third party documents except commercial invoice and draft are acceptable.
- d) LC under drawn due to quality adjustment is acceptable.
- e) Charter party bills of lading are acceptable.
- f) Bills of lading showing charter party date which may be prior to the date of the LC and different from bills of lading is acceptable.
- g) Typographical and spelling errors shall not be considered as discrepancies except on amount, date and quality.
- h) Applicable rules UCP latest version.
- i) Documents presented later than 30 days from Bill of Lading date but within LC validity are acceptable.
- j) All bank charges outside Sri Lanka for beneficiary's account.
- k) All alterations on documents to be authenticated by issuing authority
- l) Photocopies in lieu of copies acceptable.
- m) Documents presented with different headers/titles but serving the same purpose are acceptable.

- n) Certificate of sampling and analysis in the standard format of independent inspection agency is acceptable.
- o) Cargo marine insurance to be covered by the applicant.
- p) Required certificates not showing the wordings ‘independent inspector’ but showing specific name of them is acceptable.
- q) The number, date of credit and the name of our bank must be quoted on draft and invoice.
- r) Certificate of Analysis in the standard format of independent inspection agency and also showing results for other parameters is acceptable.

5.14: DOCUMENTS REQUIRED FOR CERTIFICATE OF UNLOADING AT PUTTALAM ANCHORAGE

- a) Seller’s manually signed Provisional Invoice in Two originals and Two copies showing FOB Trimmed or CFR Puttalam Anchorage price, HS code No. 2701.12 and certifying that the shipment and its value conform in all respects to supplier’s Proforma Invoice No. dated 20xx and the contract No. LCC/22-23/ST/29/1 signed between Lanka Coal Company (Pvt.) Ltd and the Coal Supplier.
- b) Full set of Clean on Board Bills of Lading (BL) in 3 Originals and 3 non-negotiable copies

NOTIFY PARTY:

Chairman and Managing Director
Lanka Coal Company (Private) Limited
51/3, Suranimala Place, Off-Dutugemunu Street,
Dehiwala 10350, Sri Lanka

- c) Certificate of Origin in One original and Two copies – acceptable to LCC and issued by the appropriate authority of the relevant country. Eg. Chamber of Commerce (combined certificate of origin and invoice acceptable).
- d) Certificate of Weight in Two originals and Two copies issued by an internationally accepted independent inspector at the Load Port.
- e) Beneficiary’s Certificate in one Original and two copies certifying that copy documents and original Statement of Facts, Ship’s Stowage Plan, Cargo Manifest and Notice of Readiness have been sent to applicant by courier.
- f) Certificate of Hold Cleanliness before loading of coal in two Originals two copies.
- g) Load port Certificate of Sampling and Analysis of Quality in Two originals and Two copies issued by an internationally accepted independent inspector at the Load Port.
- h) Draft Survey Report issued by an internationally accepted independent inspector at Load Port two originals and two copies.
- i) Applicant’s Certificate of unloading (COU) as per SCHEDULE 5.16. This will be issued within 72 hours from the receipt of the above documents.

5.15: DOCUMENTS REQUIRED FOR PAYMENT (CFR/FOB)

- a) Seller’s manually signed Commercial Invoice in Two originals and Two copies indicating FOB Trimmed or CFR Puttalam Anchorage price, HS code No. 2701.12 and certifying that the shipment and its value conform in all respects to supplier’s Proforma Invoice No. dated 20xx and the contract No. LCC/22-23/ST/29/1 signed between Lanka Coal Company (Pvt.) Ltd and the Coal Supplier.
- b) Full set of Clean on Board Bills of Lading (BL) in 3 Originals and 3 non-negotiable copies

NOTIFY PARTY:

Chairman and Managing Director
Lanka Coal Company (Private) Limited
51/3, Suranimala Place, Off-Dutugemunu Street,
Dehiwala 10350, Sri Lanka

- c) Certificate of Origin in One original and Two copies – acceptable to LCC and issued by the appropriate authority of the relevant country. *Eg. Chamber of Commerce* (combined certificate of origin and invoice acceptable).
- d) Certificate of Weight in Two originals and Two copies issued by an internationally accepted independent inspector at the discharge port anchorage/ Jetty of the Plant.
- e) Beneficiary’s Certificate in one Original and two copies certifying that copy documents and original Statement of Facts, Ship’s Stowage Plan, Cargo Manifest and Notice of Readiness have been sent to applicant by courier.
- f) Certificate of Hold Cleanliness before loading of coal in two originals and two copies.
- g) Discharge port Certificate of Sampling and Analysis of Quality in Two originals and Two copies issued by an internationally accepted independent inspector at the Discharge Port.
- h) Draft Survey Report issued by an internationally accepted independent inspector at the Discharge Port in two originals and two copies.
- i) Applicant’s certificate of unloading (COU) in one Original and two copies as per SCHEDULE 5.16.
- j) Applicant letter of confirmation (LOC) in one Original and Two copies as per SCHEDULE 5.17. This will be issued within 3 working days from the receipt of the above documents stated in clause a) to h).

5.16: DRAFT SPECIMEN FOR CERTIFICATE OF UNLOADING (COU)To: *(Name and Address of the supplier)*

DATE:

.....
.....SERIAL NO.: LCC/22-23/ST/x/xxx/COU/xx
PARTICULARS OF CONSIGNMENT

TENDER REF. NO: LCC/22/TT/1

1. a) No. (LC/NRRA/EA):		b) BL No.:		c) BL Date:	
2. Name of Beneficiary				
3. a) Total BL weight of coal (MT):		b) Name of the vessel :			
4. Beneficiary's Commercial invoice					
a. Number:		b. Date:		c. 100% of FOBT Value US\$:	
5. Awarded Price US \$/MT					
6. Acceptance of the coal quality Parameters					
Quality Parameters	LCC Standard Value	LCC Reject Value	Load Port Value	Acceptance (Yes or No)	
				Yes	No
a. Gross Calorific Value (kcal/kg)	6,150	<5,900			
b. Sulphur (%)	0.5	>1			
c. Ash (%)	11	>16			
d. Moisture (%)	12	>16			
e. Volatile Matter (%)	31	<22->39.9			
f. Size (as per loading port) Above 50mm (%)	3	>5			
g. Size (as per loading Port) Below 2mm (%)	22.5	>30			
h. Hardgrove Grindability Index	50	<40->59			
i. Ash Fusion Temperature (AFT)	1250	<1150			
j. Fluid Temperature (F.T)	1325	<1250			
7. Acceptance of the coal quality of the vessel (Yes / No)					

This is to confirm that the Vessel MV xxxxxx's coal quality is acceptable in compliance with Clauses 5.1 and 5.2 of the Agreement. Accordingly, inform the master of the vessel that coal is allowed to be unloaded / discharged at the Puttalam Anchorage.

Thanking You,
Yours Faithfully,
LANKA COAL COMPANY (PVT) LTD.

.....
Chairman / Managing Director
Cc: People's Bank Head Office Sri Lanka

5.17: DRAFT SPECIMEN LETTER OF CONFIRMATION FOR THE PAYMENT (FOB/CFR)**Peoples Bank**

SWIFT:

Att: **Name and Address of suppliers**

DATE:

SERIAL NO.: LCC/22/TT/x/xxx/LOC/xx

TENDER REF. NO: LCC/22/TT/1

PARTICULARS OF CONSIGNMENT

1. a) LC/NRRA/EA No:		b) BL No.:		c) BL Date:.....		
2. Name of Beneficiary:						
3. a) Total weight as Discharged port report (MT):.....				b) Name of the vessel :.....		
4. Beneficiary's Commercial invoice						
a. Number:		b. Date:		c. 100% of FOB Value US\$:		
5. Awarded Price US \$/MT						
6. Price adjustment	LCC Standard Value	LCC Reject Value	Load Port Value	Discharge Port Value	Acceptance Yes/No	
a. Gross Calorific Value (kcal/kg)	6,150	<5,900				
b. Sulphur (%)	0.5	>1				
c. Ash (%)	11	>16				
d. Moisture (%)	12	>16				
e. Volatile Matter (%)	31	<22,>39.9				
f. Size Above 50mm (%)	3	>5				
g. Size Below 2mm (%)	22.5	>30				
h. Hardgrove Grindability Index	50	<40,>59				
i. Ash Fusion	1250	<1150				
j. Flow (Fluid)	1325	<1250				
7. TOTAL PRICE ADJUSTMENT FOR QUALITY (a+b+c+d+e+f+g+h+i+j) US\$ per MT						
NET UNIT PRICE AFTER QUALITY ADJUSTMENT US\$/MT (6+7)						
8. Summary of Payment						
a. Total Shipment Value after quality adjustments for Discharge port Report (..... MT X US\$.....) US\$						
b. Total Freight Payment (..... MT x US\$) US\$						
c. Finance costs per MT (..... MT x US\$) US\$						
d. Total Payment US\$-(a + b +c)						
e. Other Adjustments (if any)						
a) Demurrages stipulated in Clause Schedule 3 – Part C Clause 10.2						
b) Different amounts in respect of quality adjustment of reference sample stipulated in Clause 3.5.3.						

Please release the following payment for the above LC/NRRA/EA.

USD: (United State Dollars..... Only.)

Thanking You,
Yours Faithfully,
LANKA COAL COMPANY (PVT) LTD

Chairman / Managing Director

Cc: People's Bank Head Office Sri Lanka

End of Section 5

- SECTION 1 - INVITATION FOR BIDS**
- SECTION 2 - INSTRUCTIONS TO BIDDERS**
- SECTION 3 - CONDITIONS OF CONTRACT**
- SECTION 4 - COAL SUPPLY AGREEMENT (DRAFT)**
- SECTION 5 - SCHEDULES**
- SECTION 6 - ANNEXURES**
- SECTION 7 - DEFINITIONS**

FOR INFORMATION PURPOSE ONLY

6.0 ANNEXURE

6.1. ANNEXURE 1 : FORM OF BID

TENDER No. : LCC/22-23/ST/29/1

REFERENCE : CLAUSE 2.4.3 (ii) of Section 2

To: _____ (LCC) _____ This document presents response of _____ (Bidder) _____ to the INVITATION FOR BIDS NO. LCC/22-23/ST/29/1 of Lanka Coal Company (Private) Limited ("LCC").

Along with our PRICE PROPOSAL submitted herewith, this document represents our firm's binding offer to supply coal to LCC at the FOB Trimmed/CFR price US \$ Per MT as indicated in the PRICE PROPOSAL on the Terms and conditions specified herein and in the INSTRUCTIONS TO BIDDERS, CONDITIONS OF CONTRACT and the PROPOSED COAL SUPPLY AGREEMENT. If selected for award, we shall be bound to supply coal to LCC pursuant to (a) an executed COAL SUPPLY AGREEMENT (b) the PRICE PROPOSAL, in each case, as accepted by LCC.

We agree to abide by this Form of Bid until _____ (date) and it shall remain binding upon us and may be accepted at any time before that date. We acknowledge that all documents submitted with our Bid shall form part of this Form of Bid.

Unless and until the COAL SUPPLY AGREEMENT is executed, this Form of Bid, together with LCC's written acceptance thereof, shall constitute a binding contract between LCC and us.

We understand that LCC is not bound to accept the lowest or any Bid LCC may receive.

BIDDER:

Company Name : _____

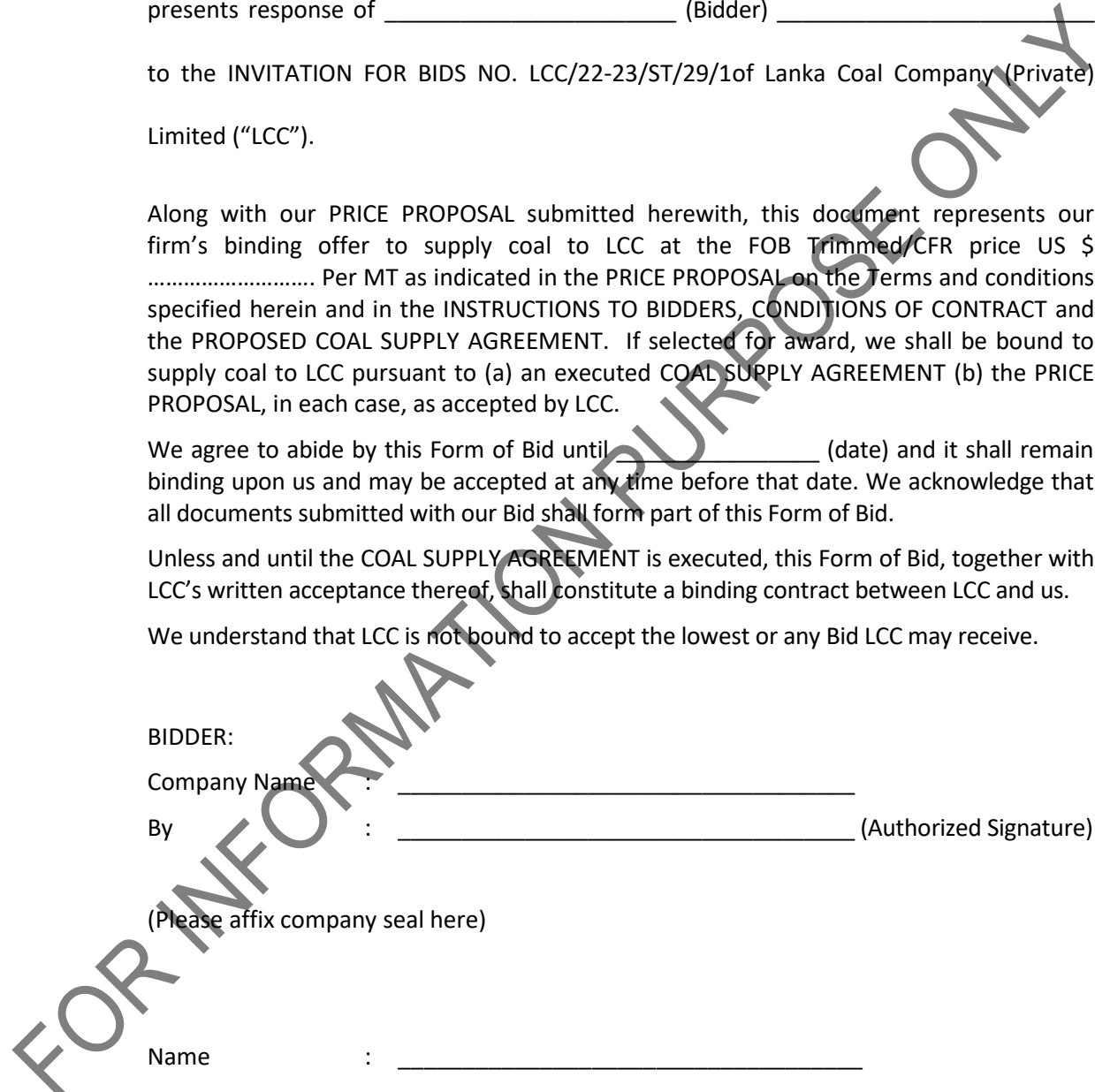
By : _____ (Authorized Signature)

(Please affix company seal here)

Name : _____

Title : _____

Date : _____



6.2. ANNEXURE 2 : SPECIMEN FORM OF BID SECURITY

REFERENCE : CLAUSE 2.4.3 (iii) of Section 2

TENDER No. : LCC/22-23/ST/29/1

Name and address of Beneficiary _____ (LCC)
_____ (whom the Bid documents define as the Buyer).

We have been informed that _____ (hereinafter called the "Bidder") is submitting a Bid for a contract for supply of coal in response to your invitation under Invitation for Bids No. _____, and that the conditions of your invitation which are set out in a document entitled Instructions to Bidders require its Bid to be supported by a Bid security.

At the request of the Bidder, we (*name of bank*) _____ hereby irrevocably undertake to pay you, the Beneficiary/Buyer, any sum or sums not exceeding in total the amount of _____

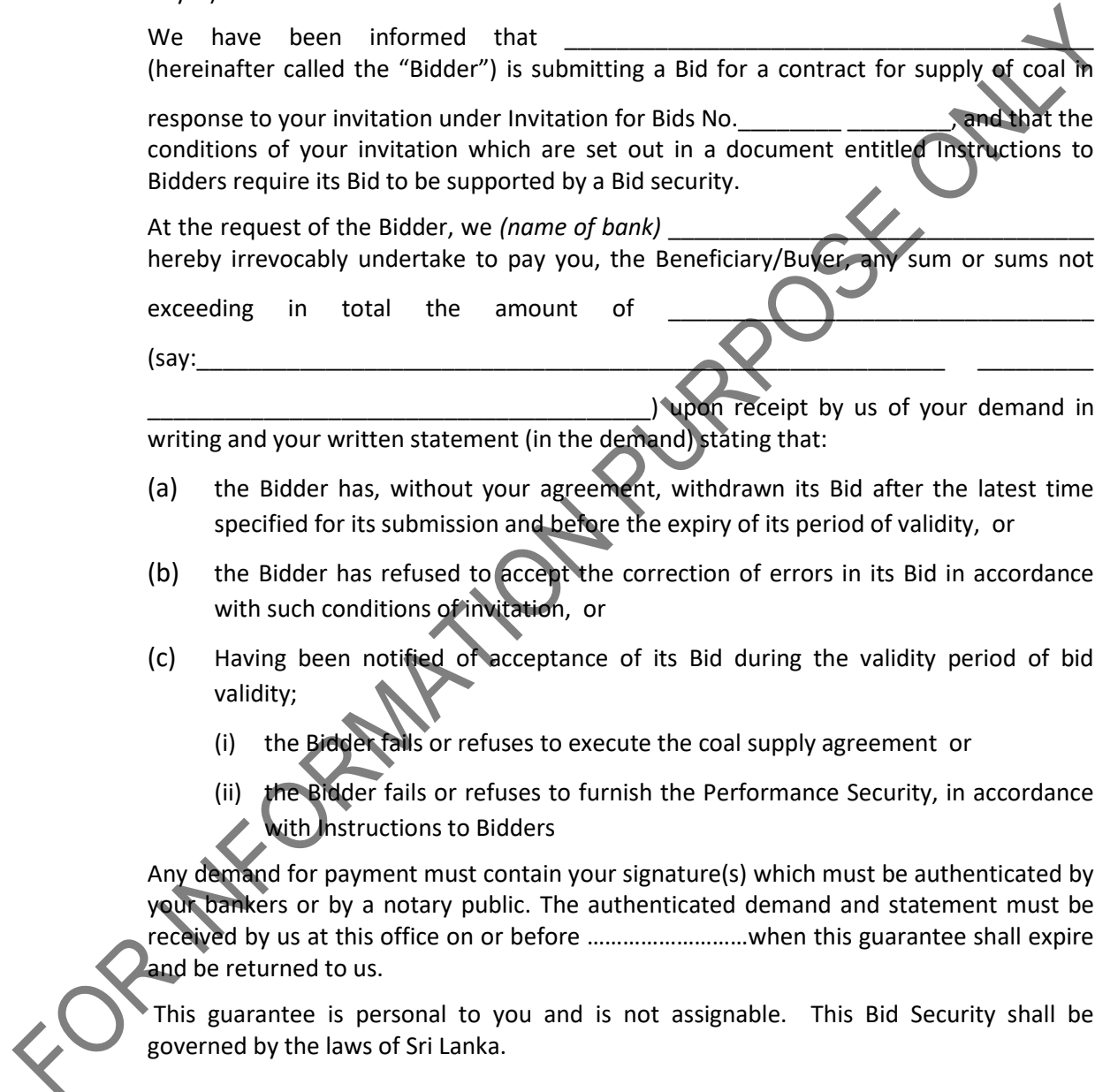
(say: _____) upon receipt by us of your demand in writing and your written statement (in the demand) stating that:

- (a) the Bidder has, without your agreement, withdrawn its Bid after the latest time specified for its submission and before the expiry of its period of validity, or
- (b) the Bidder has refused to accept the correction of errors in its Bid in accordance with such conditions of invitation, or
- (c) Having been notified of acceptance of its Bid during the validity period of bid validity;
 - (i) the Bidder fails or refuses to execute the coal supply agreement or
 - (ii) the Bidder fails or refuses to furnish the Performance Security, in accordance with Instructions to Bidders

Any demand for payment must contain your signature(s) which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at this office on or beforewhen this guarantee shall expire and be returned to us.

This guarantee is personal to you and is not assignable. This Bid Security shall be governed by the laws of Sri Lanka.

Date _____ Signature(s) _____



6.3. ANNEXURE 3A : FORM OF POWER OF ATTORNEY

REFERENCE : CLAUSE 2.4.3 (iv) of Section 2

Note:

The Bidder shall attach a Power of Attorney, duly authorised*, indicating that the person(s) (with Specimen Signature) and the signing the Bid have the authority to sign the Bid and that the Bid is binding upon the Bidder during the full period of its validity.

***Duly authorised means the person who is signing the BID/ Agreement has to be authorised by a Board Resolution.**

FOR INFORMATION PURPOSE ONLY

**6.3. ANNEXURE 3B : FORM OF POWER OF ATTORNEY FOR A AFFILIATE/JV PARTNER/PARTNER /
ASSIGNEE TO PARTICIPATE PERFORM THE TENDER LCC/22-23/ST/29/1**

REFERENCE : CLAUSE 3.23 of Section 03

Duly executed power of attorney from the registered supplier empowering affiliate/JV partner/partner/assignee to sign the form of bid, to make an offer, to enter in to a valid agreement to fulfil the terms and conditions of the contract. Such a power of attorney shall be signed by an authorised signatory of the registered supplier in front of two witnesses and certified by a notary public. Under any circumstances a letter of authorization from the registered supplier will not be accepted instead of a duly executed power of attorney.

FOR INFORMATION PURPOSE ONLY

6.4. ANNEXURE 4 : REMEDY FOR FALSE STATEMENT

REFERENCE : CLAUSE 2.4.3 (v) of Section 2

If any information provided or any certification made in or in connection with this PROPOSAL is determined at any time to have been false, LCC shall, without limitation as to other possible remedies, have the right to rescind, cancel or terminate without further liability any contract awarded in response to this proposal and to forfeit the related Bid Security or Performance Security.

BIDDER:

Company Name : _____

Authorized Signature : _____

Name : _____

Title : _____

Address : _____

Telephone No : _____

Telefax No : _____

Email Address : _____

Date : _____

Please affix company seal here.

Please affix company seal here.

FOR INFORMATION PURPOSE ONLY

6.5. ANNEXURE 5 : PRICE PROPOSAL**REFERENCE : CLAUSE 2.4.3 (vi) of section 2****BIDS NO : LCC/22-23/ST/29/1**

Bidder's Name: -----

This document presents the Bidder's PRICE PROPOSAL in response to and based upon LCC's INVITATION FOR BIDS NO. LCC/22-23/ST/29/1 herewith. It constitutes a firm and binding offer to supply LCC with coal at the price indicated herein on the terms and conditions specified in the Conditions of Contract and Coal Supply Agreement.

PRICE OFFER

(Bidders are not allowed to quote FOB Trimmed price only (at Load Port). Such bids will be rejected)

BIDDING QUANTITY ± 10% MT	DESCRIPTION	BIDDER'S OFFER FIXED PRICE OF COAL PER MT		
		Amount in figures		Amount in Words
		USD	LKR	
As per the clause 2.2.5 d), supply quantity (300,000 MT)	1. FOB (Trimmed)			
	2. Freight up to the Puttalam Anchorage			
	3. CFR Price Per MT (1+2)			
	4. Finance cost (interest) for minimum 180 days (or above) credit facility in percentage (%)			
Bidder shall specify only one main and one alternative loading port with the laycans that matching with the Arrival Schedule of Puttalam Anchorage as per the Clause 2.2.5.				
Name of the Main Port of Loading				
Alternative Port				

Bidders should include the CFR Puttalam anchorage, for the quality complied with the LCC's Standard Value as per clause 5.1 of Section 5.

I/We understand that this offer is irrevocable within the Bid Validity Period and LCC may accept this offer at any time prior to the date indicated in the Bid Data Sheet.

Signature : _____
(Authorized Signature of the Bidder)

Company Seal : _____

Name : _____
Title : _____
Date : _____

(Please affix company seal here)

Witnessed by : _____

1.) Name : _____

Title : _____

2.) Name : _____

Title : _____

FOR INFORMATION PURPOSE ONLY

6.6. ANNEXURE 6 : ADDENDA RECEIPT

REFERENCE : CLAUSE 2.4.3 (vii) of Section 2

LANKA COAL COMPANY (PRIVATE) LIMITED

INVITATION FOR BIDS NO: LCC/22-23/ST/29/1

BIDDER:

We, the undersigned hereby acknowledge that the revision, and/or supplemental information and explanation set forth in this Annex has been incorporated into the preparation of our Bid and shall be deemed to form a part of the Bid/Coal Supply Agreement Documents.

Addendum No. _____ dated _____

Addendum No. _____ dated _____

Addendum No. _____ dated _____

Note : _____

FOR AND ON BEHALF OF
(BIDDER'S NAME)

(Authorized Signature)

(Company Seal)

Name :

Position :

Place and Date :

FOR INFORMATION PURPOSE ONLY

6.7. ANNEXURE 7 : STATEMENT OF BIDDER

REFERENCE : CLAUSE 2.8 of Section 2

INVITATION FOR BIDS NO: LCC/22-23/ST/29/1

a) STATEMENT OF BIDDER

Items		Bidder's Response
1.	Name of Firm :	
2.	Registered Address :	
	2.1 Telephone No. : Telefax No. : E-Mail : Website:	
2.	Mailing Address :	
	2.2 Telephone No. : Telefax No. : E-Mail :	
3	3.1 Names of Chairman : Managing Director : General Manager Chief Executive Officer	
	3.2 Contact person - to LCC correspondence and to notify future tender invitations: Name : Position / Title : Telephone No. : Mobile No: Telefax No. : E-Mail address :	
	3.3 Local Agent (if any) Name : Position / Title : Telephone No. : Mobile No : Telefax No. : E-Mail address :	

4.	In case the Bidder is a joint-venture, list here names and addresses of all members and proportion of their participation :	
	(a) Leading Member (lead Partner)	
	(b) Other Members 1 :	
5.	(c) Other Members 2 :	
	Total annual turnover in the last three (3) years in equivalent USD :	In Million USD
	(a) 2019 :	
	(b) 2020 :	
	(c) 2021 :	

b) REFERENCES

Please list, as references, the names and addresses of three (3) firms, to which your firm has performed / work supplied / purchased material / equipment in the last three (3) years.

- a. Firm Name:
- Address:
- Business Relationship:
- Contact Name:
- Phone/Email:
- b. Firm Name:
- Address:
- Business Relationship:
- Contact Name:
- Phone/Email:
- c. Firm Name:
- Address:
- Business Relationship:
- Contact Name:
- Phone/Email:

6.8. ANNEXURE 8 : EXPERIENCE OF COAL SUPPLY

REFERENCE : CLAUSE 2.8.3.2, b) of Section 2

INVITATION FOR BIDS NO: LCC/22-23/ST/29/1

c) GENERAL EXPERIENCE

Item		Bidder's Response	
1	How many years has your organization been in business under your present business name :		
2	How many years of experience in work related to supplying thermal coal to export markets :		
3	Indicate years of organization's overseas experience in supplying coal (List of countries and the number of years) :	Years	Country
		1.	
		2.	
		3.	
		4.	
		5.	

FOR INFORMATION PURPOSES ONLY

d) PARTICULAR EXPERIENCE

EXPERIENCE IN SUPPLYING COAL HAVING GROSS CALORIFIC VALUE (ARB) 5900 kCal / kg OR HIGHER FOR UTILITIES / FIRMS IN LAST THREE (3) YEARS.

PART 1

Bidder (Trader / Miner) shall provide following information in respect of each purchaser. Also, the Bidder is requested to submit a summary by providing the name of the purchaser, quantity of coal supplied and the total quantity supplied to all the purchasers during the period mentioned below. Use separate tables for each purchaser.

Items		Bidder's Response	
1.	Name of the Purchaser :		
2.	Address :		
3.	Telephone, fax, E-mail :		
4.	Period of order / contract :		
5.	Coal Source / Origin :		
6.	Port/s of Loading / Anchorage/s :	Port/s	Anchorage/s
7.	Basis of the Contract :	FOB basis / C & F basis / CIF basis	
8.	Coal [GCV As receive Basis (ARB) 5900 kCal / kg or higher] Supplied during period : (Million Metric Tons)	1 st April 2018 to 31 st March 2019	
		1 st April 2019 to 31 st March 2020	
		1 st April 2020 to 31 st March 2021	
9.	Total Quantity (MT)		

PART 2

To be filled and certified by each purchaser (Trader / Miner) indicated in PART 1.

Name of the Purchaser:.....				
Address of the Purchaser:.....				
Name of the authorized person signed on behalf of the Purchaser:.....				
Contact details of the authorized person signed on behalf of the Purchaser:				
			Telephone no :.....	
			Fax no:.....	
			E-mail:.....	
Bill of Lading No. and date	Quantity supplied (MT)			Total quantity Supplied under the Contract
	1 st April 2018 to 31 st March 2019	1 st April 2019 to 31 st March 2020	1 st April 2020 to 31 st March 2021	

I hereby confirm that the above coal quantity has been purchased from (name of the Bidder)

Purchaser's Signature and seal.....

PART 3

To be filled and certified by the Purchaser – please provide details for each contract in separate form. (Certified copies of the relevant documents should be submitted)

Note: Date of BL / GRN is considered as the date of supply and hence BLs / GRNs dated not within the period 1st April 2018 to 31st March 2021 shall not be considered.

Contract N:				Date:	
BL/GRN No.	Date of BL/GRN	Vessel Name	Test Certificate Reference No.	GCV - KCal >5900 (As received basis)	Quantity Supplied (MT)

I hereby confirm that the above coal quantity has been purchased from (name of the Bidder)

Purchaser's Signature and seal:

6.9. ANNEXURE 9 : FINANCIAL STATUS AND BANKING INFORMATION OF BIDDER

REFERENCE : CLAUSE 2.8.3.2, e) of Section 2

INVITATION FOR BIDS NO: LCC/22-23/ST/29/1

a) FINANCIAL STATUS OF BIDDER

Bidder shall summarize actual assets and liabilities in U.S. dollar equivalent (at the rates of exchange that prevailed at the end of each year) for the last three (3) years.

Bidder shall attach annual reports and certified copies of audited financial statements for immediate the last three (3) years as per the clause 10.2.

Financial information in USD equivalent		1 st April 2018 to 31 st March 2019	1 st April 2019 to 31 st March 2020	1 st April 2020 to 31 st March 2021
1.	Total assets			
2.	Current assets			
3.	Total liabilities			
4.	Current liabilities			
5.	Turnover			
6.	Net Worth			
7.	Profits before taxes			
8.	Profits after taxes			

b) CREDIT FACILITY OF THE BIDDER

Specify proposed sources of credit line in internationally convertible currency to meet the cash flow demands during the contract. Bidder shall attach confirmed letter of confirmation letter issued by source of credit line to demonstrate availability of the credit.

Source of Credit Line		Amount (USD equivalent)
1.		
2.		
3.		
4.		

(BIDDER'S NAME)

(Authorized Signature)

Name :

Position :

Place and Date :

(Company Seal)

Shall be initialled by
Authorised Signatory

Page 95 of 102

c) PRIMARY BANKER’S INFORMATION

Name, address, and telephone and fax numbers of the company’s bankers who may provide references if contacted by LCC.

Items		Bidder’s Response
1.	Name of Bank: Address: Contacts: - Telephone Number: - Telefax Number: - Website - Email:
2.	Name of Bank: Address: Contacts: - Telephone Number: - Telefax Number: - Website : - Email:

FOR INFORMATION PURPOSE ONLY

6.10. ANNEXURE 10 : LITIGATION AGAINST THE BIDDER

REFERENCE : CLAUSE 2.8.3.3 of Section 2

INVITATION FOR BIDS NO: LCC/22-23/ST/29/1

The company shall provide below information on litigation or arbitration in which the company is or was involved in the past three (3) years.

Note: No disputes with the institutions coming under Government of Sri Lanka is a necessity for a company to register as a coal supplier.

Nature Litigation / Arbitration	Other Party(ies)	Cause of Dispute	Amount Involved

End of Section 6

FOR INFORMATION PURPOSE ONLY

SECTION 1	-	INVITATION FOR BIDS
SECTION 2	-	INSTRUCTIONS TO BIDDERS
SECTION 3	-	CONDITIONS OF CONTRACT
SECTION 4	-	COAL SUPPLY AGREEMENT (DRAFT)
SECTION 5	-	SCHEDULES
SECTION 6	-	ANNEXURES
SECTION 7	-	DEFINITIONS

FOR INFORMATION PURPOSE ONLY

7.0 DEFINITIONS

The terms and expressions used in the Agreement shall have the following meanings **respectively** assigned to them unless the context shall otherwise require:

- 1.1 Anticipated Base Load** means, in relation to any Quarter of a Contract Year, the base load level of dispatch of the Plant, measured in MWh, anticipated by the Buyer for the relevant Quarter, as notified by the Buyer to the Seller in the respective Final NQQ Notice.
- 1.2 Applicant** means Lanka Coal Company (LCC)
- 1.3 Approved Measurement Standards** means the ASTM standards for the sampling and analysis of Coal more particularly set forth in Schedule 1.
- 1.4 ASTM** means the American Society for Testing and Materials.
- 1.5 Base Price** means the base price per tonne of Coal in accordance with Clause 3.10.
- 1.6 Beneficiary** means Coal Supplier
- 1.7 Business Day** means any day excluding Saturday, Sunday or any day which shall be in Sri Lanka, a Public holiday or a day on which banking institutions are permitted to be closed.
- 1.8 Buyer** means Lanka Coal Company (Private) Limited (LCC).
- 1.9 Buyer Event of Default** has the meaning ascribed to it in Clause 3.10.2.
- 1.10 Calendar Year or Year** means a period of twelve (12) consecutive calendar months commencing on 1st January and ending on 31st December.
- 1.11 CFR** means, Cost (Coal) and Freight up to the Puttalam Anchorage in accordance with INCOTERMS 2010 or the latest edition available
- 1.12 Coal** means Thermal coal to be supplied to Buyer by Seller having quality characteristics as agreed in the Agreement.
- 1.13 Coal Price Index** means the International Coal Price Indexes published by the Argus/McCloskey's for following regions
- 1.13.1** Australia: API 6
- 1.13.2** South Africa: API 4
- 1.14 Coal Supply Agreement or Agreement** means this agreement for the supply of coal entered into by the Buyer with the Seller.
- 1.15 Confidential Information** has the meaning ascribed to it in Clause 2.4.2.
- 1.16 Contract Year** means a period of twelve (12) months commencing from 1st September and each anniversary of that date.
- 1.17 Delivery** means on CFR (Port of Puttalam Anchorage) basis.
- 1.18 Delivery [Alternative wording for FOB Trimmed delivery]:** means on FOB Trimmed basis loading and trimming of the relevant Coal on board the nominated carrying vessel.] **Deliver** and **Delivered** shall be interpreted accordingly.
- 1.19 Delivery Completion Date** means the date on which the loading and trimming of the relevant coal is completed. **Delivery Point** means on board the nominated carrying vessel at the port of loading.
- 1.20 Discharging Anchorage** means the coal carrier anchoring/mooring point (approximately around 08° 02' N, 79° 38' E) located 125 km north of Colombo in the Indian Ocean.
- 1.21 Document** means any document in this Bidding documents.
- 1.22 Escrow** means assign quadripartite bank account established as a mode of payment through USD.

- 1.23** *Event of Force Majeure* has the meaning describe to it in Clause 3.7.4.
- 1.24** *FOB Trimmed* means delivery Free on Board (FOB) in accordance with INCOTERMS 2010 or the latest edition available and including trimming work.
- 1.25** *Foreign Currency or FC* means the lawful currency for Seller's PRICE PROPOSAL and accepted for defining the Base Price according to Annexure 5.
- 1.26** *IMO* means International Maritime Organization.
- 1.27** *Independent Marine Surveyor* means such reputable independent marine survey organization as shall be acceptable to both Buyer and Seller.
- 1.28** *Independent Surveyor* means such reputable independent commercial testing organization as shall be acceptable to both Buyer and Seller.
- 1.29** *ISO* means International Organization for Standardization.
- 1.30** *Jetty of the Plant* means the barge berthing and unloading facility of the Buyer at the Plant.
- 1.31** *kcal* means kilocalorie(s) as defined in the "International System of Units".
- 1.32** *kg* means kilogram(s) as defined in the "International System of Units".
- 1.33** *Letter of Credit* means of an irrevocable, unconfirmed documentary letter of credit
- 1.34** *LKR* means Sri Lankan Rupees
- 1.35** *LOC* means Letter of Confirmation
- 1.36** *LOA* means Letter of Acceptance
- 1.37** *mm* means millimetre(s) as defined in the "International System of Units".
- 1.38** *NRRA* means Non Resident Rupee Bank Account established as a mode of payment.
- 1.39** *Offtaker* means Ceylon Electricity Board.
- 1.40** *Parties* means the Buyer and the Seller.
- 1.41** *Plant* means the Lakvijaya Power Plant located in Sri Lanka.
- 1.42** *Port of Loading or Load Port* means [port designated by supplier]
- 1.43** *Pratique* means permission to do business at a port by a ship that has complied with all applicable government regulations for the purposes of health & safety evaluations and customs compliance.
- 1.44** *Price* means the price per metric tonne (MT) of Coal to be payable by the Buyer to the Seller in respect of Coal supply under this contract.
- 1.45** *Purchaser* means bidder's miner or trader
- 1.46** *Qualifying Alternative Coal* has the meaning ascribed to it in Clause 3.8.2.
- 1.47** *Quarter* means a period of three consecutive months, the first Quarter starting from and including 1st September, the second Quarter starting from 1st December the third Quarter starting from 1st March of succeeding year.
- 1.48** *Seller Event of Default* has the meaning ascribed to it in Clause 3.10.1
- 1.49** *Shipping terms* means the international shipping industry technical terms which are more fully describe below
- 1.49.1** BEAM - widest part of the vessel
- 1.49.2** DRAUGHT - determines the minimum depth of water a ship or boat can safely navigate

- 1.49.3** DWLTHC (Air Draught) -
- 1.49.4** DWT – Dead Weight
- 1.49.5** ETA – Expected Time of Arrival
- 1.49.6** GRT – Gross Register Tonnage
- 1.49.7** **IMO Number** -International Marine Organization Number
- 1.49.8** ISPS – The International Ship and Port Facility Security under SOLAS IMO convention.
- 1.49.9** LOA – Length Overall
- 1.49.10** NOR – Notice of Readiness
- 1.49.11** NRT – Net Register Tonnage
- 1.49.12** pwwd – Per weather working Day
- 1.49.13** SOF – Statement of Facts
- 1.49.14** Sshinc - Saturdays, Sundays and Holidays included

- 1.50** **Successful Deliver** means the date of the Bill of Lading (B/L) all contractual obligations are completed
- 1.51** **Term** means the period commencing upon the date of the Agreement and ending on the last day of the period of supply of Coal to the Buyer.
- 1.52** **Tonne(s)** or **MT** means metric ton(s) as defined in the "International System of Units".
- 1.53** **"Turn Time"** means the grace period between receipt of Notice of Readiness and the commencement of laytime.
- 1.54** **Vessel** means the Ship used in connection with transporting Coal from Load Port to Transhipment Port, Puttalam.
- 1.55** **Working day** means a day upon which business is regularly transacted in the country of the Party charged with acting within a specified time. Unless expressly specified otherwise, the term "day" shall be deemed to mean "calendar day".

End of Section 7