



Sri Lanka CERT (Pvt.) Ltd
BIDDING DOCUMENT

Procurement of Production Data Center Co-Location for NCSOC

INVITATION FOR BIDS No: CERT/GOSL/SER/NCB/2023/03

National Competitive Bidding (NCB)

August, 2023



Sri Lanka CERT (Pvt.) Ltd

Invitation for Bids (IFB)

Procurement of Production Data Center Co-Location for NCSOC

CERT/GOSL/SER/NCB/2023/03

1. The Chairman, Department Procurement Committee (DPC), on behalf of Sri Lanka CERT (Pvt.) Ltd. that functions under the purview of Ministry of Technology, now invites sealed bids from eligible and qualified bidders for providing Co-Location for the Production Data Center of National Cyber Security Operation Center (NCSOC).
2. Bidding will be conducted using the National Competitive Bidding (NCB) procedure and is open to all eligible and qualified bidders as defined in Procurement Guidelines of Democratic Socialist Republic of Sri Lanka (GoSL) that meet the qualification requirements given in the Bidding Documents. Detailed Description of Services required is given in the Section V of the Bidding Document.
3. Interested eligible Bidders may obtain further information from Project Manager, Sri Lanka CERT (Pvt.) Ltd, Room: 4-112, BMICH, Colombo 7 and inspect the Bidding documents free of charge during office hours on working days commencing from **August 25, 2023** at the office of Sri Lanka CERT (Pvt.) Ltd. at the above address. Phone: +94 11 269 1692/269 5749/267 9888, Fax: +94 11 269 1064 or email: procurement@cert.gov.lk. Bidding documents are also available on Sri Lanka CERT website <https://www.cert.gov.lk> & <https://www.ncsoc.gov.lk> only for inspection purposes.
4. A complete set of Bidding Documents in English Language may be purchased by interested Bidders on submission of a written application and upon payment of a non-refundable fee of Sri Lankan Rupees Twelve Thousand five hundred (LKR 12,500.00) effective from **August 25, 2023** during office hours on working days from the office of the Sri Lanka CERT (Pvt.) Ltd. at Room: 4-112, BMICH, Colombo 7. The method of payment will be by cash.
5. A pre-bid meeting which potential Bidders may attend will be held at **1400 hrs (2.00 P.M.) on September 01, 2023** at the office of Sri Lanka CERT (Pvt.) Ltd. at the above address.
6. Bids must be delivered to Chief Executive Officer, Sri Lanka CERT (Pvt.) Ltd, Room: 4-112, BMICH, Colombo 7 to be received on or before **1500 hrs (3.00 P.M.) on September 14, 2023**. Late Bids and Bids sent electronically will not be accepted and will be rejected.
7. All Bids must be accompanied by a Bid Security in the form of a Bank Guarantee using the format given in the Bidding Documents in the amount of Sri Lankan Rupees Five Hundred Fifty Thousand (LKR 550,000.00) and shall remain valid till **January 09, 2024**.
8. Bids will be opened immediately after the deadline for submission of bids, in the presence of Bidders or their authorized representatives who choose to attend in person at the address stated above (in Para 6).
9. Sri Lanka CERT (Pvt.) Ltd. shall not be responsible for any costs or any expenses incurred by the Bidders in connection with the preparation or delivery of Bids.

Chairman
Department Procurement Committee,
Sri Lanka CERT (Pvt.) Ltd,
Room: 4-112, BMICH,
Colombo 7, Sri Lanka.

August 25, 2023

Section I : Instructions to Bidders

A. General

1. **Scope of Bid**
 - 1.1 The Employer, as defined in the **Bidding Data Sheet (BDS)**, invites bids for the Services, as described in the Appendix A to the Contract. The name and identification number of this National Competitive Bidding (NCB) Contract is **provided in the BDS**.
 - 1.2 The successful Bidder will be expected to complete the performance of the Services by the Intended Completion Date **provided in the BDS**.
2. **Source of Funds**
 - 2.1 Payments under this contract will be financed by the source **specified in the BDS**.

3. Corrupt or Fraudulent Practices

3.1 The attention of the bidders is drawn to the followings:

- (a) Parties associated with Procurement Actions, namely, suppliers/contractors and officials shall ensure that they maintain strict confidentiality throughout the process;
- (b) Officials shall refrain from receiving any personal gain from any Procurement Action. No gifts or inducement shall be accepted. Service providers/Suppliers/contractors are liable to be disqualified from the bidding process if found offering any gift or inducement which may have an effect of influencing a decision or impairing the objectivity of an official.

3.2 The Employer requires the bidders, suppliers, service providers, and consultants to observe the highest standard of ethics during the procurement and execution of such contracts. In pursuit of this policy:

- (a) *“corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution;*
- (b) *“fraudulent practice” means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;*
- (c) *“collusive practice” means a scheme or arrangement between two or more bidders, with or without the knowledge of the Employer to establish bid prices at artificial, noncompetitive levels; and*
- (d) *“coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract.*

3.3 If the Employer found any unethical practices as stipulated under ITB Clause 3.2, the Employer will reject a bid, if it is found that a Bidder directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for the Contract in question.

4. Eligible Bidders

4.1 All bidders shall possess legal rights to supply the Services under this contract.

4.2 A Bidder shall not have a conflict of interest. All bidders found to have conflict of interest shall be disqualified. Bidders may be considered to have a conflict of interest with one or more parties in this bidding process, if they:

- (a) are or have been associated in the past, with a firm or any of its affiliates which have been engaged by the Employer to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services to be purchased under these Bidding Documents ; or

4.3 A Bidder that is under a declaration of ineligibility by the Government of Sri Lanka (GOSL), at the date of submission of bids or at the date of contract signing, shall be disqualified.

4.4 Foreign Bidder may submit a bid only if so stated in the BDS.

5. Qualification of the Bidder

- 5.1 All bidders shall provide in Section III, Bidding Forms, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 5.2 In the event that prequalification of potential bidders has been undertaken **as stated in the BDS**, only bids from pre-qualified bidders shall be considered for award of Contract, in which case the provisions of sub-clauses 5.3 to 5.6 hereafter shall not apply. These qualified bidders should submit with their bids any information updating their original prequalification applications or, alternatively, confirm in their bids that the originally submitted prequalification information remains essentially correct as of the date of bid submission.
- 5.3 If the Employer has not undertaken prequalification of potential bidders, all bidders shall include the following information and documents with their bids, unless otherwise **stated in the BDS**:
 - (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Bid to commit the Bidder;
 - (b) total monetary value of Services performed for each of the last three years;
 - (c) experience in Services of a similar nature and size for each of the last three years, and details of Services under way or contractually committed; and names and address of clients who may be contacted for further information on those contracts;
 - (d) list of major items of equipment proposed to carry out the Contract;
 - (e) qualifications and experience of key site management and technical personnel proposed for the Contract;
 - (f) reports on the financial standing of the Bidder, such as profit and loss statements and auditor's reports for the past five years;
 - (g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
 - (h) authority to the Employer to seek references from the Bidder's bankers; and

- (i) information regarding any litigation, current or during the last three years, in which the Bidder is involved, the parties concerned, and disputed amount;

5.4 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the **BDS**:

- (a) the Bid shall include all the information listed in ITB Sub-Clause 5.3 above for each joint venture partner;
- (b) the Bid shall be signed so as to be legally binding on all partners;
- (c) the Bid shall include a copy of the agreement entered into by the joint venture partners defining the division of assignments to each partner and establishing that all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms; alternatively, a Letter of Intent to execute a joint venture agreement, prior to the signing of the Contract, in the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed agreement;
- (d) one of the partners shall be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; when a foreign partner/s is/are involved one of the local partners shall be nominated as being in charge; and
- (e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

5.5 To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria:

- (a) annual volume of Services of at least the amount **specified in the BDS**;
- (b) experience as service provider in the provision of at least two service contracts of a nature and complexity equivalent to the Services over the last Three (03) years **as specified in the BDS**;
- (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment **listed in the BDS**;

- (d) a Project Manager with Five (05) years' experience in Services of an equivalent nature and volume, including no less than Three (03) years as Manager; and
- (e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount specified in the **BDS**.

5.6 A history of awards against the bidder or any partner of a Joint Venture in litigation or in Arbitration may result in disqualification of the bid.

5.7 The figures for each of the partners of a joint venture shall be added together to determine the Bidder's compliance with the minimum qualifying criteria of ITB Sub-Clause 5.5(a) and (e); however, for a joint venture to qualify the partner in charge must meet at least 75 percent of those minimum criteria for an individual Bidder and other partners at least 40 percent of the criteria. Failure to comply with this requirement will result in rejection of the joint venture's Bid.

- 6. **One Bid per Bidder**
 - 6.1 Each Bidder shall submit only one Bid, either individually or as a partner in a joint venture. A Bidder who submits or participates in more than one Bid will cause all the proposals with the Bidder's participation to be disqualified.
- 7. **Cost of Bidding**
 - 7.1 The Bidder shall bear all costs associated with the preparation and submission of his Bid, and the Employer will in no case be responsible or liable for those costs.
- 8. **Site Visit**
 - 8.1 The Bidder, at the Bidder's own responsibility and risk, may visit and examine the Site of required Services and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for the Services. The costs of visiting the Site shall be at the Bidder's own expense.

B. Bidding Documents

- 9. **Content of Bidding Documents**
 - 9.1 The set of bidding documents comprises the documents listed in the table below and addenda issued in accordance with ITB Clause 11:
 - Section I Instructions to Bidders
 - Section II Bidding Data Sheet
 - Section III Bidding Forms
 - Section IV Eligible countries (Not applicable)
 - Section V Activity Schedule (Description of services)
 - Section VI General Conditions of Contract
 - Section VII Special Conditions of Contract
 - Section VIII Performance Specifications and Drawings (if Applicable)
 - Section IX Contract Forms
 - 9.2 The Bidder is expected to examine all instructions, forms, terms, and specifications in the bidding documents. Failure to furnish all information required by the bidding documents or to submit a bid not substantially responsive to the bidding documents in every respect will be at the Bidder's risk and may result in the rejection of its bid. Sections III, V, and IX should be completed and returned with the Bid in the number of copies specified in the **BDS**.

10. Clarification of Bidding Documents

10.1 A interested Bidder requiring any clarification of the bidding documents may notify the Employer by email at the Employer's address indicated in the invitation to bid. The Employer will respond to any request for clarification received earlier than 10 days prior to the deadline for submission of bids. Copies of the Employer's response will be forwarded to all Bidders who have purchased the bidding documents, including a description of the inquiry, but without identifying its source.

11. Amendment of Bidding Documents

11.1 Before the deadline for submission of bids, the Employer may modify the bidding documents by issuing addenda.

11.2 Any addendum thus issued shall be part of the bidding documents and shall be communicated by e-mail to all Bidders of the bidding documents. Prospective bidders shall acknowledge receipt of each addendum by email to the Employer.

11.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer shall extend, as necessary, the deadline for submission of bids, in accordance with ITB Sub-Clause 21.2 below.

C. Preparation of Bids

12. Language of Bid

12.1 The Bid, as well as all correspondence and documents relating to the Bid (including supporting documents and printed literature) exchanged by the Bidder and the Employer, shall be written in English language. In the event a document in a language other than English need be submitted, an official translation of the same in English need be submitted along with the document, and the content of the translated document shall only be recognized.

13. Documents Comprising the Bid

13.1 The Bid submitted by the Bidder shall comprise the following:

- (a) The Form of Bid (in the format indicated in Section III);
- (b) Bid Security;
- (c) Priced Activity Schedule;
- (d) Qualification Information Form and Documents;

and any other materials required to be completed and submitted by bidders, as **specified in the BDS**.

14. Bid Prices

14.1 The Contract shall be for the Services, as described in Appendix A to the contract and in the Specifications, Section VIII, based on the priced Activity Schedule, Section V, submitted by the Bidder.

14.2 The Bidder shall fill in rates and prices for all items of the Services described in the in Specifications (or Description of services), Section VIII and listed in the Activity Schedule, Section V. Items for which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Activity Schedule.

14.3 The Service Provider and its Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price. However, VAT shall not be included in the price but shall be indicated separately.

14.4 The Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account. A bid submitted with an adjustable price quotation will be treated as non-responsive and rejected

14.5 For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Bidder in the form of Appendix E to the Contract.

15. Currencies
of Bid and
Payment

15.1 The Bidder shall quote in Sri Lankan Rupees for local services and the payment shall be made for such services in Sri Lankan Rupees.

15.2 The Bidder may quote in US Dollars for services for which foreign currencies involved. And the Bidder may be required by the Employer to justify to the Employer's satisfaction for such foreign currency requirements if any.

**16. Bid
Validity**

16.1 Bids shall remain valid until the date specified in the **BDS**. A bid valid for a shorter date shall be rejected by the Employer as non responsive.

16.2 In exceptional circumstances, prior to the expiration of the bid validity date, the Employer may request bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB Clause 17, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its bid.

17. Bid Security

17.1 The Bidder shall furnish as part of its bid, a Bid Security or a Bid-Securing Declaration, as specified in the **BDS**.

17.2 The Bid Security shall be in the amount specified in the **BDS** and denominated in Sri Lankan Rupees, and shall:

- (a) at the bidder's option, be in the form of either a bank draft, a letter of credit, or a bank guarantee from a banking institution;
- (b) be issued by any commercial bank licensed by the Central Bank of Sri Lanka.
- (c) be substantially in accordance with the form of Bid Security included in Section III, Bidding Forms,
- (d) be payable promptly upon written demand by the Employer in case the conditions listed in ITB Sub-Clause 17.5 are invoked;
- (e) be submitted in its original form; copies will not be accepted;
- (f) remain valid for a period of 28 days beyond the validity period of the bids, as extended, if applicable, in accordance with ITB Sub-Clause 16.2;

17.3 If a Bid Security or a Bid- Securing Declaration is required in accordance with ITB Sub-Clause 17.1, any bid not accompanied by a substantially responsive Bid Security or Bid Securing Declaration in accordance with ITB Sub-Clause 17.1, shall be rejected by the Employer as non-responsive.

17.4 The Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the Performance Security pursuant to ITB Clause 35.

17.5 The Bid Security may be forfeited or the Bid Securing Declaration executed:

- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Form, except as provided in ITB Sub-Clause 16.2; or
- (b) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB Clause 34;

(ii) furnish a Performance Security in accordance with ITB Clause 35.

17.6 The Bid Security or Bid- Securing Declaration of a JV must be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security or Bid-Securing Declaration shall be in the names of all future partners as named in the letter of intent to constitute the JV.

18. Alternative Proposals by Bidders

18.1 Alternative bids shall not be considered.

19. Format and Signing of Bid

19.1 The Bidder shall prepare one original of the documents comprising the Bid as described in ITB Clause 11 of these Instructions to Bidders, bound with the volume containing the Form of Bid, and clearly marked "ORIGINAL." In addition, the Bidder shall submit copies of the Bid, in the number **specified in the BDS**, and clearly marked as "COPIES." In the event of discrepancy between them, the original shall prevail.

19.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder, pursuant to Sub-Clauses 5.3(a) or 5.4(b), as the case may be. All pages of the Bid where entries or amendments have been made shall be initialed by the person or persons signing the Bid.

19.3 The Bid shall contain no alterations or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Bid.

D. Submission of Bids

20. Sealing and Marking of Bids

20.1 The Bidder shall seal the original and all copies of the Bid in two inner envelopes and one outer envelope, duly marking the inner envelopes as “ORIGINAL” and “COPIES”.

20.2 The inner and outer envelopes shall

- a). bear the name and address of the Bidder;
- b). be addressed to the Employer at the address provided in the **BDS**
- c). **bear the name and identification number of the Contract as defined in the BDS and**
- d). provide a warning not to open before the specified time and date for Bid opening as **defined in the BDS**

20.3 In addition to the identification required in ITB Sub-Clause 20.2, the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to ITB Clause 22.

20.4 If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the Bid.

21. Deadline for Submission of Bids

21.1 Bids shall be delivered to the Employer at the address specified above (Refer 20.2 (b)) no later than the time and date **specified in the BDS**.

21.2 The Employer may extend the deadline for submission of bids by issuing an amendment in accordance with ITB Clause 11, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will then be subject to the new deadline.

22. Late Bids

22.1 The Employer shall not consider any bid that reaches after the deadline for submission of bids. Any bid received by the Employer after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

E. Bid Opening and Evaluation

24. Bid Opening

- 24.1 The Employer will open the bids, including modifications made pursuant to ITB Clause 23, in the presence of the bidders' representatives who choose to attend at the time and in the place **specified in the BDS**.
- 24.2 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 23 shall not be opened.
- 24.3 The bidders' names, the Bid prices, the total amount of each Bid and of any alternative Bid (if alternatives have been requested or permitted), any discounts, Bid modifications and withdrawals, the presence or absence of Bid Security, and such other details as the Employer may consider appropriate, will be announced by the Employer at the opening. No bid shall be rejected at bid opening except for the late bids pursuant to ITB Clause 22; Bids, and modifications, sent pursuant to ITB Clause 23 that are not opened and read out at bid opening will not be considered for further evaluation regardless of the circumstances. Late and withdrawn bids will be returned unopened to the bidders.
- 24.4 The Employer will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with ITB Sub-Clause 24.3.

25. Process to Be Confidenti al

- 25.1 Information relating to the examination, clarification, evaluation, and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process. Upon the award to the successful bidder, the details of which may be availed on request. Any effort by a Bidder to influence the Employer's processing of bids or award decisions may result in the rejection of his Bid.
- 25.2 If, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the Employer, who will provide written explanation indicating specific shortcomings. Any request for explanation from one bidder should relate only to its own bid; information about the bid of competitors will not be addressed.

26. Clarification of Bids

- 26.1 To assist in the examination, evaluation, and comparison of bids, the Employer may, at the Employer's discretion, ask any Bidder for clarification of the Bidder's Bid, including breakdowns of the prices in the Activity Schedule, and other information that the Employer may require. The request for clarification and the response shall be in writing, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids in accordance with ITB Clause 28.
- 26.2 Subject to ITB Sub-Clause 26.1, no Bidder shall contact the Employer on any matter relating to its bid from the time of the bid opening to the time the contract is awarded. If the Bidder wishes to bring additional information to the notice of the Employer, he should do so in writing.
- 26.3 Any effort by the Bidder to influence the Employer in the Employer's bid evaluation or contract award decisions may result in the rejection of the Bidder's bid.

27. Examination of Bids and Determination of Responsiveness

- 27.1 Prior to the detailed evaluation of bids, the Employer will determine whether each Bid (a) meets the eligibility criteria defined in ITB Clause 4; (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the bidding documents.
- 27.2 A substantially responsive Bid is one which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Services; (b) which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.
- 27.3 If a Bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

28. Correction of Errors

28.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Arithmetical errors will be rectified by the Employer on the following basis: if there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected; if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; if there is a discrepancy between the amounts in figures and in words, the amount in words will prevail.

28.2 The amount stated in the Bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security may be forfeited in accordance with ITB Sub-Clause 17.5(b).

29. Currency for Bid Evaluation

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

30. Evaluation and Comparison of Bids

30.1 The Employer will evaluate and compare only the bids determined to be substantially responsive in accordance with ITB Clause 27.

30.2 In evaluating the bids, the Employer will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:

(a) making any correction for errors pursuant to ITB Clause 28;

(b) excluding provisional sums and the provision, if any, for contingencies in the Activity Schedule, Section V, but including Day work, when requested in the Specifications (or Description of services) Section VIII;

(c) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with ITB Sub-Clause 23.5.

30.3 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors, which are in excess of the requirements of the bidding documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in Bid evaluation.

30.4 The estimated effect of any price adjustment conditions under Sub-Clause 6.6 of the General Conditions of Contract, during the period of implementation of the Contract, will not be taken into account in Bid evaluation.

31. Preference for Domestic Bidders

31.1 Domestic bidders shall not be eligible for any margin of preference in Bid evaluation.

F. Award of Contract

32. Award Criteria

32.1 The Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

Subject to ITB Clause 33, the Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest evaluated Bid price, provided that such Bidder has been determined to be (a) eligible in accordance with the provisions of ITB Clause 4, and (b) qualified in accordance with the provisions of ITB Clause 5.

32.2 If, pursuant to ITB Sub-Clause 13.2 this contract is being let on a “slice and package” basis, the lowest evaluated Bid Price will be determined when evaluating this contract in conjunction with other contracts to be awarded concurrently. Taking into account any discounts offered by the bidders for the award of more than one contract.

33. Employer’s Right to Accept any Bid and to Reject any or all Bids

33.1 Notwithstanding ITB Clause 32, the Employer 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 award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Employer’s action.

34. Notific ation of Award and Signing of Agreement

34.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, that its Bid has been accepted.

34.2 Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.

34.3 Upon the successful Bidder’s furnishing of the signed Contract Form and performance security pursuant to ITB Clause 35, the Employer will promptly notify each unsuccessful Bidder and will discharge its bid security, pursuant to ITB Clause 17.4

35. Performance Security

35.1 Within fourteen (14) days of the receipt of notification of award from the Employer, the successful Bidder, if required, shall furnish the Performance Security in accordance with the GCC, using for that purpose the Performance Security Form included in Section IX Contract forms. The Employer shall promptly notify the name of the winning Bidder to each unsuccessful Bidder and discharge the Bid Securities of the unsuccessful bidders pursuant to ITB Sub-Clause 17.4. Refer BDS.

35.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security or execution of the Bid-Securing Declaration. In that event the Employer may award the Contract to the next lowest evaluated Bidder, whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

36. Advance Payment and Security

36.1 The Employer will provide an Advance Payment on the Contract Price as stipulated in the Conditions of Contract, subject to the amount **stated in the BDS.**

Section II. Bidding Data Sheet

The following specific information relating to services to be procured and procurement procedure that will be used shall complement, supplement or amend the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict the provisions in the Bid Data Sheet (BDS) shall prevail over those in the ITB.

ITB Clause No.	A. General
1.1	<p>The Employer is: Chief Executive Officer (CEO), Sri Lanka CERT (Pvt.) LTD.</p> <p>The name and identification number of the Contract is; “PROCUREMENT OF PRODUCTION DATA CENTER CO-LOCATION FOR NCSOC”</p> <p>IFB No: CERT/GOSL/SER/NCB/2023/03</p> <p>Bidders are required to bid for the total requirement of services as given in description of services. Bids for partial requirements shall be treated as non-responsive and shall be rejected.</p>
1.2	<p>Site should be handed over to the employer within 3 weeks from the date of award of contract. Contract duration of providing the data center facility shall be 36 months from the date of acceptance of the site by the employer.</p>
2.1	<p>The source of funding for this project is: Government of Sri Lanka (GOSL)</p>
5.2	<p>The pre-qualification of the bidder are as follows:</p> <p style="padding-left: 40px;">a) Bidder shall own and operate a Tier 3 or equivalent data center.</p>
5.3 (a)	<p>In addition to Power of Attorney, any other valid proof for authorizing the signatory of the Bid to commit the Bidder, such as Board Resolution, Articles of Association and court decisions, etc. are acceptable.</p>
5.4	<p>Joint ventures are not allowed.</p> <p>Sub-contractors are not allowed.</p>
5.5 (a)	<p>Average annual turnover during the last 3 years (2019/2020,2020/2021,2021/2022) shall be not less than LKR 50 Million.</p>

5.5(b)	Service Provider should have been engaged in the provision of at least two service contracts of a nature and complexity equivalent to the service required under this procurement.
5.5(d)	Years of experience of the Project/Account Manager shall be 3 years.
5.5(e)	Amount shall not be less than LKR 10 million.
8.1	The employer, shall visit and examine the Site offered and its surroundings prior to awarding the contract in order to ensure all the terms, conditions and requirements are complied with. The costs of visiting the Site shall be at the Employer's own expense and the bidder shall facilitate such a visit.
B. Content of Bidding Document	
9.2 and 19.1	The number of copies of the Bid to be completed and returned shall be one original and one copy.
10.1	If further clarifications are required, such quarries shall be received by the employer on or before September 08, 2023. Any quarries received by the employer after this date will not be entertained and clarified. For Clarification of bid purposes only, the purchaser's address is: Attention: Project Manager Address: Sri Lanka CERT (Pvt.) Ltd Room: 4-112, BMICH, Colombo 7. Fax: +94 11 269 1064 email: procurement@cert.gov.lk
16.1	The period of Bid validity shall be 90 days from the deadline for Bid submission. Accordingly, bids should be valid till December 13, 2023.
17.1	The Bidder shall provide: Bid Security in the form of a Bank Guarantee (as per the format given in the Bidding Document) Bid Security shall be issued in favor of; The Chief Executive Officer Sri Lanka CERT (Pvt.) Ltd. Room: 4-112, BMICH, Colombo 7, Sri Lanka.
17.2	Bid Security shall be in the amount as stated below in the form of Bank Guarantee. The bid security shall be Sri Lankan Rupees Five Hundred Fifty Thousand (LKR 550,000.00).

17.2 (a)	Bid Security shall be in the form of a Bank Guarantee (as per the format given in the Bidding Documents).
17.2 (f)	Bid security shall be valid for 28 days beyond the validity period of the bids. Accordingly, Bid Securities shall remain valid till January 09, 2024 .
D. Submission of Bids	
20.2 (b)	<p>The Employer’s address for the purpose of Bid submission is:</p> <p>Attention: Chief Executive Officer</p> <p>Address: Sri Lanka CERT (Pvt.) Ltd, Room: 4-112, BMICH, Colombo 7, Sri Lanka.</p> <p>For identification of the bid the envelopes should indicate:</p> <p>Contract: Procurement of Production Data Center Co-Location for NCSOC</p> <p>Contract Number: CERT/GOSL/SER/NCB/2023/03</p>
20.2 (c)	<p>Name and identification number:</p> <p>Name of Contract: “Procurement of Production Data Center Co-Location for NCSOC”</p> <p>Identification number of Contract No: CERT/GOSL/SER/NCB/2023/03</p>
21.1	<p>The deadline for submission of bids shall be:</p> <p>Time: on or before 1500hrs (3.00 P.M.)</p> <p>Date: September 14, 2023.</p>
E. Bid Opening and Evaluation	
24.1	<p>Bids will be opened immediately after the deadline for submission of bids at the address of;</p> <p style="padding-left: 40px;">Sri Lanka CERT (Pvt.) Ltd. Room: 4-112, BMICH, Colombo 7, Sri Lanka</p>
30.3	Alternative bids shall not be considered.

F. Award of Contract

35.0

The Performance Security acceptable to the Employer shall be the in the Standard Form of unconditional Bank Guarantee (as per the format given in the Bidding Document) issued by any commercial bank licensed by the Central Bank of Sri Lanka and the amount shall be 10% of the total contract price. Performance security shall be submitted within 07 working days of the date of notification of award from the employer.

Section III. Bidding Forms

- 1. Service Provider's Bid**
- 2. Qualification Information**
- 3. Form of Contract**
- 4. Bid Security (Bank Guarantee)**

1. Service Provider's Bid

[date]

To: [name and address of Employer]

Having examined the bidding documents including addenda No, we offer to execute the [name and identification number of Contract] in accordance with the Conditions of Contract, specifications, drawings and description of service accompanying this Bid for the Contract Price of [amount in numbers], [amount in words] [names of currencies excluding VAT].

Description	Number of months	Price per month (Excluding VAT) LKR	Total Price LKR (Excluding VAT) LKR
Payment for Production Data Center Co-Location for NCSOC	36		

Note: Payment for the services performed shall be made in Sri Lankan Rupees on monthly basis.

This Bid and your written acceptance of it shall constitute a binding Contract between us. We understand that you are not bound to accept the lowest or any Bid you receive.

We hereby confirm that this Bid complies with the Bid validity and Bid Security required by the bidding documents and specified in the Bidding Data Sheet.

Authorized Signature:

Name and Title of Signatory:

Name of Bidder:

Address:

2. Qualification Information

1. Individual Bidders or Individual Members of Joint Ventures

1.1 Constitution or legal status of Bidder: *[attach copy]*

Place of registration: *[insert]*

Principal place of business: *[insert]*

Power of attorney of signatory of Bid: *[attach]*

1.2 Average annual volume of Services performed during the last 3 years, *[insert]*

1.3 Services performed as prime Service Provider on the provision of Services of a similar nature and volume over the last one year. Also list details of work under way or committed, including expected completion date.

Project name and country	Name of employer and contact person	Type of Services provided and year of completion	Value of contract
(a)			
(b)			

1.4 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data. Refer also to ITB Sub-Clause 5.4(e) and GCC Clause 9.1.

Position	Name	Years of experience (general)	Years of experience in proposed position
(a)			
(b)			

2. Joint Ventures

2.1 Joint ventures are not allowed.

3. Additional Requirements

3.1 Bidders should provide any additional information required in the BDS and to fulfill the requirements of ITB Sub-Clause 5.1, if applicable.

3. Form of Contract

This CONTRACT (hereinafter called the “Contract”) is made the *[day]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of Employer]* (hereinafter called the “Employer”) and, on the other hand, *[name of Service Provider]* (here in after called the “Service Provider”).

WHEREAS

- (a) the Employer has requested the Service Provider to provide certain Services as defined in the Conditions of Contract and Contract Data attached to this Contract (herein after called the “Services”);
- (b) the Service Provider, having represented to the Employer that they have the required skills, and personnel and resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of.....;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
 - (a) The Conditions of Contract;
 - (b) The Contract Data;
 - (c) The Form of Bid
 - (d) The Priced Activity Schedule
 - (e) The Employer’s Requirements
 - (f) The following Appendices: *[Note: If any of these Appendices are not used, the words “Not Used” should be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix.]*
 - Appendix A: Description of the Services
 - Appendix B: Schedule of Payments
 - Appendix C: Breakdown of Contract Price
2. The mutual rights and obligations of the Employer and the Service Provider shall be as set forth in the Contract, in particular:
 - (a) The Service Provider shall carry out the Services in accordance with the provisions of the Contract; and
 - (b) The Employer shall make payments to the Service Provider in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of *[name e of Employer]*

[Authorized Representative]

For and on behalf of *[name e of Service Provider]*

[Authorized Representative]

4. Bid Security (Bank Guarantee)

[The Bank shall fill in this Bank Guarantee Form in accordance with the instructions indicated.]

Beneficiary: Chief Executive Officer, Sri Lanka CERT (Pvt.) Ltd

Date: _____

BID GUARANTEE No.: _____

We have been informed that _____ (hereinafter called "the Bidder") has submitted to you its bid dated (hereinafter called "the Bid") for the execution of _____ under Invitation for Bids No. _____ ("the IFB").

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

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

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the Purchaser during the period of bid validity, (i) fails or refuses to execute the Contract Form; or (ii) fails or refuses to furnish the performance security, if required, in accordance with the Instructions to Bidders.

This guarantee will expire: (a) if the Bidder is the successful bidder, upon our receipt of copies of the contract signed by the Bidder and the performance security issued to you upon the instruction of the Bidder; or (b) if the Bidder is not the successful bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder of the name of the successful bidder; or (ii) twenty-eight days after the expiration of the Bidder's Bid.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

[signature(s)]

Section IV : Eligible Countries

[Not applicable]

Section V: Activity Schedule (Description of Service)

1. Description of Services and Technical Requirements
2. Technical Specifications and SLA – Production Data Center Co-Location
3. Drawings and additional explanations

1. Description of Services and Technical Requirements

Chairman, the Department Procurement Committee now invites eligible data center owners to indicate their interest in providing space in their data centers to accommodate the equipment of the Sri Lanka CERT.

Initial duration of the contract shall be 3 years. The duration may be extended for further period depending on the requirement and the service level of the service provider. Requirements for the site has been specified under description of service and technical specifications.

Objectives of the procurement

To obtain core location services which includes required space, electricity, physical security and other Tier 3 data center services for implementation of NCSOC.

2. Technical Specifications – Production Data Center Co-Location

Bidders are required to state their compliance to specifications/Requirements against each and every criterion of the specification sheets.

#	Feature	Minimum Specification	Bidder's Offer	Compliance to the Specifications/ Requirements	
				Yes/ No	Remarks (page reference no)
1	Standards				
1.1	Data Center Standard	Tier 3 or higher or equivalent	(Specify)		
2	Specifications of the building, Server room and data storage room				
2.1	Security against earthquake risk	PML less than 10 - 20%	(Specify)		
2.2	Electromagnetic radiation emission prevention	Faraday cage			

2.3	Surge protection for ISP links	All copper-based LL/ILL/ADSL lines from ISPs need to be properly surge protected			
2.4	Physical Partition (Cage)	<p>Physically separated partition with secure metal wire cage fences or any other option.</p> <p>This cage must be dedicated to Sri Lanka CERT.</p> <p>Refer the diagram (Section V (3. Drawings and additional explanations))</p>	(Specify)		
2.5	Physical barriers	Need to be placed (e.g., metal wire cage walls) to prevent unauthorized entry and environmental contamination	(Specify)		

3	Fire / Flood Prevention				
3.1	Threat from flood	Data center should not be in a potential flood area	(Specify)		
3.2	Fire Suppression System	Required	(Specify)		
3.3	Fire resistance partition	Resist fire over 1 hour	(Specify)		
3.4	Sensors to detect water seepages.	Required	(Specify)		
4	Electricity Supply and Relevant Equipment				
4.1	Primary Power Source	From National Grid via UPS	(Specify)		
4.2	Redundant Power Source	From Generators via UPS	(Specify)		

4.3	Redundant Power Source Capacity	8 HRS at full capacity	(Specify)		
4.4	Redundancy of power supply path	2 paths from 2 different UPS, each power feed should be from independent breakers.	(Specify)		
4.5	Redundancy of in-house power generator	N (N=2 or higher)	(Specify)		
4.6	Redundancy of UPS equipment	N+1	(Specify)		
4.7	Equipment Protection	Need be protected from power failures and other electrical anomalies	(Specify)		
4.8	Ability to provide 240 V / 2*8A /2*16A /2*32A/2*64	(active/active by independent distribution paths, load balanced), and each rack should be capable of supplying up to 240 V /2*8A /2*16A /2*32A/2*64	(Specify)		
5	Air Conditioning Equipment				

5.1	Redundancy of heat source /air conditioning equipment	N+1 (N=1 or higher)	(Specify)		
5.2	Redundancy of power supply path to heat source / air conditioning equipment	Multiple paths required	(Specify)		
5.3	Server Room temperature	16 Celsius to 22 Celsius	(Specify)		
6	Access control Security				
6.1	Building access	24*7*365 access should be given to authorized persons nominated by the client.	(Specify)		
6.2	Server cage dedicated to Sri Lanka CERT	Should facilitated two factor authentications with IC card and biometrics	(Specify)		
6.3	Locks and Alarms (cage)	Server Room need to be physically locked	(Specify)		

		and alarmed when unoccupied.			
6.4	Audit trail of access	Audit trail access to Server cage dedicated to Sri Lanka CERT (date and time of entry and departure logs).	(Specify)		
		Ability to provide details of people accessing server room by sharing the entries made in security registry, report from access control system, CCTV video clips etc.	(Specify)		
7	Security monitor				
7.1	Building monitoring	Man, and CCTV camera (recording and monitoring)	(Specify)		
7.2	Server room Entrance and exit	CCTV camera (recording and monitoring) Retention period of 6	(Specify)		

		month at HD quality (motion recording)			
7.3	Security monitoring for Server cage dedicated to Sri Lanka CERT (Video Surveillance)	<p>Dedicated CCTV camera system with DVR for monitoring the server cage of Sri Lanka CERT</p> <p>Refer the diagram (Section V (3. Drawings and additional explanations))</p> <p>Rack space for DVR shall be provided by Sri Lanka CERT</p>	(Specify)		
8	Physical layout (Drawings and additional explanations section)				
8.1	Space	Space for 2*42U equipment rack	(Specify)		
		Proper ventilation should be supplied to the racks.	(Specify)		

		Minimum 2.5 feet space from front and back side of the racks for easy access and maintenance.	(Specify)		
9	Third-party support access				
9.1	Third party support access	Third party support services access need to be granted to the Sri Lanka CERT cage, only when necessary. Such access needs to be authorized and accompanied.	(Specify)		

Additional Explanations

1. Server Racks need to be placed in according to the diagram which is provided below.
2. Server Racks will be provided by Sri Lanka CERT. All server racks are 42 U.
3. Bidder should have meet me room to bring any type of ISP links & should extend same to Sri Lanka CERT cage without any additional cost to Sri Lanka CERT or connectivity provider.

Schedule of Deliverable

No	Task:	Deadline:
1	Co-location facility with physical partition	Award Date + 14 days
2	User acceptance and ready for commissioning	Award Date + 20 days

Team Composition

#	Title	Minimum no of resources	Engagement Model	Experience
1	Project Manager/ Account Manager	1	Part-time	Minimum 8 years of industry experience Minimum 3 years of Project/ Account management experience data center or similar/ related projects
2	Data Center Engineer	1	Part-time	Minimum 7 years of industry experience Minimum 3 years' experience data center projects

Service Level Agreement (SLA) and Penalty Schema

The following service levels should be guaranteed;

Data Center (DC) uptime need to be 99.741%. A service is deemed to have failed in the event of breach of any of the below condition/ requirement;

1. Power: Nominal Out Voltage 230V with less than 5% distortion at full load. Frequency for 50 Hz nominal +/- 3Hz to be available on 24x7x365 basis.
2. Cooling and Humidity Control: Temperature should be kept within 16 to 22 degree Celsius. Humidity shall be between 40% and 60%.
3. For any security breaches like break-in to data center, racks, unauthorized access or vandalism to equipment etc, Sri Lanka CERT should be notified within 15 minutes according to the escalation list provided by Sri Lanka CERT.
4. Incident reports for all reported incidents shall be made available within 24 hours from the report of incident duly signed by the head of the datacenter.
5. All scheduled maintenance periods shall be notified by at least 10 days prior, and for major service interruptions, it shall be 4 weeks' minimum.

Support Level Descriptions

Description	Critical	Medium	Minor
Response Time	15 Minutes	30 Minutes	1 Hour
Resolution Time	45 Minutes	2 Hours	4 Hours
Type of Events	Any of following; - Full power failure - Ambient Temperature > 24C - Catastrophic DC service failure	Any of following; - Partial power failure - 22C < Ambient Temperature < 24C - Partial DC service failure, which will impact services.	Any of following; - Power fluctuations - Temperature fluctuations < 24 C - DC Service failures, which won't impact services.
Penalties after the resolutions time exceeds.	As per the given formula	As per the given formula	As per the given formula

Support Hours

The bidder must provide support and maintenance services as per Support Levels mentioned below;

Support Level 1: Critical	
Support Hours	24 hours a day, all days in the week (including public and mercantile holidays)
Support Level 2: Medium	
Support Hours	24 hours a day, all days in the week (including public and mercantile holidays)
Support Level 3: Minor	
Support Hours	From 08:30 AM to 05:30 PM Monday to Friday (excluding public holidays)

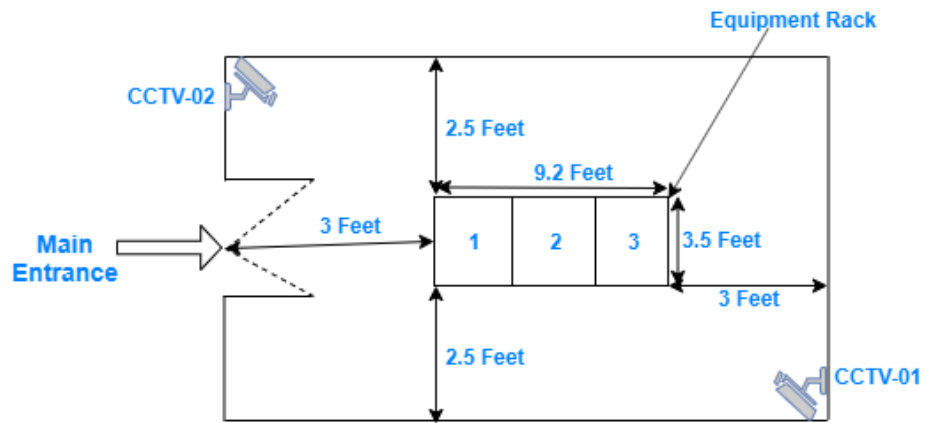
Penalties

In case of interruptions, penalties will be calculated as per the formula given below (per hour basis):

$$\text{Amount} = 10 \times [\text{Total Monthly Charge}/(30 \times 24)] \times \text{Number of hours}$$

3. Drawings and additional explanations

Design for the proposed Site



Section VI. General Conditions of Contract

A. General Provisions

1.1 Definitions

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

(a) “Contract” means the Contract Agreement signed by the Parties, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.

(b) “Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto.

(c) “Contract Price” means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract.

(d) “Day” means calendar day.

(e) “Completion Date” means the date of completion of the Services by the Service Provider as certified by the Employer

(f) “GCC” means the General Conditions of Contract.

(g) “Services” means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider’s Bid.

(h) “Employer” means the entity who employs the Service Provider

(i) “Subcontractor” means any natural person, private or government entity, or a combination of the above, to whom any part of the Services is subcontracted by the Supplier.

(j) “Service Provider” means the natural person, private or government entity, or a combination of the above, whose bid to provide the Services has been accepted

by the Employer and is named as such in the Contract Agreement.

(k)“Service Provider’s Bid” means the completed bidding document submitted by the Service Provider to the Employer

(l)“SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented;

(m)“Specifications” means the specifications of the service included in the bidding document submitted by the Service Provider to the Employer

(n) “The Project Site,” where applicable, means the place named in the SCC.

(o)“Activity Schedule” is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Bid;

(p) “Member,” in case the Service Provider consist of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity specified in the SSC to act on their behalf in exercising all the Service Provider’ rights and obligations towards the Employer under this Contract;

(q) “Party” means the Employer or the Service Provider, as the case may be, and “Parties” means both of them;

(r) “Personnel” means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the Services or any part thereof;

1.2 Applicable Law The Contract shall be interpreted in accordance with the laws of the Democratic Socialist Republic of Sri Lanka.

1.3 Language This Contract has been executed in the language **specified in the SCC**, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.4 Notices 1.4.1;Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to

whom the communication is addressed, or when sent by registered mail, or facsimile to such Party at the address **specified in the SCC**.

1.4.2; A notice shall be effective when delivered or on the notice's effective date, whichever is later.

- 1.5 Location** The Services shall be performed at such locations as are specified in Appendix A, in the specifications and, where the location of a particular task is not so specified, at such locations, whether in the Government's country or elsewhere, as the Employer may approve.
- 1.6 Authorized Representatives** Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Employer or the Service Provider may be taken or executed by the officials **specified in the SCC**.
- 1.7 Inspection and Audit by the GOSL** The Service Provider shall permit the GOSL to inspect its accounts and records relating to the performance of the Services and to have them audited by auditors appointed by the GOSL, if so required by the GOSL.
- 1.8 Taxes and Duties** The Service Provider, Subcontractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.

2. Commencement, Completion, Modification, and Termination of Contract

- 2.1 Effectiveness of Contract** This Contract shall come into effect on the date the Contract is signed by both parties or such other later date as may be **stated in the SCC**.
- 2.2 Commencement of Services**
- 2.2.1 Program** Before commencement of the Services, the Service Provider shall submit to the Employer for approval a Program showing the general methods, arrangements, order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated.
- 2.2.2 Starting Date** The Service Provider shall start carrying out the Services thirty (30) days after the date the Contract becomes effective, or at such other date as may be **specified in the SCC**.
- 2.3 Intended Completion Date** Unless terminated earlier pursuant to Sub-Clause 2.6, the Service Provider shall complete the activities by the Intended Completion Date, as is **specified in the SCC**. If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Sub-Clause 3.8. In this case, the Completion Date will be the date of completion of all activities.

2.4 Modification Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties.

2.5 Force Majeure

2.5.1 Definition For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

2.5.2 No Breach of Contract The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

2.5.3 Extension of Time Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.6 Termination

2.6.1 By the Employer The Employer may terminate this Contract, by not less than thirty (30) days’ written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Sub-Clause 2.6.1:

- (a) if the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the Employer may have subsequently approved in writing;
- (b) if the Service Provider become insolvent or bankrupt;
- (c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) if the Service Provider, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purposes of this Sub-Clause:

- (i) “corrupt practice”¹ is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) “fraudulent practice”² is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) “collusive practice”³ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice”⁴ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) “obstructive practice” is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a GOSL investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - (bb) acts intended to materially impede the exercise of the GOSL’s inspection and audit rights

2.6.2 By the Service Provider

The Service Provider may terminate this Contract, by not less than thirty (30) days’ written notice to the Employer, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Sub-Clause 2.6.2:

- (a) if the Employer fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 7 within forty-five (45) days after receiving written notice from the Service Provider that such payment is overdue; or
- (b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

2.6.3 Suspension of Loan or Credit

In the event that the GOSL suspends the funds to the Employer, from which part of the payments to the Service Provider are being made:

- (a) The Employer is obligated to notify the Service Provider of such suspension within 7 days of having received the GOSL's suspension notice.
- (b) If the Service Provider has not received sums due to by the due date stated in the SCC in accordance with Sub-Clause 6.5 the Service Provider may immediately issue a 14 day termination notice.

2.6.4 Payment upon Termination

Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the Employer shall make the following payments to the Service Provider:

- (a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel.

3. Obligations of the Service Provider

3.1 General

The Service Provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Employer, and shall at all times support and safeguard the Employer's legitimate interests in any dealings with Subcontractors or third parties.

3.2 Conflict of Interests

3.2.1 Service Provider Not to Benefit from Commissions and Discounts. The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider’s sole remuneration in connection with this Contract or the Services, and the Service Provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.

3.2.2 Service Provider and Affiliates Not to be Otherwise Interested in Project The Service Provider agree that, during the term of this Contract and after its termination, the Service Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

3.2.3 Prohibition of Conflicting Activities Neither the Service Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- (a) during the term of this Contract, any business or professional activities in the Government’s country which would conflict with the activities assigned to them under this Contract;
- (b) after the termination of this Contract, such other activities as may be **specified in the SCC**.

3.3 Confidentiality The Service Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Employer’s business or operations without the prior written consent of the Employer.

3.4 Insurance to be Taken Out by the Service Provider The Service Provider (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at its (or the Subcontractors’, as the case may be) own cost but on terms and conditions approved by the Employer, insurance against the risks, and for the coverage, as shall be **specified in the SCC**; and (b) at the Employer’s request, shall provide evidence to the Employer showing that such insurance has been taken out and maintained and that the current premiums have been paid.

3.5 Service Provider’s Actions The Service Provider shall obtain the Employer’s prior approval in writing before taking any of the following actions:

Requiring Employer's Prior Approval

- (a) entering into a subcontract for the performance of any part of the Services,
- (b) appointing such members of the Personnel not listed by name in Appendix C (“Key Personnel and Subcontractors”),
- (c) changing the Program of activities; and
- (d) any other action that may be **specified in the SCC**.

3.6 Reporting Obligations

The Service Provider shall submit to the Employer the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.

3.7 Documents Prepared by the Service Provider to Be the Property of the Employer

All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.6 shall become and remain the property of the Employer, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Employer, together with a detailed inventory thereof. The Service Provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be **specified in the SCC**.

3.8 Liquidated Damages

3.8.1 Payments of Liquidated Damages

The Service Provider shall pay liquidated damages to the Employer at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The Employer may deduct liquidated damages from payments due to the Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities.

3.8.2 Correction for Over-payment

If the Intended Completion Date is extended after liquidated damages have been paid, the Employer shall correct any overpayment of liquidated damages by the Service Provider by adjusting the next payment certificate. The Service Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 6.5.

3.8.3 Lack of performance penalty

If the Service Provider has not corrected a Defect within the time specified in the Employer's notice, a penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in Sub-Clause 7.2 and **specified in the SCC**.

3.9 Performance Security

The Service Provider shall provide the Performance Security to the Employer no later than the date specified in the Letter of

acceptance. The Performance Security shall be issued in an amount and form and by a bank acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The performance Security shall be valid until a date 28 days from the Completion Date of the Contract.

4. Service Provider's Personnel

4.1 Description of Personnel

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix C are hereby approved by the Employer.

4.2 Removal and/or Replacement of Personnel

- (a) Except as the Employer may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.
- (b) If the Employer finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Service Provider shall, at the Employer's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Employer.
- (c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5. Obligations of the Employer

5.1 Assistance and Exemptions

The Employer shall use its best efforts to ensure that the Government shall provide the Service Provider such assistance as **specified in the SCC**.

5.2 Change in the Applicable Law

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Sub-Clauses 6.2 (a) or (b), as the case may be.

5.3 Services and Facilities

The Employer shall make available to the Service Provider the Services and Facilities listed under Appendix F.

6. Payments to the Service Provider

- 6.1 Lump-Sum Remuneration** The Service Provider’s remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all Subcontractors’ costs, and all other costs incurred by the Service Provider in carrying out the Services described in Appendix A. Except as provided in Sub-Clause 5.2, the Contract Price may only be increased above the amounts stated in Sub-Clause 6.2 if the Parties have agreed to additional payments in accordance with Sub-Clauses 2.4 and 6.3.
- 6.2 Contract Price** The price payable in Sri Lankan Rupees
- 6.3 Payment for Additional Services, and Performance Incentive Compensation**
- (a) For the purpose of determining the remuneration due for additional Services as may be agreed under Sub-Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.
 - (b) **If the SCC so specify**, the service provider shall be paid performance incentive compensation as set out in the Performance Incentive Compensation appendix.
- 6.4 Terms and Conditions of Payment** Payments will be made to the Service Provider according to the payment schedule **stated in the SCC. Unless otherwise stated in the SCC**, the advance payment (Advance for Mobilization, Materials and Supplies) shall be made against the provision by the Service Provider of a bank guarantee for the same amount, and shall be valid for the period **stated in the SCC**. Any other payment shall be made after the conditions **listed in the SCC** for such payment have been met, and the Service Provider have submitted an invoice to the Employer specifying the amount due.
- 6.5 Period allocated for Payments** Payments shall be made within the period specified in the **SCC**
- 6.6 Dayworks**
- 6.6.1 If applicable, the Daywork rates in the Service Provider’s Bid shall be used for small additional amounts of Services only when the Employer has given written instructions in advance for additional services to be paid in that way.
 - 6.6.2 All work to be paid for as Dayworks shall be recorded by the Service Provider on forms approved by the Employer. Each completed form shall be verified and signed by the Employer representative as indicated in Sub-Clause 1.6 within two days of the Services being performed.

7. Quality Control

7.1 Identifying Defects

The principle and modalities of Inspection of the Services by the Employer shall be as **indicated in the SCC**. The Employer shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities. The Employer may instruct the Service Provider to search for a Defect and to uncover and test any service that the Employer considers may have a Defect. Defect Liability Period is as **defined in the SCC**.

7.2 Correction of Defects, and Lack of Performance Penalty

- (a) The Employer shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.
- (b) Every time notice a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the Employer's notice or specified in the Service Level Agreement (SLA).
- (c) If the Service Provider has not corrected a Defect within the time specified in the Employer's notice, the Employer will assess the cost of having the Defect corrected, the Service Provider will pay this amount, and a Penalty for Lack of Performance calculated as described in Sub-Clause 3.8.

8. Settlement of Disputes

8.1 Amicable Settlement

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

8.2 Dispute Settlement

- 8.2.1 If any dispute arises between the Employer and the Service Provider in connection with, or arising out of, the Contract or the provision of the Services, whether during carrying out the Services or after their completion, the matter shall be referred to the Adjudicator within 14 days of the notification of disagreement of one party to the other.
- 8.2.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 8.2.3 The Adjudicator shall be paid by the hour at the rate **specified in the BDS and SCC**, together with reimbursable expenses of the types **specified in the SCC**, and the cost shall be divided equally between the Employer and the Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's

written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

- 8.2.4 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place **shown in the SCC**.
- 8.2.5 Should the Adjudicator resign or die, or should the Employer and the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be appointed in terms of section 8.2.1.

Section VII. Special Conditions of Contract

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The contract name is: Procurement of Production Data Center Co-Location for NCSOC Contract No: CERT/GOSL/SER/NCB/2023/03
1.1(h)	The Employer is: Sri Lanka CERT (Pvt.) Ltd.
1.1(k)	The Service Provider is; _____
1.1(p)	The Member in Charge is; _____
1.3	The language is; English
1.4	The addresses are: Employer: Sri Lanka CERT (Pvt.) Ltd. Attention: Chief Executive Officer , Sri Lanka CERT Tel: +94 11 269 1692, +94 11 269 5749 Facsimile: +94 11 267 9888 e-mail; procurement@cert.gov.lk Service Provider: _____ Attention: _____ Tel: _____ Facsimile: _____ e-mail; _____
1.6	The Authorized Representatives are: For the Employer: _____ For the Service Provider: _____
2.1	The date on which this Contract shall come into effect is; on the date the contract is signed by both parties.

2.2.2	The Starting Date for the commencement of Services is: 07 days from the UAT.
2.3	The Intended Completion Date is 36 months after Starting Date
3.4	<p>The risks and coverage by insurance shall be:</p> <ul style="list-style-type: none"> (i) Third Party motor vehicle to a value not less than Sri Lanka Rupees 1,000,000 equivalent for each vehicle. This refers only to motor Vehicles operated by the Service Provider for the purpose of this Contract. (ii) Third Party liability to a value not less than Sri Lanka Rupees 1,000,000 equivalent per event with the number of events unlimited. (iii) Employer's liability and workers' compensation in accordance with current requirements of the Government of Sri Lanka. (iv) Loss or damage to equipment and property to a value not less than Sri Lanka Rupees 1,000,000 equivalent.
3.5(d)	Not applicable.
3.7	<p>Restrictions on the use of documents prepared by the Service Provider are:</p> <p>None</p>
3.8.1	The Service Provider shall perform the services as per the contract and any failure on the part of the Service Provider shall be taken as default of the contract and shall be dealt with accordingly.
5.1	<p>The assistance and exemptions provided to the Service Provider are:</p> <p>Not applicable</p>
6.2	The amount in local currency is : Sri Lanka Rupees
6.3.2	The performance incentive paid to the Service Provider shall be: Not applicable
6.4	Payment for the services performed as described in this contract shall be made in Sri Lankan Rupees on monthly basis upon receipt of invoice and acceptance that the service provider has performed the services satisfactorily during the respective month for which the payment is requested.
6.5	Payment shall be made within 30 days of receipt of the invoice and the relevant documents specified in Sub-Clause 6.4.
7.1	Not Applicable.
8.2.4	<p>A dispute which cannot be resolved amicably shall be settled in the following manner;</p> <p>Any party may declare a 'Dispute' by notifying the other party of such matter setting forth the specifics of the matter in controversy or the claim being made. Within 10 days of receipt of such notice, a senior representative of each party not involved with the day-to-day operation shall confer and attempt to resolve the Dispute.</p>

	<p>In the event the parties are unable to resolve the Dispute within 10 days, either party may submit the Dispute for Commercial Mediation to an expert mediator nominated by the Ceylon Chamber of Commerce in terms of the Commercial Mediation Centre of Sri Lanka, Act No. 44 of 2000 (As amended in 2005). In the event the parties are unable to resolve the Dispute through mediation or if a certificate of non-settlement is entered in terms of Section 3 F of the said Act, either party may refer the dispute to a court of competent jurisdiction.</p>
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Section VIII. Performance Specifications and Drawings

Refer Section V Activity Schedule (Description of Services)

Section IX. Contract Forms

Performance Bank Guarantee (Unconditional)

To: _____

Whereas _____ (hereinafter called “the Service Provider”) has undertaken, in pursuance of Contract No. _____ dated _____ to execute _____ (hereinafter called “the Contract”);

And whereas it has been stipulated by you in the said Contract that the Service Provider shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

And whereas we have agreed to give the Service Provider such a Bank Guarantee;

Now therefore we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Service Provider, up to a total of _____, _____, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of _____/ as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Service Provider before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Services to be performed there under or of any of the Contract documents which may be made between you and the Service Provider shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Guarantee shall be valid until a date 28 days from the date of issue of the Certificate of Completion.

Signature and seal of the Guarantor

Name of Bank

Address

Date _____