Ministry of Industry & Commerce

LANKA MINERAL SANDS LIMITED

BIDDING DOCUMENT

Sale of Mineral Sands

TENDER REF.NO: LMS/MKT/TDR/17/16

INTERNATIONAL COMPETITIVE BIDDING

SELLER - LANKA MINERAL SANDS LIMITED
No.341/21, SARANA MAWATHA,
RAJAGIRIYA,
SRI LANKA
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TENDER NOTICEx

LANKA MINERAL SANDS LIMITED
MINISTRY OF INDUSTRY & COMMERCE

SALE OF HEAVY MINERAL SANDS
INTERNATIONAL COMPETITIVE BIDDING

TENDER REF. NO: LMS/MKT/TDR/17/16

INVITATION FOR BIDS

The Chairman of the Cabinet Appointed Tender Committee, on behalf of Lanka Mineral Sands Limited, No. 341/21, Sarana Mawatha, Rajagiriya, Sri Lanka invites sealed bids from local & foreign parties who are interested in buying Dry Ilmenite available at the factory in Pulmoddai of Sri Lanka.

The details of the tender are as listed below.

<table>
<thead>
<tr>
<th>PRODUCTS</th>
<th>QUANTITY FOR SALE</th>
<th>BID SECURITY</th>
<th>DATE &amp; TIME OF TENDER CLOSING AND OPENING</th>
</tr>
</thead>
<tbody>
<tr>
<td>DRY ILMENITE</td>
<td>9,000 MT (BULK DELIVERY)</td>
<td>LKR. 22,777,200.00 or USD 149,850.00</td>
<td>20 / 10 / 2017 At 1400 hrs</td>
</tr>
</tbody>
</table>

The Bidding Document could be viewed at the official websites www.industry.gov.lk or www.lankamineralsands.com and downloaded free of charge.

The Bidding Document together with the Prescribed Bid Form may be purchased on week days from 0900hrs. to 1500hrs from 25/09/2017 to 19/10/2017 from Marketing Division upon payment of non-refundable Bidding Document Fee of LKR35,000.00 or USD 230.00 to Lanka Mineral Sands Ltd. 341/21, Sarana Mawatha, Rajagiriya, Sri Lanka.

The Bid, prepared in accordance with the Instructions to Bidder, enclosed in a suitable envelope marked “Sale of Heavy Mineral Sands, Tender No. LMS/MKT/TDR/17/16” on the top left hand of the envelope should either be sent under registered post to the addressed in the below to receive before 1400hrs on 20/10/2017 or be deposited in the Tender Box available at the same address.
The Bids will be opened immediately after closing the Tender at the address given below. The Bidder or only one Representative will be allowed to be present at the time of opening of Tender. Late bids will be rejected.

For any additional information: please contact Marketing Manager of Lanka Mineral Sands Ltd, and Marketing Division on Telephone +94112883951, +94112883965, +94112883954, Fax +94 11 2882668 and Email ilmenite@slt.lk / malmsl@slt.net.lk

Chairman,
Cabinet Appointed Tender Committee (Sales),
Ministry of Industry & Commerce,
PO Box 570, No.73/1, Galle Road,
Colombo -03,
Sri Lanka.
MINISTRY OF INDUSTRY & COMMERCE
LANKA MINERAL SANDS LIMITED

SECTION - 2 : GENERAL INFORMATION

2.1. INTRODUCTION

2.1.1 Lanka Mineral sands Limited (LMSL) formerly Ceylon Mineral Sands Corporation was established in 1957 for the exploration of beach sands in Sri Lanka subsequently converted to a fully Government owned Company in 1992 under the commercialization policy of the Government. Lanka Mineral Sands Limited has now incorporated under the Company Act No. 7 of 2007 of Democratic Socialist Republic of Sri Lanka. At present, Lanka Mineral Sands Ltd is gazetted under Ministry of Industry and Commerce (hereinafter referred to " the Seller")

2.1.2. The Ilmenite Rutile Zircon Plant (IRZ Plant) is the Factory of Lanka Mineral Sands Ltd. and located at Pulmoddai in Eastern Province of Sri Lanka. It is approximately 56 KM far from the Port of Trincomalee and 315 KM from the Port of Colombo. Lanka Mineral Sands Ltd is the only Entity holds Mining License in Sri Lanka for mining of heavy mineral beach sands and Processor. Ilmenite, Rutile, Zircon and High Titanium Ilmenite are the main Products while Garnet, Monazite, Magnetite are by-products.

2.2. SCOPE OF SALE

2.2.1. This refers the Tender Notice published on 21 / 09 / 2017 in the Newspapers of Dinamina, Thinakaran and Daily News

2.2.2. Bidding Process will be conducted through Cabinet Appointed Tender Committee assisted by Technical Evaluation Committee and decision of the Cabinet Appointed Tender Committee will be the final

2.2.3. The Seller invites for the Interested Bidders for buying of Heavy Mineral Product in the below taken place through International Competitive Bidding Procedure. The Product is available at IRZ Plant and for sale & delivery on Exw-Pulmoddai in Bulk form. The Bidders shall process basically valid Business Registration to qualify for submission of bid as specified in the Instructions to Bidders. The Bid should accompany the documents, a Bid Security, Business Registration, Audited Financial Statement, Identical details of the Shareholders & Authorization and the other documents for proven of competence of the Bidder. The Seller & Successful Bidder should enter into the Contract Agreement at the award of tender.

SECTION 3 - PRODUCTS FOR SALE, RELATED SERVICES AND PRODUCT SPECIFICATIONS

3.1. Product is Dry Ilmenite and quantity offered for sale is 9000MT. The Product is guaranteed to the specifications provided by the Seller and it is delivered in BULK on Ex-Work, IRZ Plant, Pulmoddai basis, The sale is defined to export and the services are the exercises and documentary works incidental thereto on imports and exports of product vested with both parties Seller and Buyer. Loading of Goods, Inland Transport, Freight forwarding, Exports Custom Clearance, Delivery of Product and Commercial Documentary Work, Regulatory Permits/Certificate, Analysis of Products and inspections are main services.
3.2. Product Specifications are furnished with:
   a). mineralogical specification,
   b). size distributions of grains and
   c). chemical analysis report. (content of Titanium Dioxide)
   (Please see annexure 01)

3.3. The product and imperative details for bid

<table>
<thead>
<tr>
<th>PRODUCT DESCRIPTION</th>
<th>QUANTITY</th>
<th>BID SECURITY</th>
<th>DATE &amp; TIME OF BIDS OPENING</th>
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<td>LKR 22,777,200.00 or USD 149,850.00</td>
<td>20/10/2017 At 1400hrs</td>
</tr>
</tbody>
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SECTION 4 - INSTRUCTIONS TO BIDDERS (ITB)

4.1 INTERPRETATION.

4.1.1. The term ‘Interested Party’ is defined the party who have potential for Heavy Mineral Products, “Bidder” is the party who submit the bid, “Successful Bidder/ Tenderer” is the party who won the Tender or a part of tender being the substantially responsive bidder to the Bidding Document, “the Product” is the Heavy Mineral Sands offered for sale by Seller while the Goods / Stock means the certain product prepared or reserved in the sales process.

4.1.2. Throughout these bidding process the term “in writing” means communicated in written form by mail (including electronic mail) or hand delivered with proof of receipt.

4.1.3 if the context so requires, “singular” means “plural” and vice versa; and “day” means calendar day.

4.2. ETHICS, FRAUDS & CORRUPTIONS

4.2.1 The attention of the bidders is drawn to the following guidelines to ensure smooth governing of the sales process:
   a). Parties associated with sales Actions, namely, Bidders/ buyers and officials shall ensure that they maintain strict confidentiality throughout the process;
   b). Officials shall refrain from receiving any personal gain from any Sale Action. No gifts or inducement shall be accepted. Bidders/ Buyers 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.

4.2.2. The Seller requires the bidders/ Buyers to observe the highest standard of ethics during the Sale 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 Sales process or in contract execution;
b). “fraudulent practice” means a misrepresentation or omission of facts in order to influence a sales 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 Seller 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 sales process or affect the execution of a contract.

4.2.3. If the Seller found any unethical practices as stipulated under ITB Clause 4.2 above, that a Bidder directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for the Contract in question, the Seller will reject a bid.

4.3. BIDDING DOCUMENT


4.3.2. The Complete Tender Document is published in the Websites www.industry.gov.lk and www.lankamineralsands.com for easy reference of Potential Bidders in addition to publish the Tender Notice in the Newspapers in Sinhala, Tamil & English. All these documents could be viewed on and down loaded free of charge from the websites for reference. However, Bidding Document along with Prescribed Bid Form shall be purchased to submit the bid.

4.3.3. The Communication language is English and therefore, every documents or correspondence should be in English.

4.4. ELIGIBLE BIDDERS

4.4.1. All bidders shall possess legal rights to buy Heavy Mineral Sands under this contract and exports & imports of product. A Bidder shall not have a conflict of interest, under a declaration of ineligibility at the date of submission of the bid & the date of contract award and debarred in any country upon this trading. All bidders found to have conflict of interest shall be disqualified.

4.4.2. To be qualified for submission and accept the bid, the bidder should originally process valid Business Registration established in Abroad / Sri Lanka as incorporated or Individual Enterprise and the Business Registration, Audited Financial Statement of last year, Bid Security and the documentary evidence to prove the bidder’s competence to perform the contract for Seller’s satisfaction such as warehouse facility and competence in trading, processing and manufacturing of value added products based on heavy mineral sands.

4.4.3. The respective addresses and the contact details given by the bidders set out in the bid will be considered for all purposes. The disputes arising any in the communications at which addresses the party with the detail furnished and communications at which addresses all processes and notices of or with this Agreement, its breach or termination may validly be served upon or delivered to the Party.
4.5. PREPARATION FOR BID

4.5.1. The product is delivered at the IRZ Plant on, EX-WORK (2000), PULMODDAI basis and therefore, all costs associated with this INCOTERM are vested with the Bidder other than the loading and analysis of Product.

4.5.2. The bidder shall bid for the total quantity of each product offered for sale and no bidder could bid for purchase of a part of any product.

4.5.3. The product is under warranty and certified to the specifications provided by the Seller. However, the party, who chooses to get the samples of the product tested, could visit at IRZ Plant and take sample for their own analysis. As well, the samples could be obtained from the Marketing Division of Lanka Mineral Sands Ltd, No. 341/21, Sarana Mawatha, Rajagiriya, Sri Lanka (Seller) on normal working days upon submission of written request to Marketing Manager.

4.5.4. The bid should be made by the bidder in United State Dollars (USD) and it should be valid for 60 days from the date of opening of tender. The bids submitted in any other currency will not be accepted.

4.5.5. The Bidding Document could be downloaded from the official website www.industry.gov.lk or www.lankamineralsands.com free of charge. However, the Prescribed Bid Form issued by the Seller should only be used for submission of bid as it will only be accepted by the Seller. The Bidding Document together with Prescribed Bid Form may be purchased upon payment of a non-refundable tender Document fees of LKR35,000.00 or USD 230/- to Lanka Mineral Sands Ltd. 341/21, Sarana Mawatha, Rajagiriya, Sri Lanka and submission of written request to Marketing Manager, Lanka Mineral Sands Ltd, 341/21, Sarana Mawatha, Rajagiriya, Sri Lanka on normal working days from 0900hrs to 1500hrs from the date of 25/09/2017 from Marketing Division. The issuance of Bidding Documents will be closed at 1500hrs on 19 / 10 /2017. The bidders who are interested in participating in tender should ensure to work within the stipulated time frame and ensure there is no delay in submitting the bid(s).

4.5.6. The bidders, who wish to obtain Bidding Document on electronic mail, should send official request on Ilmenite@slit.lk /malmsl@slitnet.lk and procurementmic@gmail.com together with the copy of remittance advice upon payment of Bidding Document fee LKR35,000 or USD230. On receipt of such requests and the payment, the Seller will forward the Bidding Document to the Applicant by return email. Those who wish to obtain so should also ensure to work within the stipulated time frame in submitting the bid.

4.5.7. The Bid should be submitted with the Prescribed Bid Form (Price Schedule) accompanied the Bid Submission Form duly filled. In addition to these, Bid Security, Valid Business Registration, the copy of Audited Financial Statement (last year), Evidence documents for competence of the bidder to ensure the Seller for satisfy execution of the sales contract & Authorization of the signatory(s) along with identical copy documents of the bidder as specified in the sub clause 4.4.2 of clause 4.4 Eligible Bidders should be forwarded by the bidder in accordance with the explanations of clause 4.7 of Submission of bids.

4.5.8. The bid shall be made in cash or in the form of Bank Guarantee corresponding to the amount of Security given in clause 3.3 of Section 3. This is refundable and discharged after completion of the obligations of the bidder and award of the tender.
4.5.9. The bid Securities of the bidder(s), who were not successful will be released after the decision of the Cabinet Appointed Tender Committee or receipt of the formal approval to award of the tender for the Successful Bidder. The bid Security of the Successful Tenderer will only be released after settlement of the Contract Value in full within the time frame and execution of the obligations of the bidder. The Bid Bond furnished by the Successful Bidder will be performing as security until the settlement of full tendered value. Thereafter, the stock purchased will thus perform as security on the performance for the obligations of the successful bidder until the entire stock is removed.

4.5.9.1) The Bid Security shall, in cash either by SLR or USD, giving reference to Tender Number be deposited in favour of Chairman, Lanka Mineral Sands Ltd for credit of Rupee A/c No 0931 or US Dollar A/c No.73449850 (Swift Code- BCEYLKXL) maintained at the Bank of Ceylon, Corporate Branch of Colombo 01, Sri Lanka before 1300hrs on 20/10/2017. The copy of the Remittance Advice/ Cash Deposit Advice certified by the Authorized Officer of the bank/ Attorney-at -Law should also be attached to the Prescribed Bid Form as mentioned in the form.

4.5.9.2) The Bid Security, in the form of Bank Guarantee issued by any licensed Commercial Bank of Sri Lanka or the other guarantee “confirmed” by a Commercial Bank registered under Central Bank of Sri Lanka that is drawn in favour of Chairman, Lanka Mineral Sands Ltd should be furnished with the specimen form of Bid Guarantee provided by the Seller. In accordance with the Section 07 Biding Forms, It should be unconditional, valid for 60 days from the closing date of the tender and payable on first demand of the Seller. (The original bank guarantee should be attached to the SBF)

Some of Banks operating in Sri Lanka are listed below for easy reference.

i) Bank of Ceylon
ii) Peoples Bank PLC
iii) Amana Bank PLC
iv) Axis Bank Ltd
v) Cargills Bank Ltd.
vi) City Bank N.A.
vii) Commercial Bank of Ceylon PLC
viii) Deutsche Bank AG
ix) DFCC Wardana Bank
x) Habib Bank Ltd
xi) HNB PLC
xii) Indian Bank
xiii) Indian Overseas Bank
xiv) National Development Bank PLC
xv) Nation trust Bank PLC
xvi) Pan Asia Bank In Cooperation PLC
xvii) Public Bank Berhad
xviii) Sampath Bank PLC
xix) Seylan Bank PLC
xx) Standard Charted Bank
xxi) State Bank of India
xxii) The HSBC Ltd
xxiii) Union Bank of Colombo Ltd
xxiv) ICICI Bank
xxv) MCB Bank
4.6. AMENDMENT TO BIDDING DOCUMENT

4.6.1. Amendment to the Bidding Document could be made by the Seller and to give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Seller may, at its discretion, extend the deadline for the submission of bids. Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all who have obtained the Bidding Document and published on the websites for others reference. In which cause all rights and obligations of the Seller and Bidders previously subject to the deadline shall thereafter, be subject to the deadline as extended.

4.6.2. In exceptional circumstances, prior to the expiration of the bid validity date, the Seller 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 to extend by the Seller, 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.

4.7 SUBMISSION OF BIDS, WITHDRAWAL, MODIFICATION AND OPENING

4.7.1. The Bidding Document could be downloaded from the websites mentioned in the Invitations for bidders.

4.7.2. The Bidder shall submit the sealed bid with the PBF accompanied the Bid Submission Form duly filled in on time by registered post or hand delivery as detailed in the invitation to the bidders and sub clause 4.7.6 in the below. The Bid Security, the copy of valid Business Registration along with the documents to prove the specimen signatures of the Shareholders therein, Audited Financial Statement of last year and other evidence documents to prove the bidder’s competence in the trading, processing and/ or manufacture of value added products based on heavy mineral sands should be as well. In addition to these the valid copy of NIC or Passport of the Officers signing the PBF and authorized signatory should also be forwarded.

4.7.3. The all details requested by the Seller in the Biding Form should be furnished by the bidder. The submission of incomplete Bidding form which remaining any blank will result rejection of bid.

4.7.4. A Bidder may withdraw, or modify its Bid after it has been submitted by sending a written notice to the Cabinet Appointed Tender Committee duly signed by an Authorized Representative, and shall include a copy of the authorization. The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be submitted in the formal way, and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” or “MODIFICATION;” and received by the Seller prior to the deadline prescribed for submission of bids.

4.7.5. Bids requested to be withdrawn shall be returned to the Bidders only upon notification of contract award to the Successful Bidder. No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Seller on the Bid Submission Form or any extension thereof.
4.7.6. The bid together with the other document as stated in the clause 4.7.2, enclosed in a suitable envelope marked “Sale of Heavy Mineral Sands Tender No. LMS/MKT/TDR/17/16” on the top left-hand of the envelop should either be sent under registered post to Chairman, Cabinet Appointed Tender Committee, Ministry of Industry & Commerce, P.O. Box 570, No. 73/1, Galle Rd, Colombo-03, Sri Lanka to receive before 1400hrs on 20/10/2017.

4.7.7. The Bidder or only one representative whose chooses to participate will be allowed to be present at the time of opening of the Tender.

4.7.8. The Tender will be opened in public at the Ministry of Industry & Commerce, P.O. Box 570, No. 73/1, Galle Rd, Colombo-03, Sri Lanka, immediately after closing the Tender at 1400hrs on 20/10/2017.

4.7.9. Late bids will not be opened and rejected and will be returned by mail to the party.

4.8. AWARD OF CONTRACT, SETTLEMENT OF PAYMENT AND DISCHARGE OF BID SECURITY

4.8.1. The Seller shall award the Contract to the Bidder whose offer has been determined to be the highest evaluated bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactory.

4.8.2. An additional Royalty for the value difference of Exw- IRZ Plant, Pulmoddai and FOB Colombo/Trincomalee will be charged from the Successful Tenderer. It will be 7% of the value difference plus NBT applicable and invoiced to the Bidder. The applicable Royalty for the Successful Tenderer will be less than USD1.8/MT. Therefore, this additional royalty will be a part of the contract value. The royalty is a Government Levy and may be changed subject to revision by the Government time to time.

4.8.3. The Seller has right to vary quantities at time of contract award. The Seller reserves the right to increase or decrease the quantity of products originally specified in clause 3.1 of Section 3 with the consent of the Successful Bidder and provided this does not exceed twenty five percent (25%) and without any change in the unit prices or other terms and conditions of the Bidding Documents. The buyer’s confirmation will also be decisive factor for revise of qty.

4.8.4. Prior to the expiration of bid validity, the Seller shall notify the Successful Bidder, in writing, that its bid has been accepted.

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

4.8.6. Upon the Successful Bidder’s either execution of signing the Contract, paying the full tendered value and / or on receipt of the formal approval to award the Tender, the Seller will promptly notify each unsuccessful Bidder and will discharge its Bid Securities.

4.8.7. Within Seven (7) days after notification, the Seller shall complete the Agreement, and inform the Successful Bidder to sign it and within Ten (10) days of receipt of information, the Successful Bidder shall sign the Contract Agreement. If the Successful Tenderer wishes to sign Contract Agreement through Email and advises to the Seller, facility will be provided by the Seller to expedite and make the process easy.
4.8.8. The Pro Forma Invoice shall also be issued by the Seller on request of Successful Tenderer. It includes the total value of the entire products purchased and the applicable Royalty.

4.8.9. The Payment Terms is on Advance and shall be settled within fourteen (14) working days and on receipt of entire payment of the Contract, the Seller shall discharge the Bid Security of the Successful Bidder.

4.8.10. The failure of Successful Bidder to settle the full payment on the award of Tender and sign the Contract will constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security.

4.8.11. In the event of annulment, the Seller may award the Contract to the next highest evaluated Bidder, whose offer is substantially responsive and is determined by the Seller to be qualified to perform the Contract satisfactory.

4.8.12 The buyer should bear all the charges imposed by foreign and local Banks in the payment and transmission of remittance.

4.8.13. The Seller acknowledges the Successful Tender the receipt of payment.

4.8.14. In the case of delay for the settlement of payment and request for extension by the Successful Bidder, the Seller may grant extension agreeing to the reasons explained by the Successful Bidder, at its case of its discretion, 0.1% interest of the total tendered value will be charged per day but such an extension is limited to a month in maximum. An additional invoice will be issued for this interest charges.

4.9. CLEARANCE OF GOODS PURCHASED

4.9.1. The products purchased should be removed within 45 days of the issuance of the acceptance letter on Award of Tender.

4.9.2. The Successful Bidder is permitted to remove the stock only upon settlement of full Tendered Value.

4.9.3. Partial Shipment is permitted by the Seller.

4.9.4. The Successful Bidder shall instruct to the Seller of their shipment Schedule prior to 07 days of export license and other documents are required.

4.9.5. The Successful Bidder could assign transporters, freight forwarders and the consignees abroad for the shipments. In such assigning of another consignee for shipment, Buyer shall bear all responsibilities in respect of assigning and their performance.

4.9.6. The local buyer who won the tenders could shipped the product to their foreign parties. In such indirect export through the Export License of Seller, the exports should be as agreed with the Seller and they should forward the Copy of Original Bill of Lading, Party's Copy of CUSDEC no sooner the completion of export clearance of each consignment. The Original Export License should, forth with be returned at the completion of entire export.

4.9.7. The successful bidder should take every effort to clear the stock within 45 days as specified in the sub-clause 4.9.1 above. Unless otherwise extension will be allowed by the Seller, demurrage will be charged for the stock not removed within 45 days pursuant to the sub-clause 6.24 of Conditions of Contract. The demurrage period will strictly be limited to 45 days.

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4.9.8. The Seller provides the Commercial Documents of Pro forma Invoice, Commercial Invoice etc and Other documents of Packing List, Weight Certificate, Export License, Inland Transport License, and the permits relevant to international preferential / free trade agreements at request of the Successful Bidder.

SECTION 5 – BID EVALUATION CRITERIA

5.1 The Seller shall evaluate each bid that has been determined, up to this stage of the evaluation, to be substantially responsive. The Seller shall compare all substantially responsive bids to determine the highest-evaluated bid.

5.2. There is no any domestic preference for evaluation of bids. Every bidder whether foreign or local both have equal opportunity.

5.3. The bid price offered by the bidder for buying of product will be the most important factor in Award of Tender.

5.4. The past performance and experience of the bidder in the settlement of payment, removal of the stock, the experienced in execution and submission of relevant documents after shipment was finished by the local parties, the bidder’s strength in the market and competency in the trading, processing and value addition based on heavy mineral sands are considered in monetary terms for comparison of bids.

SECTION 6 – TERMS AND CONDITIONS OF CONTRACT.

6.1 DEFINITION

6.1.1. The following words and expressions shall have the meanings hereby assigned to them:
(a) “Contract” means the Contract Agreement entered into between the Buyer and the Seller 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 an amendments thereto.
(c) “Contract Price” means the price payable to the Seller as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
(d) “Day” means calendar day.
(e) “Completion” means the fulfillment of the Delivery /supply of Products/Goods and imports and exports to the destination in terms of INCOTERM specified and completion of the Related Services by the Seller and the Buyer in accordance with the terms and conditions set forth in the Contract.
(f) “CC” means the Conditions of Contract.
(g) “Goods / Products” means all of the commodities that the Seller is required to sell and deliver to the buyer under the Contract.
(h) “Seller” means the entity sell / deliver the Goods/ products and Related Services, as stated in the clause 2.2 of General Information.
(i) "Related Services" means the services incidental to the imports and exports of the goods/products, such as insurance, transport of goods and other obligations of the Seller and Buyer under the Contract.

(ii) "Subcontractor" means any natural person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Buyer/Seller.

(iii) "Buyer/Successful Tenderer" means the natural person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Seller and is named as such in the Contract Agreement.

(iv) "The IRZ Plant Pulmoddai" where applicable, means the place named as a delivery point of products.

6.2. CONTRACT DOCUMENTS

6.2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

6.3. FRAUD AND CORRUPTION

6.3.1 The Government of Sri Lanka requires the Seller as well as Buyer to observe the highest standard of ethics during the Sales process and execution of such contracts. In pursuance of this policy:

(i) "corrupt practice" means offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the Sales process or in contract execution;

(ii) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a Sales process or the execution of a contract; 

(iii) "collusive practice" means a scheme or arrangement between two or more bidders, with or without the knowledge of the Seller to establish bid prices at artificial, noncompetitive levels; and

(iv) "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the Sales process or affect the execution of a contract.

6.4. INTERPRETATION

6.4.1 Entire Agreement the Contract constitutes the entire agreement between the Seller and the Buyer and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.

6.4.2 No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

6.4.3 Severability if any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

6.5. LANGUAGE

6.5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Seller and the Buyer, shall be written in English language. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern.
6.5.2 The Buyer shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the buyer.

6.6. JOIN VENTURE CONSORTIUM OR ASSOCIATION

6.6.1. If the Buyer is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Seller for the fulfillment of the provisions of the Contract and shall designate one party to act as already with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Seller.

6.7. ELIGIBILITY

6.7.1. All goods delivered under this contract shall be complied with applicable specifications provided by the Seller unless otherwise stated the product has no warranty. In the absence of such standards, the products delivered should be tested at the independence laboratory acceptable to the both Seller and Buyer before shipment.

6.8. GOVERNING LAW

6.8.1. The Contract shall be governed by and interpreted in accordance with the laws of the Democratic Socialist Republic of Sri Lanka.

6.9 SETTLEMENT OF DISPUTES

6.9.1. The Seller and the Buyer shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

6.9.2. If, after twenty-eight (28) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Seller or the Buyer may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or before delivery of the Product under the Contract. Arbitration proceedings shall be conducted in accordance with the Arbitration Act No:11 of 1995.

6.9.3. Notwithstanding any reference to arbitration herein, (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and (b) the Buyer shall pay the Seller any monies due the Seller.

6.10. SCOPE OF SALE

6.10.1. The Products to be sold / delivered and the services to be rendered shall be as specified with Section-3, Products for Sale, Related Services and Specifications
6.11. BUYER’S RESPONSIBILITIES

6.11.1. The Buyer shall clear all the Product and execute the Services in accordance with the Section - 3 Products for Sale and Related Services and Seller as well in accordance with CC Clause 6.10 and the Delivery and Completion of obligations, as per CC Clause 6.11.

6.12. CONTRACT PRICE

6.12.1. Bid price offered by the Buyer for the Products and the Related Services performed under the Contract shall not vary from the prices quoted by the buyer in its bid.

6.13. TERMS OF PAYMENT

6.13.1. The Contract Price, shall be paid as specified in the sub-clause 4.8.9 of ITB 4.8

6.13.2. The Seller’s request, for payment shall be made to the Buyer in writing, accompanied the invoices describing, as appropriate,

6.13.3. Payments could be made promptly by the Buyer referred to the Pro forma Invoice and acceptance for award at the request for payment by the Seller until Contract Agreement is signed.

6.14. TAXES AND DUTIES

6.14.1. The Seller will be entirely responsible for all taxes, duties, license fees, etc., incurred before delivery of the contracted products to the Buyer on Exw basis. However, if there is any additional compensation incidental thereto whole taxes, levies License fees shall be borne by the Buyer.

6.15. PERFORMANCE SECURITY

6.15.1. As specified in the Instructions to Bidder clause 4.5.9 buyer shall not furnish or provide a performance security. The Bid Security submitted is continued instead of Performance of the contract until the payment is made by the buyer. The payment of the tendered value settled by the buyer will be the security for other obligations of the buyer until remove the stock purchased.

6.15.2. The Bid Security shall be payable to the Seller as compensation for any loss resulting from the Buyer’s failure to complete the settlement of its obligations under the Contract.

6.15.3. The Bid Security shall be discharged by the Seller and returned to the Buyer or relevant Bank as applicable not later than twenty-one (21) days following the date of Completion of the Buyer’s obligations in the settlement of contract value under the Contract.

6.16. CONFIDENTIAL INFORMATION

6.16.1. The Seller and the Buyer shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract,
6.16.2. The Buyer shall not use such documents, data, and other information received from the Seller for any purposes unrelated to the contract. Similarly, the Seller shall not use such documents, data, and other information received from the Buyer for any purpose other than the performance of the Contract.

6.16.3. The above provisions shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the delivery or any part thereof.

6.16.4. The provisions of CC Clause 6.16 shall survive completion or termination, for whatever reason, of the Contract.

6.17. SPECIFICATIONS AND STANDARDS

6.17.1. Composite Mineral Specifications of the Product
   (a) The Product, unless otherwise stated as no warranty, supplied under this Contract will conform to the Mineral Composition of the product provided in the Specifications in accordance with clause 3.2 of section 3.

6.18. PACKING AND DOCUMENTS

6.18.1. The Seller, as stated in the Section 3 products for sale, are delivered in bulk or bagged. On the other hand, Seller could accept the specific packaging of products if the Buyer will bear the entire cost of packaging.

6.19. INSURANCE

6.19.1. Unless otherwise specified in the Section -3 regarding the obligation in the insurance, the Seller will be account for the product until the period specified for removal or delivery to the buyer or their transport contractor on Exw Factory basis. Thereafter, responsibility upon any loss or damage incidental to acquisition, transportation, storage freight are vested with the buyer.

6.20. TRANSPORTATION

6.20.1. Unless otherwise specified that transport will be on account of Seller in the Section -3 the responsibility for arranging transportation of the Goods and freight shall be on account of the Buyer.

6.21. INSPECTIONS AND TESTS

6.21.1. The Seller shall at its own expense and at no cost to the Buyer carries out all tests and/or inspections of the Goods at the Seller’s Premises before the shipment of product. If the Buyer needs to analyze the product on their own expenses, the Seller will grant permission for their own analysis.

6.21.2. The buyer or its designated representative shall be entitled to attend the tests and/or inspections. If such instant buyer shall bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

6.21.3. The Seller shall provide the buyer with a report of the results of any such test and/or inspection.

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6.21.4. The buyer is unable to reject any products after imported to their destination outside Sri Lanka. However, where the Seller found any default at the Sellers’end, a proportionate compensate will be allocated for the buyer.

6.22. FORCE MAJEURE

6.22.1. The Seller will not be liable for forfeiture of buyer’s Bid Security or stock if and to the extent that its delay and failure to perform its obligations under the Contract is the result of an event of Force Majeure.

6.22.2. For purposes of this Clause, “Force Majeure” means an event or situation beyond the control of the Seller/Buyer that is not foreseeable, unavoidable, and its origin is not due to negligence or lack of care on the part of the Seller/Buyer. Such events may include, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

6.23. EXTENSION OF TIME & DEMURRAGES

6.23.1. There is no any extension for removal of stock or settlement of payment where there is no acceptable reasons or case of Force Majeure.

6.23.2. The demurrage will be charged at Rs125 per MT or an amount equivalent in USD per week. for the stock not removed within 45 days stipulated in the clause 4.9 of ITB Clearance of Goods. Seller will not be responsible for contamination or loss to the stock not removed within the period stipulated or granted for removal. The maximum period for removal of the stock will be 90 days along with the extension if any from the award of tender and the Seller have right to forfeit the stock not removed by the party within 90 days from the award of tender.

6.24 THE CUSTOM CLEARENCE LEVY

6.24.1. The Export CESS imposed by the Government for export of Mineral products shall be borne by the Buyer.

6.25. TERMINATION

6.25.1. Termination for Default

(a) The Seller, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Successful Buyer, may terminate the Contract in whole or in part:

(i) if the Successful Buyer fails to remove and clear any or all of the stock within the period specified in the Contract, or within any extension thereof granted by the Seller.

(ii) if the Successful Buyer fails to perform any other obligation under the Contract; or

(iii) if the Successful Buyer, in the judgment of the Seller has engaged in fraud and corruption, as defined in CC Clause 3, in completing for or in executing the Contract.

6.26. ASSIGNMENT

6.26.1. Neither the Seller nor the Buyer shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

6.26.2. The Successful Tenderer has no permission to change of Ownership of the Tender awarded to other party.
SECTION 7 – BIDDING FORMS

7.1 (a) Prescribed Bid Submission Form (PBSF)
(b) Prescribed Bid Form
(c) Bid Guarantee Form
BID SUBMISSION FORM

[Note: the purchaser is required to fill the information marked as "*" and delete this note prior to selling of the bidding document]
[The Bidder shall fill in this Form in accordance with the instructions indicated No alteration to its format shall be permitted and no substitutions shall be accepted.]

Date........................................: [insert date (as day, month and year) of Bid Submission] Ref- Tender No.: LMS/MKT/TDR/17/16

To: Chairman
   Cabinet Appointed Tender Committee
   Ministry of Industry and Commerce
   PO Box.570, No.73/1, Galle Road
   Colombo 03, Sri Lanka.

We, the undersigned, declare that:

(a) We have examined and have no reservations to the Bidding Documents, including Addenda No.:................................................ [insert the number and issuing date of each Addenda];

(b) We offer to purchase in conformity with the Bidding Documents and in accordance with the Removal Time Frame specified in the Product for Sale ...........................................and ........................................... the following Products for Sale and Related Services.................................................................
   [* Insert a brief description of the Goods and Related Services];

(c) The total value of our Bid without VAT offered is ................................................ [insert the total value (qty x rate) in words and figures]; at a price of USD............................................................... per MT on Exw, IRZ Plant, Pulmoddai basis [insert the rate of bid price in words only];

(d) Our bid shall be valid for the period of time 60 days specified in sub-clause 4.5.4 of ITB preparation for Bid from the date fixed for the bid submission deadline in accordance with ITB and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

(e) If our bid is accepted, we commit to purchase and remove on time the product(s) paying the full Tendered value given in the Pro Forma Invoice raised by the Seller in accordance with sub clause 4.8.8 of ITB

(f) We have no conflict of interest in accordance with sub clause 4.4.1 of ITB 4.4 Eligible Bidder;

(g) Our firm, for any part of the contract—has not been declared blacklisted by any statutory bodied.

(h) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed.

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

............................................................. [Insert signature of person whose name and capacity are shown]
............................................................. [Insert the legal capacity]
............................................................. [Insert full name of person signing the Bid Submission Form]

Duly authorized to sign the bid for and on behalf of..........................................................: [insert complete name of Bidder] Dated on ................................ day of ............................................ [insert date of signing]
Ministry of Industry & Commerce
LANKA MINERAL SANDS LIMITED
PRESCRIBED BID FORM

Tender No.: LMS/MKT/TDR/17/16
Details of the Bidder

<table>
<thead>
<tr>
<th>Name of Company:</th>
<th>Address</th>
<th>Tele Phone</th>
<th>Fax</th>
<th>Mobile T.P.</th>
<th>Email</th>
<th>Website</th>
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</thead>
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The Bid Prices of proposed to purchase

<table>
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<tr>
<th>Products</th>
<th>Quantity In MT</th>
<th>Bid Security</th>
<th>Terms of Payment</th>
<th>Terms of Delivery</th>
<th>Stock removal period</th>
<th>Bid Price per Metric Tonne. In USD</th>
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<tbody>
<tr>
<td>01 Ilmenite</td>
<td>9000</td>
<td>100% on Advance</td>
<td>Exw. IRZ Plant, Pulmoddai</td>
<td>45 days from the date of award tender</td>
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</table>

PASTE HERE THE PHOTOCOPY OF PAYMENT ADVICE ISSUED BY THE BANK UPON PAYMENT OF BID SECURITY IN CASH
OR
ATTACH THE ORIGINAL BID SECURITY IN THE FORM OF BANK GUARANTEE.

[In addition to the above the copies of Valid Business Registration & document the specimen signatures of the board of company therein, Audited Financial Statement (last year), and Evidence for the competence of the bidder should also be attached]

Authorized Signatory

1. Name: .................................................
   Designation: ........................................
   Address: ...........................................
   Specimen Signature
   NIC / Passport No. ....................................
   (attach a copy)

2. Name: .................................................
   Designation: ........................................
   Address: ...........................................
   Specimen Signature
   NIC / Passport No. ....................................
   (Attach a copy)
Authorization of the Chairman/ Managing Director of Bidder's Company

I/we hereby agree with the terms and conditions stipulated in the tender document and abide to the instructions of Seller, Lanka Mineral Sands Ltd and duly authorized to sign the correspondence of behalf of ................................................................. our/ my Company.

Name in full.............................................................................................................................

Capacity / Designation.................................................................................................

NIC/ Passport No. ................................................. (please attach a copy)

Authorized Signature..........................Date.......................... Common Seal......................
(a) Specimen Guarantee Form

BID GUARANTEE

[This Bank Guarantee form shall be filled in accordance with the instructions indicated in brackets]

[Insert issuing agency's name and address of issuing branch or office]

[Insert Beneficiary:]

Date: [insert (by issuing agency) date]

BID GUARANTEE No.: [insert (by issuing agency) number]

We have been informed that [insert (by issuing agency) name of the Bidder; if a joint venture, list complete legal names of partners] (hereinafter called "the Bidder") has submitted to you its bid dated [insert date (by issuing agency)] (hereinafter called "the Bid") for the purchase of [insert name of product(s)] under Invitation for Bids No. [insert IFB number] ("the IFB").

Furthermore, we understand that, according to your conditions, Bids must be supported by a Bid Guarantee.

At the request of the Bidder, we hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [insert amount in figures] [insert amount in words] 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; or
b) does not accept the correction of errors in accordance with the instructions to Bidders (hereinafter "the ITB"); or
c) having been notified of the acceptance of its Bid by the Purchaser/Buyer during the period of bid validity, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to settle the tendered value within the stipulated period, in accordance with the ITB.

This Guarantee shall expire (a) if the Bidder is the successful bidder, upon our receipt of copies of the Contract signed by the Bidder and of settled the tendered value in full within the stipulated period by 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 that the Bidder was unsuccessful, otherwise it will remain in force up to [insert date] (insert date)

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

[Signature(s) of authorized]
SECTION 8 – CONTRACT FORM
8.1 – Contract Agreement.

CONTRACT AGREEMENT

This contract Agreement is made the .... day of ...... 2017
by and between,
(1) ........................................ a company registered under the Company Act ......... The Democratic Socialist Republic of Sri Lanka and having its principal place of business at ........................................ Sri Lanka (hereinafter called “the Seller”), and
(2) ........................................ bearing registration No. ........................................ and having its principal place of business at ........................................ (Hereinafter called “the Purchaser”)

WHEREAS modus operandi in the contract agreement is that the seller invites bids for the sale of Dry Ilmenite (hereafter called and referred to as “the product”) and the successful bidder (hereafter called and referred to as “purchaser”) upon a price inclusive of all relevant taxes (herein after called and referred to as “contract price” adhering to the tentative monthly schedule embodied in the Bidding Document and both seller and Purchaser agree that this contract agreement to term a as forward sales agreement of which shall last for a period of one year from the date of signing. NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1) In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Terms & Conditions of Contract referred to as follows:
(a) “Contract” means the Contract Agreement entered into between the Seller and the Buyer, 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 Seller as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
(d) “Day” means calendar day.
(e) “Completion” means the fulfillment of the supply of Goods to the destination specified and completion of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
(f) “CC” means the Conditions of Contract.
(g) “Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.
(h) “Purchaser” means the entity purchasing the Goods and Related Services, as specified in the Contract Data.
(i) “Related Services” means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other such obligations of the Supplier under the Contract.
(j) “Subcontractor” means any natural person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.
(k) “Supplier” means the natural person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Purchaser and is named as such in the Contract Agreement.
(l) “The Project Site,” where applicable, means the place named in the Contract Data.

2) Seller and Purchaser agree that the following documents listed below is which is an integral part of the tender procedures in respect of this transaction and pledge to adhere to and respect to the terms, conditions, rulings and requirements of the documents that are integrated to this sale and purchase agreement and undertake not to violate any of these conditions.

A. Bidding document
B. Tender Notice together with following supporting documents.
   • Instructions to Bidder (ITB)
   • Evaluation and Qualification criteria
   • Acceptance of award
   • Pro forma Invoice
   • Bidding Forms
   1) Bid Submission Form
   2) Agreed Delivery frame (schedule)
   3) Bid guarantee
3) Seller undertakes to supply 9,000 Dry Ilmenite within a stipulated period mentioned in the 4.9.7 of ITB.

4) The purchaser undertakes to remove the stocks of Dry Ilmenite within the 45 days period mentioned in 4.9.7 of ITB.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Democratic Socialist Republic of Sri Lanka on the day, month and year indicated above.

For and on behalf of the Seller

the capacity of in the presence of Mr. .............................................................. General Manager ........................................ NIC
........................................ Issued on ........................................ Signature ........................................

for and on behalf of the Purchaser

........................................ (Signature)
........................................ (Name in Full)
Authorized Signatory

In the capacity of Director
In the presence of Mr. .............................................................. Of ........................................... (PVT) Ltd
NIC........................................ Issued on ........................................ Signature.........................................
ANNEXURE- 01

Tender No: LMS/MKT/TDR/17/16

PRODUCT – ILMENITE
Sample No : 4054/ILM
2017/09/18

CHEMICAL ANALYSIS

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MINERALOGICAL ANALYSIS

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SIZE DISTRIBUTION

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