

**The Government of the Democratic  
Socialist Republic of Sri Lanka**  
**Ministry of Petroleum Resources of Development**  
**Ceylon Petroleum Corporation**

**NOTICE OF INVITATION FOR EXPRESSION OF  
INTEREST FOR QUALIFICATION FOR THE  
CONTRACT**

**FOR**

**BUILT OPERATE AND TRANSFER OF MAINTENANCE AND EMERGENCY RESPONSE  
VESSEL (MERV)**

**B/50/2018**

**January , 2018**

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## GLOSSARY

Addendum	As defined in Clause 2.8.1
Applicable Laws	means the Constitution, laws, decisions or regulations and other forms of primary and secondary legislation which are in force in the Democratic Socialist Republic of Sri Lanka, as well as the final and binding judgments, orders and decisions of any court of last instance of competent jurisdiction in the Democratic Socialist Republic of Sri Lanka, including the international contracts applicable in the Democratic Socialist Republic of Sri Lanka in accordance with the Constitution, applicable to this EOI.
Applicant	As defined in Clause 1.2.1
Application	As defined in the Disclaimer
Application Amount	As defined in Clause 2.1.4
Application Due Date	As defined in Clause 1.1.5
Associate	As defined in Clause 2.1.8
Authority	As defined in Clause 1.1.1
Bidding Documents	As defined in Clause 1.2.3
Bids	As defined in Clause 1.2.3
Bidding Process	As defined in Clause 1.2.1
Bid Stage	As defined in Clause 1.2.1
Bidders	As defined in Clause 1.1.2
Conflict of Interest	As defined in Clause 2.1.8
Concessionaire	As defined in Clause 1.1.3
Concession Agreement	As defined in Clause 1.1.3
Consortium	As defined in Clause 2.2.1 (a)
Consortium Agreement	As defined in Clause 2.2.4 (e)
DBFOT	As defined in Clause 1.1.1
Equity	means the paid up equity share capital and shall include compulsorily convertible instruments <sup>1</sup>
Financial Capacity	As defined in Clause 2.2.2 (b)
Lead Member	As defined in Clause 2.2.4 (c)
LOA	As defined in Clause 1.3
Member	Member of a Consortium
Net Worth	As defined in Clause 2.2.3 (b)
PPP	As defined in Clause 1.1.1
Prequalified	As defined in Clause 3.6
Project	As defined in Clause 1.1.1
Qualification	As defined in Clause 1.2.1
Qualification Stage	As defined in Clause 1.2.1
RFP	As defined in Clause 1.2.1
EOI Documents	means, (i) this EOI; (ii) the Schedules, Annexures and Appendices to this EOI; and (iii) any other document that the Authority may so designate and provide to the Applicant.
EOI	As defined in the Disclaimer
Rupees or Rs. or LKR	means Sri Lankan Rupee

<sup>1</sup> This is subject to the restrictions under Applicable Law.

SPV	As defined in Clause 2.2.4
Subject Person	As defined in Clause 2.1.8 (a)
Technical Capacity	As defined in Clause 2.2.2 (a)
AFT	
MERV	Maintenance and Emergency Response Vessel
CPC	Ceylon Petroleum Corporation
SPM	Single Point Mooring
SPBM	Single Point Bouy Mooring
CPR	Controllable pitch propulsion
BHP	Break Horsepower
MT	Metric Ton
SWL	Safety Working Load
SOLAS	
N/A	Not Applicable
L/M	Lead Member
OM	Other Member/s
IFC	As defined in Clause 1.1.6

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein.

## PRINCIPLES OF INTERPRETATION

- (A) Throughout this EOI, unless indicated otherwise by the context, the singular also means plural.
- (B) Any reference in this EOI to any statute or statutory provision shall be construed as including a reference to that statute or statutory provision, and to all statutory instruments, orders and regulations for the time being made pursuant to it or deriving validity from it, as may be from time to time amended, modified, extended or re-enacted, whether before or after the date of this EOI.
- (C) The words “hereof,” “herein”, “hereunder” and words of similar import when used in this EOI shall refer to this EOI as a whole and not to any particular provision of this EOI. The words “include” and “including” shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases or words of like import.
- (D) The headings and sub clauses of this EOI are intended for convenience only and shall not in any way affect the meaning or construction of any provision therein.
- (E) References to articles, recitals, clauses are, unless the context otherwise requires, references to articles, recitals and clauses of this EOI.
- (F) References to days, months and years are references to calendar days, calendar months and calendar years respectively.
- (G) Reference to person shall mean any natural or legal person.

## DISCLAIMER

The information contained in this Notice of Invitation for Expression of interest by way of Request for Qualification document (the “**EOI**”) or subsequently provided to Applicant(s), whether verbally or in documentary or any other form by or on behalf of the Authority or any of its employees or advisors, is provided to Applicant(s) on the terms and conditions set out in this EOI and such other terms and conditions subject to which such information is provided.

This EOI is not an agreement and is neither an offer nor invitation by the Authority to the prospective Applicants or any other person. The purpose of this EOI is to provide interested parties with information that may be useful to them in the formulation of their application for qualification pursuant to this EOI (the “**Application**”). This EOI includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. This EOI and any assumptions, assessments and statements made herein do not purport to contain all the information that each Applicant may require. This EOI may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this EOI. The assumptions, assessments, statements and information contained in this EOI may not be complete, accurate, adequate or correct. Each Applicant should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this EOI and obtain independent advice from appropriate sources.

Information provided in this EOI to the Applicant(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Applicant(s) under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this EOI or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the EOI and any assessment, assumption, statement or information contained therein or deemed to form part of this EOI or arising in any way for participation in this Bid.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Applicant upon the statements contained in this EOI. The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this EOI.

The issue of this EOI does not imply that the Authority is bound to select and short-list prequalified Applicants for Bid Stage or to appoint the selected Bidder or Concessionaire, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Applications or Bids without assigning any reasons whatsoever.

This EOI including the terms herein shall be subject to the provisions of the Applicable Law and the Authority shall, at all times, have the right to modify or supplement the EOI Documents by way of an Addendum, as and when required, including pursuant to the completion of a legal due diligence.

The Applicant shall bear all its costs associated with or relating to the preparation and submission of its Application including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Application. All such costs and expenses will remain with the Applicant and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Applicant in preparation or submission of the Application, regardless of the conduct or outcome of the Bidding Process.

## 1. INTRODUCTION

### 1.1 Background

1.1.1 The Ceylon petroleum Corporation(CPC) , Ministry of Petroleum resources development , the Government of the Democratic Socialist Republic of Sri Lanka (the “**Authority**”) has been serving the nation by supplying fuel for local transportation and power generation. CPC has own refinery at Sapugaskanda which is able to supply the 30% of total fuel demand of the country and the balance 70% demand is catered by importing refined products. There are three fuel unloading locations which are Crude oil SPBM located at 9.2Km away from Colombo port , finished product SPBM located at 6km away from Muthurajawela and Dolphin Tanker berth located at Colombo port.

It is a requirement to have a Maintenance and emergency Response Vessel (MERV) for the operations , maintenance and emergency activities of Two SPBMs. From the year 1987, CPC is being chartering a MERV for the said task and now the authority decided to have CPC own Vessel through a private party on Build, Operate and Transfer ( "**BOT**") basis , and has decided to carry out the bidding process for selection of a private entity as the bidder to whom the project may be awarded. A brief description of the Project is further detailed in Appendix II.

1.1.2 The Authority intends to pre-qualify suitable Applicants (the “**Bidders**”) who will be eligible for participation in the Bid Stage, for awarding the Project through an open competitive bidding process in accordance with the procedure set out herein.

1.1.3 The selected Bidder, who is either a company registered in Sri Lanka under the Companies Act or undertakes to incorporate as such prior to execution of the agreement shall be responsible for Built, operation and transfer of the MERV in accordance with the provisions of a long term agreement (the “**Agreement**”) to be entered into between the Concessionaire and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.

1.1.4 The scope of work will broadly include designing, building, financing, operation and maintenance of the MERV including vessel’s crew management until the ownership transfer to the CPC.

1.1.5 The Authority shall receive Applications pursuant to this EOI in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Authority, and all Applications shall be prepared and submitted in accordance with such terms on or before the date specified in Data Sheet, Appendix I for submission of Applications (the “**Application Due Date**”).

### 1.2 Brief description of Bidding Process

1.2.1 The Authority has adopted a two-stage process (collectively referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. The first stage (the "**Qualification Stage**") of the process involves qualification (the “**Qualification**”) of interested parties/consortia who make an Application in accordance with the provisions of this EOI (the "**Applicant**", which expression shall, unless repugnant to the context, include the Members of the Consortium). At the end of this stage, the Authority expects to announce a list of all pre-qualified Applicants who shall be eligible for participation in the second stage of the Bidding Process (the "**Bid Stage**") comprising Request for Proposals (the “**Request for Proposals**” or “**RFP**”).

- 1.2.2 In the Qualification Stage, Applicants would be required to furnish all the information specified in this EOI. Only those Applicants who are pre-qualified and short-listed by the Authority shall be invited to submit their Bids for the Project. The applicants are advised to obtain the clarification if any from CPC about the project.
- 1.2.3 In the Bid Stage, the Bidders will be called upon to submit their proposals (the “**Bids**”) in accordance with the RFP and other documents to be provided by the Authority (collectively the “**Bidding Documents**”).
- 1.2.4 During the Bid Stage, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids.
- 1.2.6 Any queries or request for additional information concerning this EOI shall be submitted in writing or by fax and e-mail to the officer designated in Data Sheet, Appendix I. The envelopes/communications shall clearly bear the following identification/title:

**Queries/Request for Additional Information: EOI for**

“**BUILT OPERATE AND TRANSFER OF MAINTENANCE AND EMERGENCY RESPONSE VESSEL(MERV) to CPC**”

**1.3 Schedule of Bidding Process**

The Authority shall endeavor to adhere to the following schedule:

<b>Event Description</b>	<b>Date</b>
<b>Qualification Stage</b>	
1. Issuance of EOI Document	09.05.2018
2. Pre-Application Investor Conference	07.06.2018
3. Authority response to queries latest by	14.06.2018
4. Application Due Date	21.06.2018
5. Announcement of short-list Applicants	To be announced
<b>Bid Stage</b>	
1. Issuance of RFP Documents	To be announced
2. Last date for receiving queries	To be announced
3. Pre-Bid meeting	To be announced
4. Authority response to queries latest by	To be announced
5. Bid Due Date	To be announced
6. Opening of Bids	To be announced
7. Letter of Award (LOA)	To be announced
8. Signing of Concession Agreement	To be announced

The above schedule is indicative in nature and the Authority may, in its sole discretion and without prior notice to the Applicants, amend the schedule. Applicants shall not rely in any way whatsoever on the Schedule and the Authority shall not incur any liability whatsoever arising out of amendments to the schedule. The Authority shall give notice of changes to the schedule, if any, by Addendum.



## 2. INSTRUCTIONS TO APPLICANTS

### A. GENERAL

#### 2.1 General terms of Bidding

- 2.1.1 An Applicant bidding individually or as a Member of a Consortium shall not be entitled to submit another bid for the Project either individually or as a Member of any Consortium, as the case may be.
- 2.1.2 The EOI Documents can be downloaded from the website of the Authority by accessing the details given in the Data Sheet, Appendix I.
- 2.1.3 The Application shall be furnished as per formats provided in Appendix III.
- 2.1.4 The EOI Documents will be issued free of Charge to the Applicants during working days from 0900 hrs to 1500 hrs local time (GMT+05:30) **till 18.07.2018**. However the bidder can inspect the above EOI document at CPC website [www.ceypetco.gov.lk](http://www.ceypetco.gov.lk)

#### Content of the Bidding Document

ANNEXURE A	Letter comprising the Application
ANNEXURE B	General Information of the Applicant <sup>2</sup>
ANNEXURE C	Power of Attorney for Signing of the Application
ANNEXURE D	Power of Attorney for Lead Member of Consortium
ANNEXURE E	Consortium Agreement
ANNEXURE F	Technical Capacity of the Applicant
ANNEXURE G	Financial Capacity of the Applicant
ANNEXURE H	Application Checklist

- 2.1.5 The Applicant should submit a Power of Attorney as per the format at Annexure C, Appendix III, authorizing the signatory of the Application to commit the Applicant. In case of a Consortium, the Members thereof should furnish a Power of Attorney in favor of the Lead Member in the format at Annexure D, Appendix III.
- 2.1.6 The Application shall be unconditional and unqualified. Any condition or qualification or any other stipulation contained in the Application shall render the Application liable for rejection as a non-responsive Application.
- 2.1.7 The EOI Document and all attached documents provided by the Authority, are and shall remain or become the property of the Authority and are transmitted to the Applicants solely for the purpose of preparation and the submission of an Application in accordance herewith. Applicants are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Application. The provisions of this Clause 2.1.7 shall also apply mutatis mutandis to Applications and all other documents submitted by the Applicants, and the Authority, unless otherwise provided in the EOI Documents, will not return any Application or any information provided along therewith.

To be submitted separately for each Member in case of a Consortium.

2.1.8 An Applicant shall not have a conflict of interest ("**Conflict of Interest**") that affects the Bidding Process. Any Applicant found to have a Conflict of Interest shall be disqualified. Without limiting the generality of the above, an Applicant shall be deemed to have a Conflict of Interest that affects the Bidding Process, if:

- (a) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this qualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five percent) of the subscribed and paid up share capital of such Bidder, Member or Associate, as the case may be in the other Bidder(s), its Member or Associate is less than 5% (five percent) of the paid up and subscribed equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a state owned financial institution. For the purposes of this Clause 2.1.14, indirect shareholding held through one or more intermediate persons shall be computed as follows:(aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person ("**Subject Person**") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six percent) of the subscribed and paid up equity shareholding of such intermediary; or
- (b) a constituent of such Applicant is also a constituent of another Applicant; or
- (c) such Applicant, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Applicant, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Applicant, its Member or any Associate thereof; or
- (d) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
- (e) such Applicant, or any Associate thereof has a relationship with another Applicant, or any Associate thereof, directly or through common third party/parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Application of either or each other; or
- (f) such Applicant, or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

*Explanation:*

In case an Applicant is a Consortium, then the term Applicant as used in this Clause 2.1.8, shall include each Member of such Consortium.

For purposes of this EOI, Associate means, in relation to the Applicant/Consortium Member, a person who controls, is controlled by, or is under the common control with such

Applicant/Consortium Member (“**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract or otherwise.

It is clarified that a certificate from a statutory auditor who audits the book of accounts of the Applicant or the Consortium Member shall be provided to demonstrate that a person is an Associate of the Applicant or the Consortium as the case may be.

- 2.1.9 An Applicant shall be liable for disqualification if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Applicant, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Applicant, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this EOI. Nor will this disqualification apply where such adviser is engaged after a period of 6 (six) months from the date of execution of the Concession Agreement.

## 2.2 Eligibility of Applicants

- 2.2.1 For determining the eligibility of Applicants for their pre-qualification hereunder, the following shall apply:

- (a) The Applicant for pre-qualification may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. However, no applicant applying individually or as a member of a Consortium, as the case may be, can be member of another Applicant. The term Applicant used herein would apply to both a single entity and a Consortium.
- (b) An Applicant may be a natural person, private entity, government owned entity/authority or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.4 below.

- 2.2.2 To be eligible for pre-qualification and short-listing, an Applicant shall fulfil the following conditions of eligibility:

- (a) **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Applicant shall have:
- (i) Design and built capability of TUG boats having minimum bollard Pull of 30MT

The Applicant shall demonstrate previous experience in development and delivery of minimum two (2) nos of a similar or higher capacity TUG boat which shall include design, built, and delivery, in the last 5 (five) years, preceding the Application Due Date.

If the applicant is a consortium, The entity –claiming the experience for design & build the tug should have held, in the company undertaking the project, a minimum of 26% (Twenty six per cent) equity during the entire year for which the development and delivery experience is being claimed;

and,

(ii) **Operation and maintenance capability:**

The Applicant shall demonstrate having experience in the operation and maintenance of one (1) nos. Tug Vessels in similar or higher capacity over the last 5 (five) years, preceding the Application Due Date. The period of contract of these Operation and Maintenance work shall be minimum of 2 years. The entity claiming the experience for Operation and maintenance should have held, in the company operating the project, a minimum of 26% (twenty six percent) equity during the entire year for which the operation and maintenance experience is being claimed.

(b) **Financial Capacity:** For demonstrating financial capacity (the “**Financial Capacity**”), the Applicant shall have:

- (i) minimum Net Worth of US\$ 9 million (US\$ nine million) at the close of the preceding financial year; and
- (ii) invested, through debt and/or equity finance, in the last 10 (ten) years, preceding the Application Due Date.

(c) **Equity Shareholding of a Member in the SPV:**

- (i) In case of a Consortium, the Technical Capacity of only those Members, who have and shall continue to have at least 51% (fifty one percent) Equity each in the SPV, shall be considered to satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 3(three) years from the date of commercial operation of the Project, hold not less than 51% (fifty one percent) of the Equity in the SPV.
- (ii) Further, the Net Worth of only those Members, who have and shall continue to have an Equity of at least 26% (twenty six percent) each in the SPV, shall be considered to satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 3 (three) years from the commercial operations of the Project, hold not less than 26% (twenty six percent) of the Equity in the SPV.

For this purpose, the Net Worth of the Applicant in case of a Consortium will be calculated as the weighted average of the Net Worth of each of such Members at the close of the preceding financial year and the weights will be based on the proposed equity stake of such Member in the total Equity in the SPV.

(d) **Local Procurement Laws:**

- (i) Foreign bidders may form a joint venture company with a local entity to become eligible for obtaining the Concession, if applicable.
- (ii) Foreign bidders shall have agreed to comply with the Applicable Law in relation to foreign investment in Sri Lanka.

2.2.3 Each Applicant shall enclose with its application, to be submitted as per the format at Appendix III, complete with its Annexes, the following:

- (a) certificate(s) from its statutory auditors or the concerned client(s) confirming that the Applicant has the Technical Capacity;

- (b) certificate(s) from its statutory auditors confirming that the Applicant has the Financial Capacity as per Clause 2.2.2 (b) (ii), and specifying the average net worth of the Applicant, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.3 (b). For the purposes of this EOI, net worth (“**Net Worth**”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders; and
- (c) the Application Amount as mentioned in Clause 2.1.4.

2.2.4 Where the Applicant is a single entity, it may be required to form an appropriate Special Purpose Vehicle, incorporated under the Companies Act (the “**SPV**”), to execute and implement the Project. In case the Applicant is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

- (a) Number of Members in a Consortium should be limited to 3 (three);
- (b) Subject to the provisions of sub clause (a) above, the Application should contain the information required for each member of the Consortium;
- (c) Members of the Consortium shall nominate 1 (one) member as the lead member (“**Lead Member**”), who shall have at least 51% (fifty one percent) Equity in the SPV. The nomination of the Lead Member shall be supported by a Power of Attorney, as per the format at Annexure D, Appendix III, signed by all the other members of the Consortium;
- (d) An individual Applicant cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Applicant Consortium cannot be member of any other Applicant Consortium applying for pre-qualification;
- (e) Members of the Consortium shall enter into a binding consortium agreement in the format prescribed in Annexure E, Appendix III (“**Consortium Agreement**”) for the purpose of making the Application and submitting a Bid in the event of being short-listed. The Consortium Agreement shall, inter alia:
  - (i) convey the intent to form an SPV with shareholding/ownership equity commitment(s) in accordance with this EOI, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;
  - (ii) clearly outline the proposed roles and responsibilities of each Member at each stage;
  - (iii) commit the minimum equity stake to be held by each Member;
  - (iv) commit that the member, whose Technical Capacity has been evaluated for the purposes of this EOI, shall subscribe to 51% (fifty one percent) or more of Equity of the SPV and shall further commit that such member shall for a period of 3 (three) years from the date of commercial operation of the Project, hold not less than 51% (fifty one percent) of the Equity in the SPV;

- (v) commit that the members, whose Net Worth has been evaluated for the purposes of this EOI, shall subscribe to 26% (twenty six percent) or more of Equity of the SPV and shall further commit that such member shall for a period of 3(three) years from the date of commercial operations of the Project, hold not less than 26 % (twenty six percent) of the Equity in the SPV; and
- (vi) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the commercial operations of the Project is achieved in accordance with the Concession Agreement.
- (f) except as provided under this EOI and the Bidding Documents, there shall not be any amendment to the Consortium Agreement without the prior written consent of the Authority.

**(Note:** A copy of the Consortium Agreement should be submitted along with the EOI. The Consortium Agreement entered into between the members of the Consortium should be specific to the Project and should fulfil the above requirements, failing which the EOI shall be considered non-responsive.)

- 2.2.5 Any entity which has been barred by the Government, or any entity controlled by it, from participating in any project (BOT or otherwise), and the bar subsists as on the Application, would not be eligible to submit an Application, either individually or as member of a Consortium. Further, if any entity, which has been barred or sanctioned or can be barred or sanctioned by the World Bank Group, under its Guidelines for Procurement of Goods, Works and Non-Consulting Services, or the World Bank Group Anti-Corruption policies and sanctions procedures, then, such entity would not be eligible to submit an Application, either individually or as member of a Consortium.
- 2.2.6 An Applicant including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Applicant, Consortium Member or Associate. Also, there are no litigations or other proceedings pending before, or adverse orders passed by, any Court of Law, Government authority or regulatory authority, in respect of the projects referred to in Clause 2.2.2 (a) (i) and (ii) hereinabove.
- 2.2.7 In computing the Technical Capacity and Financial Capacity of the Applicant/Consortium Members under Clauses 2.2.2, 2.2.3 and 3.3, the Technical Capacity and Financial Capacity of their respective Associates would also be eligible hereunder.
- 2.2.8 Change in the composition of a Consortium will not be permitted by the Authority during the Qualification Stage.
- 2.2.9 The following conditions shall be adhered to while submitting an Application:
  - (a) Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Applicants may format the prescribed forms making due provision for incorporation of the requested information;

- (b) information supplied by an Applicant (or other constituent Member if the Applicant is a Consortium) must apply to the Applicant, Member or Associate named in the Application and not, unless specifically requested, to other associated companies or firms. Invitation to submit Bids will be issued only to Applicants whose identity and/or constitution is identical to that at prequalification;
- (c) the Applicants should demonstrate their capabilities in accordance with Clause 2.2.2 above; and
- (d) in case the Applicant is a Consortium, each Member should substantially satisfy requirements to the extent specified herein.

### **2.3 Cost of Application**

The Applicants shall be responsible for all of the costs associated with the preparation of their Applications and their participation in the Bid Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

### **2.4 verification of information**

2.4.1 Applicants are encouraged to submit their respective Applications after verifying the information provided in the document, applicable laws and–regulations, and any other matter considered relevant by them.

2.4.2 It shall be deemed that by submitting the Application, the Applicant has:

- (a) made a complete and careful examination of the EOI;
- (b) made a complete and independent examination/research of all required information, inputs, conditions, circumstances and factors that may have any effect on their Applications;
- (c) received all relevant information requested from the Authority;
- (d) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the EOI or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.4.1 above;
- (e) obtained all requisite corporate and regulatory authorizations, under and in accordance with the Applicable Laws and/or the applicable laws of the respective jurisdiction of the Applicant, which are required for submitting the Application and undertaking the obligations pursuant to the Application and as set out in the EOI Documents.
- (f) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.4.3 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the EOI or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

### **2.5 Right to accept or reject any or all Applications**

2.5.1 The Authority reserves the right to verify all statements, information and documents submitted by the Applicant in response to the EOI. Any such verification or lack of such verification by the

Authority shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

2.5.2 Notwithstanding anything contained in this EOI, the Authority reserves the right to accept or reject any Application and to annul the Bidding Process and reject all Applications, at any time without any liability or any obligation for such acceptance, rejection or annulment, and invite fresh application for qualification, without assigning any reasons therefor.

2.5.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the concession thereby granted by the Authority, that one or more of the prequalification conditions have not been met by the Applicant, or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Applicant/SPV has already been issued the LOA or has entered into the Concession

Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this EOI, be liable to be terminated, by a communication in writing by the Authority to the Applicant, without the Authority being liable in any manner whatsoever to the Applicant and without prejudice to any other right or remedy which the Authority may have under this EOI, the Bidding Documents, the Concession Agreement or under applicable law.

**B. DOCUMENTS**

**2.6 Contents of the EOI**

2.6.1 This EOI comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addendum issued in accordance with Clause 2.9.

**Invitation for Applications**

- Section 1. Introduction
- Section 2. Instructions to Applicants
- Section 3. Evaluation of Applications
- Section 4. Fraud and Corrupt Practices
- Section 5. Pre-Application Investor Conference
- Section 6. Miscellaneous

**Appendices**

- I. Data Sheet
- II. Project Description
- III. Formats for Application

ANNEXURE A	Letter comprising the Application
ANNEXURE B	General Information of the Applicant <sup>3</sup>
ANNEXURE C	Power of Attorney for Signing of the Application
ANNEXURE D	Power of Attorney for Lead Member of Consortium
ANNEXURE E	Consortium Agreement
ANNEXURE F	Technical Capacity of the Applicant
ANNEXURE G	Financial Capacity of the Applicant
ANNEXURE H	Application Checklist



## **2.7 Clarifications**

2.7.1 Applicants requiring any clarification on the EOI may notify the Authority in writing or by fax or by-mail in accordance with Clause 1.2.6. They should send their queries before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3.

2.7.2 The Authority shall endeavor to respond to the questions raised or clarifications sought by the Applicants within the period specified therein, but no later than seven (07) days prior to the Application Due Date. The responses will be informed by email or by fax or uploaded on the Authority's website. The Authority will forward all the queries and its responses thereto, to all the Applicants without identifying the source of queries. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause 2.7.2 shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.

2.7.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all the Applicants. All clarifications and interpretations issued by the Authority shall be deemed to be part of the EOI. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority. These will be put up on the Authority's website and may be accessed by the Bidder by accessing the web link ([www.ceypetco.gov.lk](http://www.ceypetco.gov.lk)).

## **2.8 Amendment of EOI**

2.8.1 At any time prior to the deadline for submission of Applications, the Authority may, for any reason including pursuant to conclusion of a legal due diligence, whether at its own initiative or in response to clarifications requested by an Applicant, modify the EOI by the issuance of an addendum ("**Addendum**").

2.8.2 Any Addendum thus issued will be sent in writing to all the Applicants and will be put up on the Authority's website.

2.8.3 In order to afford the Applicants a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, at its own discretion, extend the Application Due Date.

## **C. PREPARATION AND SUBMISSION OF APPLICATION**

### **2.9 Format and Signing of Application**

2.9.1 The Applicant shall provide all the information sought under this EOI. The Authority will evaluate only those Applications that are received in the required formats along with the Application Amount as mentioned in Clause 2.1.4 and which are complete in all respects.

2.9.2 The Application shall be typed or written in indelible ink and signed by the authorized signatory of the Applicant who shall also initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Application shall be initialed by the person(s) signing the Application.

### **2.10 Sealing and Marking of Applications**

2.10.1 The Applicant shall submit the Application in the formats specified under Appendix-III along with the Application Amount as mentioned in Clause 2.1.4, and seal it in an envelope and mark the envelope as "**APPLICATION FOR EOI ON MERV**". The Application shall include:

- (a) Letter comprising the Application (Appendix – III - **ANNEXURE A**);
- (b) General Information of the Applicant (Appendix – III - **ANNEXURE B**);
- (c) Power of Attorney for signing of the Application in the prescribed format (Appendix – III - **ANNEXURE C**);
- (d) If applicable, the Power of Attorney for Lead Member of Consortium in the prescribed format (Appendix – III - **ANNEXURE D**);
- (e) Consortium Agreement (in case of Consortium) (Appendix – III - **ANNEXURE E**);
- (f) Technical Capacity of the Applicant (Appendix – III - **ANNEXURE F**);
- (g) Financial Capacity of the Applicant (Appendix – III - **ANNEXURE G**); and
- (h) Application Checklist (Appendix – III - **ANNEXURE H**).

2.10.2 A certified true copy of the Application shall be placed in hard binding and the pages shall be numbered serially. Each page thereof shall be initialed in blue ink by the authorized signatory.

3 (three) copies of this document shall be placed in a separate envelope and marked "COPY OF DOCUMENTS".

2.10.3 The envelopes specified in Clauses 2.10.1 and 2.10.2 shall be placed in an outer envelope, which shall be sealed. Each of the 4 (four) envelopes shall clearly bear the following identification:

**"Application for Qualification: BUILT, OPERATE AND TRANSFER OF MAINTENANCE AND EMERGENCY RESPONSE VESSEL(MERV"**

and shall clearly indicate the name and address of the Applicant. In addition, the Application Due Date should be indicated on the right hand top corner of each of the envelopes.

2.10.4 Each of the envelopes shall be addressed to information as given in Data Sheet, Appendix I.

2.10.5 If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Application submitted.

2.10.6 Applications shall be delivered by hand, by poster courier services at the address(es) as stated under Data Sheet, Appendix I. The Authority will, on request, provide the Applicants with acknowledgement of receipt showing the date and time when its Application was received. Applications submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

## **2.11 Application Due Date**

2.11.1 Applications should be submitted as per the information given in the Data Sheet, Appendix I in the manner and form as detailed in this EOI.

2.11.2 The Authority may, in its sole discretion, extend the Application Due Date by issuing an Addendum in accordance with Clause 2.8 uniformly for all Applicants.

## **2.12 Late Applications**

Applications received by the Authority after the specified time on the Application Due Date shall not be eligible for consideration and shall be summarily rejected and be returned un-opened.

## **2.13 Modification/Substitution/Withdrawal of Applications**

2.13.1 The Applicant may modify, substitute or withdraw its Application after submission, provided that written notice of the substitution or withdrawal is received by the Authority prior to the Application Due Date. No Application shall be modified, substituted or withdrawn by the Applicant on or after the Application Due Date.

2.13.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.10, with the envelopes being additionally marked "MODIFICATION" or "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

2.13.3 Applicants may note that the Authority may, at its sole, absolute and unfettered discretion, ask for additional information and/or seek clarifications from an Applicant after the Application Due Date, inter alia, for the purposes of removal of inconsistencies or infirmities in the Application submitted by such Applicant.

2.13.4 Any additional information supplied subsequent to the Application Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

## **2.14 Rejection of Application**

2.14.1 Notwithstanding anything contained in this EOI, the Authority reserves the right to reject any Application and to annul Bidding Process and to reject all Applications at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reason whatsoever.

2.14.2 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Application without assigning any reasons.

## **2.15 Validity of Application**

The Application shall be valid for a period of not less than 180 (one hundred and eighty) days from the Application Due Date. The validity of the Application may be extended at the sole discretion of the Authority.

## **2.16 Confidentiality**

Information relating to the examination, clarification, evaluation, and recommendation for the short-listed pre-qualified Applicants shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to, or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of Application, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or the Authority or as may be required by law or in connection with any legal process.

## **2.17 Correspondence with the Applicant**

Save and except as provided in this EOI, the Authority shall not entertain any correspondence with any Applicant in relation to acceptance or rejection of any Application.

## **D. QUALIFICATION AND BIDDING**

### **2.18 Pre-qualification and notification**

After the evaluation of Applications, the Authority would announce a list of prequalified Applicants (“Bidders”) who will be eligible for participation in the Bid Stage. The list of the pre-qualified Applicants shall be announced no later than 4 (four) weeks prior to the issuance of the Bidding Documents to the Bidders, and at the discretion of the Authority. At the same time, the Authority would notify the other Applicants that they have not been pre-qualified. The Authority will not entertain any query or clarification from Applicants who fail to qualify.

### **2.19 Submission of Bids**

The Bidders will be requested to submit a Bid in the form and manner to be set out in the Bidding Documents.

Only pre-qualified Applicants shall be invited by the Authority to submit their Bids for the Project.

## **3. EVALUATION OF APPLICATIONS**

### **3.1 Opening and Evaluation of Applications**

3.1.1 The Authority shall open the Application on the Application Due Date, at the place specified in Data Sheet, Appendix I and in the presence of the Applicants who choose to attend.

3.1.2 The Authority will subsequently examine and evaluate the Applications in accordance with the provisions set out in this Section 3.

3.1.3 To facilitate evaluation of the Applications, the Authority may, at its sole discretion, seek clarifications in writing from any Applicant regarding its Application.

3.1.4 Applicants are advised that pre-qualification of Applicants will be entirely at the discretion of the Authority. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.

### **3.2 Tests of responsiveness**

3.2.1 Prior to evaluation of Applications, the Authority shall determine whether each Application is responsive to the requirements of the EOI. An Application shall be considered responsive only if:

- (a) it is received as per the format at Appendix – III;
- (b) it is received by the Application Due Date including any extension thereof pursuant to Clause 2.8.3;
- (c) it is signed, sealed, hard bound and marked as stipulated in Clauses 2.9 and 2.10;
- (d) it is accompanied by the Power(s) of Attorney as specified in Clause 2.1.5 and in the case of a Consortium, the Power of Attorney as specified in Clause 2.1.5 as the case may be;

- (e) it contains all the information (complete in all respects) as requested in this EOI (in formats same as those specified);
- (f) it does not contain any condition or qualification;
- (g) it is accompanied by the Consortium Agreement (for Consortium), as stipulated in this EOI;
- (h) it is accompanied by the Application Amount as mentioned in Clause 2.1.4; and
- (i) it is not non-responsive in terms hereof.

3.2.2 The Authority reserves the right to reject any Application which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Application.

### **3.3 Evaluation Parameters**

3.3.1 Only those Applicants who meet the eligibility criteria specified in Clause 2.2.2 above shall qualify for evaluation under this Section 3. Applications of firms/consortia who do not meet these criteria shall be rejected.

3.3.2 The Applicant's competence and capability for the purpose of this EOI is proposed to be established by the following parameters:

- (a) Technical Capacity; and
- (b) Financial Capacity.

### **3.4 Details of Experience**

3.4.1 The Applicants must provide the necessary information relating to Technical Capacity as per format at Annexure F, Appendix III.

3.4.2 The Applicant should furnish the required project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annexure F, Appendix III.

### **3.5 Financial information for purpose of evaluation**

3.5.1 The Application must be accompanied with the Audited Annual Reports of the Applicant (of each Member in case of a Consortium) for the last 4 (Four) financial years, preceding the year in which the Application is made.

3.5.2 In case the annual accounts for the latest financial year are not audited and therefore the Applicant cannot make it available, the Applicant shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Applicant shall provide the Audited Annual Reports for 4 (Four) years preceding the year for which the Audited Annual Report is not being provided.

3.5.3 The Applicant must establish the minimum Net Worth specified in Clause 2.2.2 (b), and provide details as per format at Annexure G, Appendix III.

### 3.6 Pre-qualification of Applicants

The credentials of eligible Applicants shall be measured in terms of their experience. All Applicants who fulfil the conditions of eligibility specified in Clause 2.2.2 and meet the other conditions specified in this EOI shall be designated as being pre-qualified (“**Prequalified**”).

### 3.7 Contacts during Application Evaluation

As provided in this EOI, the Authority shall not entertain any correspondence with any Applicant in relation to the acceptance or rejection of any Application.

## 4. FRAUD AND CORRUPT PRACTICES

4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Should any corrupt practice, fraudulent practice, coercive practice, collusive practice, undesirable practice or restrictive practice of any kind come to the knowledge of the Authority it will, in the first place allow the Applicant to provide an explanation and action shall be taken only when a satisfactory explanation is not received. Such action and reasons thereof shall be recorded in the record of the procurement proceedings and promptly communicated to the concerned Applicant. Any communications between the Applicant and the Authority related to the matters of alleged corrupt practice, fraudulent practice, coercive practice, collusive practice, undesirable practice or restrictive practice in the Bidding Process shall be in writing.

4.2 For the purposes of this Section 4, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) “**corrupt practice**” means offering, giving or promising to give, receiving, or soliciting, either directly or indirectly, to any officer or employee of the Authority or other public or private authority or individual, a gratuity in any form; employment or any other thing or service of value as an inducement with respect to an act or decision or method followed by Authority in connection with a procurement proceeding or contract execution;
- (b) “**fraudulent practice**” means the misrepresentation or omission of facts in order to influence a decision to be taken in a procurement proceeding or contract execution;
- (c) “**coercive practice**” means impairing or harming or threatening to harm, directly or indirectly, persons or their property to influence a decision to be taken in a procurement proceeding or the execution of a contract, and this will include creating obstructions in the normal submission process used for Bids, applications, proposals or quotations;
- (d) “**collusive practice**” means a scheme or arrangement between two or more persons, with or without the knowledge of the Authority, that is designed to arbitrarily reduce the number of Applications submitted or fix tender prices at artificial, non-competitive levels, thereby denying a procuring entity the benefits of competitive price arising from genuine and open competition;
- (e) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

- (f) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

## **5. PRE-APPLICATION INVESTOR CONFERENCE**

- 5.1 A Pre-Application Investor Conference shall be convened at the designated date, time and place as given in the Data Sheet, Appendix I.
- 5.2 During the course of Pre-Application Investor Conference, the Applicants shall be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, at its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

## **6. MISCELLANEOUS**

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of Sri Lanka and the courts at Colombo shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bidding Process.
- 6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/or cancel the Bidding Process and/or amend and/or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - (b) consult with any Applicant in order to receive clarification or further information;
  - (c) pre-qualify or not to pre-qualify any Applicant and/or to consult with any Applicant in order to receive clarification or further information;
  - (d) retain any information and/or evidence submitted to the Authority by, on behalf of, and/or in relation to any Applicant; and/or
  - (e) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Applicant.
- 6.3 It shall be deemed that by submitting the Application, the Applicant agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.
- 6.4 N/A

## APPENDIX I –Data Sheet

The following specific data shall supplement the provisions of EOI Document.

1.	Name of Authority	Ceylon Petroleum Corporation
2.	Project Name	Built, Operate and Transfer of Maintenance and Emergency Response Vessel(MERV)
3.	Address of Authority	Ceylon Petroleum Corporation , No. 609, Dr. Danister De Silva Mawatha Colombo 09, Sri Lanka.
4.	Pre-Application Investor Conference	Pre-Application Investor Conference will be held on: Date: <b>05.07.2018</b> Time: 10:00 am(Sri Lanka time)  Venue : Procurement & Stores Function, 1 <sup>st</sup> , Ceylon Petroleum Corporation, No. 609, Dr. Danister De Silva Mawatha, Colombo 09, Sri Lanka.
5.	Address for Submission of the Application	Procurement & Stores Function 1 <sup>st</sup> . floor, Ceylon Petroleum Corporation No. 609, Dr. Danister De Silva Mawatha Colombo 09, Sri Lanka.
6.	Language of the Application	English
7.	Application Due Date	Date : 19.07.2018  Time: 1400 p.m. (Sri Lanka time)
8.	Place and Time of the Application Opening	Procurement & Stores Function 1 <sup>st</sup> . floor, Ceylon Petroleum Corporation No. 609, Dr. Danister De Silva Mawatha Colombo 09, Sri Lanka.



## **APPENDIX II –Indicative Project Description**

The Ceylon Petroleum Corporation (CPC) , Ministry of Petroleum resources development , the Government of the Democratic Socialist Republic of Sri Lanka (the “**Authority**”) has been serving the nation by supplying fuel for local transportation and power generation. CPC has own refinery at Sapugaskanda which is able to supply the 30% of total fuel demand of the country and the balance 70% demand is catered by importing refined product to Sri Lanka , there are three fuel unloading locations which are Crude oil SPBM- located at 9.2Km away from port of Colombo , finished product SPBM located at 6km away from Muthurajawela and Dolphin Tanker berth (DTB) located at Port of Colombo.

The Operation and Maintenance activities of SPMs are done by CPC own staff and specially designed vessel is required for the work and the emergency response activities. The vessel is usually identified as Maintenance and Emergency Response Vessel (MERV). The utilization of MERV related to Operation , Maintenance and Emergency activities of SPMs are as follows in brief.

### **1. Operation activities-**

1. MERV shall transport the mooring and operation crew from and to harbour to the tanker and provide safe facility to transfer the Crew and equipment to and from the tanker.
2. Handover the SPM floating hose end to the tanker after tanker mooring to SPM.
3. Providing towing facility to tanker from AFT during discharging to avoid tanker to move toward the SPM.
4. Vessel should have adequate bollard pull/engine power/bow thruster / controlling facility to position the tug at any weather condition permitted for tanker mooring.
5. Cabin/meal /accommodation facilities shall be available for 5nos of crew from CPC/CPSTL.
6. Any other activities specified by CPC/CPSTL mooring staff.

### **2. Maintenance Activities-**

1. Deck space and all the facility/equipment such as crane ,winch A-frame, stern roller etc., to be available on board of the MERV for handling and testing of SPM hoses which are 35’-40’ long and 12”-24” inner diameter floating and submarine hoses.
2. Anchor chain handling facility to be available on board. The sizes of anchor chains Diameter of SPMs are 3.5” to 3”
3. Compressor/diving compressor/zodiac and safety gears etc., should be available for carrying out any kind of maintenance at SPMs.
4. Any other activities specified by CPC/CPSTL staff.

### **3. Emergency Response Activities**

1. Vessel should have all the firefighting equipment, oil spill combat equipment /spray booms etc., to attend any emergency situation while tanker discharging or during maintenance.
2. It is a requirement to have a Maintenance and emergency Response Vessel (MERV) for the operations and maintenance and emergency activities of Two SPBMs round the clock and, CPC is being chartering a MERV for the said task from the year 1987. The authority decided to purchase

CPC own Vessel through a private party on Build, Operate and Transfer (the "BOT") basis , and has decided to carry out the bidding process for selection of a private entity as the bidder to whom the project may be awarded.

#### **4. THE VESSEL SHALL COMPLY WITH THE FOLLOWING MAIN REQUIREMENTS**

##### **4.1 DIMENSIONS of the MERV**

- a) Length overall should be a minimum of thirty five meters (35m) and not more than sixty meters (60m).
- b) Breadth moulded should be not less than ten meters (10m).
- c) Depth moulded should be not less than four meters (4m).
- d) Length between the main winch and stern to be in the range of fifteen to twenty meters (15m to 20m). General arrangement plan of the vessel to be submitted along with the Bid.
- e) The vessel shall have a stern roller or rounded stern flush with deck and a rounded hull. All conditions of the sub clause 2.4.3 of section 2 should be met.

##### **4.2 PROPULSION**

Twin screw, controllable pitch propulsion system (CPP) - with main engines. Developing a total BHP of minimum 3000 (Three Thousand) continuous rating.

##### **4.3 BOLLARD PULL**

The vessel's continuous static bollard pull shall be not less than 60 MT.

##### **4.4 BOW THRUSTER**

Bow thruster developing 3.7 MT of thrust at continuous rating and not less than three hundred and fifty (350) BHP should be provided. Bow thruster to be operated independent of all other machinery such as generators etc,

##### **4.5 SPEED**

Free running speed of minimum ten (10) knots.

##### **4.6 GENERATORS**

Two main generators with sufficient power to work all deck equipment simultaneously and one auxiliary generator to be provided. Capacities of all generators to be stated. 230 volt and 400 volt power outlets must be available and number of each type of outlets to be specified. The power outlets to be available outside the super structure. Power supply shall be of 400 volt three phase 50 Hz.

##### **4.7 DECK REQUIREMENTS**

- a) Deck shall have
  - i. Sufficient area for work space & storage of maintenance tools, SPM spares such as ropes, wires, shackles, etc.
  - ii. Deck space shall be available for storage of anti-pollution equipment (booms, skimmers, and power packs), air compressors, welding & diving equipment.
- b) Deck crane must be,

- i. Located forward of deck area clear of deck space for handling equipment from deck area.

And

- ii. Crane shall have a minimum SWL of 5 MT at six meters (6m) from the ship's side closer to the center of the crane in an athwart ship direction.

- iii. Capable of lifting a load of 5 MT at a radius of 10 m from its center.

c) 'A' Frame:

- i. Articulated 3 MT SWL 'A' frame at stern. 'A' frame and attachments shall be collapsible to deck level.

- ii. 'A' frame to be designed to accommodate work close to tanker.

- iii. 'A' frame shall be capable of working to a minimum of two and a half meters (2.5m) outward from stern end of the vessel.

d) Main deck winch:

Minimum twenty five (25) MT capacity continuous rating.

e) Tugger winch:

Two (02) Nos. Tugger winch of min. five (05) MT continuous rating each to be provided. Tugger winches shall be located on the main deck on port and starboard sides closer to the ship's side. Mode of operations should be stated (electric, hydraulic etc.).

f) Forecastle head winch and bollards: to handle tail hose and ropes.

g) Forecastle bollards should be of sufficient strength to pull 180,000 DWT tanker off the buoy.

h) Adequate lighting for work on forward deck and aft deck and two (02) Nos. ten inch (10") diameter search lights of not less than 2 Kilo Watts (KW) of power each.

i) Anti Pollution Equipment

- i. Spray Booms of minimum length seven point five (7.5) meters with five (5) numbers nozzles for each spray boom to cover the entire swath on both port and starboard sides, independent pumps and tanks with a minimum capacity of 4,000 liters for the storage of dispersant to be provided. A stand by pump or provision to couple the main fire pump/ emergency fire pump to the spray booms in case of failure of the main pump shall be provided. Spraying capacity shall be min. 150 liters/min as an over-the-bow spraying system. Additional hand-sprayers to be provided. Spray system shall have facility to draw direct from dispersant drum.

- ii. One number of Weir type skimmer should be available onboard the vessel (specifications should be compatible with the type of oil used in both the vessel offered and the Tankers handled).

- iii. One number of 'U' shape oil containment boom and Jib Arm should be available onboard the vessel.

- j) Inflatable run-about:  
Minimum 01 No. inflatable run-about/boat to accommodate a minimum of eight persons safely with life jackets with a 25-40 HP petrol outboard motor, which should comply with all appropriate SOLAS compliance requirements. Petrol shall be provided by the Bidder.
- k) Accommodation/Meal requirements:  
i. 1 x single berth cabin and 2 x2 berth cabin minimum  
ii. Rates for providing meals/ accommodation per head basis to be stated separately.
- l) Air compressors and other equipment:  
Air compressor 7 kg/cm<sup>2</sup> x 21.5 cubic meters per minute, together with one number of 2" (two inch) diameter hose of 25 meter length and 1" (one inch) diameter hose of 75 meter long, to be provided.  
  
Welding equipment up to 300 amp and oxy-acetylene cutting facility to be provided by the bidder. A separate compressor (**capacity 210 liters per minute at 225 bars with power not less than 5 HP**) for charging aqua-lung bottles to be provided.
- m) Adequate storage space for SPM maintenance equipment and materials.
- n) (1) An opening with lockable gate to be provided on both port and starboard sides of the main deck bulwark.  
(2) Gang plank or brow for safe access.  
(3) Pilot board platform on either side (port and starboard) to allow CEYPETCO staff to board tanker using ship gangway.  
(4) 03 Nos., portable communication equipment with all marine channels to be provided.  
(5) Two numbers coils of polypropylene rope, SWL 40 MT and 220 meters length each  
(6) Anchor handling system:  
  
System should be available for anchor handling and towing operations. Preferably a unit having towing pins complete with flaps for horizontal locking and fork (jaw type). Complete system (Fork and pins) should run vertically up and down and inserted to the deck structure. System should be powered by high pressure hydraulic cylinders of about 200 bars.  
  
Note: System should be capable of handling 3" (76 mm) to 3 ½" (90 mm) diameter anchor chains and minimum load capacity of the system should be equal to bollard pull power of the vessel.

#### **4.8 SLOP TANK**

Slop tank of min. 60 cubic meters capacity should be available and suitably arranged to receive oil spilled on deck or skimmed oil and fitted with suitable discharge pump. Slop tank to have flange opening on deck to receive oil.

**4.9 BOW ANCHORS:** 02 Nos.

**4.10 FIRE FIGHTING EQUIPMENT**

Fire monitor with high pressure fire fighting pump to be available on board for immediate use in case of an external fire. Foam facility to be provided. All equipment should comply with minimum requirements of SOLAS.

**4.11 BRIDGE EQUIPMENT**

Vessel shall be fitted with the following bridge equipment, which should comply with minimum SOLAS requirements:

1. GMDSS radio console (for A1+A2+A3) and three sets of hand held two-way VHF radio telephone, with rechargeable batteries + battery chargers.
2. Magnetic compass and gyro compass
3. At least two set of operational Radar, of minimum 24 nautical miles range.
4. Echo sounder with recorder
5. GPS navigator
6. NAVTEX receiver.
7. AIS receiver.
8. Anemometer with recorder and printing facilities.
9. Auto pilot system.
10. Computer system with printer of capacity acceptable to the charterer and an underwater Digital Camera (usable depth – up to 30m) of at least 5 mega pixels

**4.12 Flag of Registry**

It shall be registered under Sri Lankan Flag and recognized classification society.

APPENDIX III – Formats for Application

ANNEXURE A – Letter Comprising the Application

Dated:

To .....

.....

..... Tel: Fax:

Sub: “Application for Qualification: Built, Operate and Transfer of Maintenance and Emergency Response Vessel (MERV)”

Dear Sir,

1. With reference to the EOI document dated [\_\_\_\_\_], I/we, having examined the EOI document and understood their contents, hereby submit my/our Application for the aforesaid Project. The Application is unconditional and unqualified.
2. All information provided in the Application and in the Appendices is true and correct.
3. This statement is made for the express purpose of qualifying as an Applicant for the development, construction, operation and maintenance of the aforesaid Project.
4. I/We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
5. I/We acknowledge the right of the Authority to reject our Application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. I/We certify that in the last 3 (three) years, we/any of the Consortium Members (and/or the Associates which have been used to satisfy Qualification Criteria) have neither failed to perform on any contract, as evidenced by imposition of a total penalty which has exceeded 5% (five percent) of the project revenues in that year or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
7. I/We declare that:
  - (a) I/We have examined and have no reservations to the EOI documents, including any Addendum issued by the Authority.
  - (b) I/We do not have any conflict of interest in accordance with Clause 2.1.8 of the EOI document;
  - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.2 of the EOI document, in respect of any tender or request for proposal issued by or any agreement entered into with any other public sector enterprise or any authority; and

- (d) I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 4 of the EOI, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/We understand that the Authority may cancel the Bidding Process at any time and that the Authority are neither bound to accept any Application that the Authority may receive nor to invite the Applicants to Bid for the Project, without incurring any liability to the Applicants.
9. I/We declare that we/any Member of the Consortium are/is not a Member of a/any other Consortium submitting an Application for the Project.
10. I/We declare that I/we have obtained all requisite corporate and regulatory authorizations, under and in accordance with the [Applicable Law / applicable laws of our jurisdiction of incorporation], required for submitting the Application and undertake the obligations pursuant to the Application and as set out in the Bid Documents.
11. I/We acknowledge that the Application shall be valid for a period of 180 (one hundred and eighty) days from the Application Due Date, subject to any extension granted by the Authority.
12. I/We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of Law or indicted or has adverse orders passed, or blacklisted, by a Court of Law, Government department or regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
13. I/We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Authority or convicted by a Court of Law for any offence committed by us or by any of our Associates.
14. I/We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors on the Board of the {insert name of the Applicant or Members of the Consortium}.
15. I/We further certify that, there are no litigations or other proceedings pending before, or any adverse orders passed by, any Court of Law, Government authority/department or regulatory authority, in respect of the projects (details of which form part of this Application) which are being relied upon by us for the purposes of determining our Technical Capacity in terms of Clause 2.2.2 (a) (i) and (ii) of the EOI.
16. I/We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.
17. We acknowledge that our Consortium/proposed Consortium is qualified on the basis of:
- (a) [Technical Capacity of those of its Members who shall each, for a period of 3 (three) years from the date of the commercial operation of the Project, hold not less than 51% (fifty one percent) of Equity in the SPV; and]

- (b) [Financial Capacity of those of its Members who shall each, for a period of 3(three) years from the date of the commercial operation of the Project, hold not less than 26% (twenty six percent) of the Equity in the SPV.]

We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership.

18. I/We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the EOI, I/We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify us or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that any such breach would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.
19. I/We understand that the selected Bidder shall be a company registered in Sri Lanka under Companies Act or from outside Sri Lanka under equivalent law {and shall incorporate a company under the Companies Act in terms of the EOI and the Bidding Documents}.
20. I/We hereby irrevocably waive any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Applicants, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
21. I/We have studied all the EOI documents carefully and also surveyed the Project. We understand that except to the extent as expressly set forth in the EOI document, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of it.
22. I/We agree and undertake to abide by all the terms and conditions of the EOI document.
23. We agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till the commercial operations of the Project in accordance with the Concession Agreement.

In witness thereof, I/we submit this Application under and in accordance with the terms of the EOI document.

Yours faithfully,

Date: (Signature of the Authorized signatory) Place: (Name and designation of the of the Authorized signatory) Name and seal of Applicant/Lead Member

All blank spaces shall be suitably filled up by the Applicant to reflect the particulars relating to such Applicant.

Note: Paragraphs in square parenthesis may be omitted, if not applicable, or modified as necessary.



## ANNEXURE B – General Information of the Applicant

### 1. Details

(a) Name:

(b) Country of incorporation:

(c) Address of the corporate headquarters and its branch office(s), if any, in Sri Lanka:

(d) Date of incorporation and/or commencement of business:

2. Brief description of the company including details of its main lines of business and proposed role and responsibilities in the Project:

3. Details of individual who will serve as the point of contact/communication for the Authority:

(a) Name :

(b) Designation :

(c) Company :

(d) Address :

(e) Telephone Number :

(f) E-Mail Address :

(g) Fax Number :

4. Particulars of the Authorized Signatory of the Applicant:

(a) Name :

(b) Designation :

(c) Address :

(d) Phone Number :

(e) Fax Number :

5. In case of a Consortium:

(a) The information above (1-4) should be provided for all the Members of the Consortium.

(b) A copy of the Consortium Agreement, as envisaged in Clause 2.2.4(e) should be attached to the Application.

(c) Information regarding the role of each Member should be provided as per table below:

Name of Member

Role\* {Refer Clause 2.2.4(e)}<sup>4</sup>

Percentage of equity in the Consortium {Refer Clauses 2.2.4(a), (b) & (c)}

1 2 3

\* The role of each Member, as may be determined by the Applicant, should be indicated in accordance with instruction 4 at Annexure B, Appendix III.

(d) The following information shall also be provided by the Applicant or for each Member of the Consortium, as the case may be. In case the Applicant or any Member of the Consortium is relying on the experience (technical and/or financial) of its Associate, then the information as required herein below shall be provided for such Associate:

Name of Applicant/Member of Consortium:

Criteria Yes, No

- (a) Has the Applicant/constituent of the Consortium been barred by the Government authority, or any entity controlled by it, from participating in any project (BOT or other similar project).
- (b) If the answer to (a) is yes, provide the details, and does the bar subsist as on the date of Application.
- (c) Has the Applicant/constituent of the Consortium ever failed, in last 3 (three) years, to complete any project (BOT or other similar project) awarded to it by any public authority/entity in last three years on account of its default? If the answer is yes, provide the details.
- (d) Has any contract or concession agreement entered into by the Applicant/constituent of the Consortium in relation to any project (BOT or other similar project) terminated by the contracting authority, on account of any default attributable to the Applicant/constituent of the Consortium, in the last 3 (three) years? If the answer is yes, provide the details.
- (e) Has the Applicant/constituent of the Consortium (or the relevant Associate) paid liquidated damages (whether disputed or not) of more than 10% (ten percent)] of the annual contract value in a contract due to delay or has been penalized due to any other reason attributable to the Applicant/constituent in relation to execution of a contract, in the last 3 (three) years? If the answer is yes, provide the details.
- (f) Has the Applicant/constituent of the Consortium, in case of a consortium, suffered bankruptcy/insolvency in the last 3(three) years or filed for bankruptcy/insolvency/liquidation proceedings?
- (g) Has the Applicant/constituent of the Consortium been blacklisted or adverse orders passed by any Government department/Public Sector Undertaking/Regulatory Authority/multilateral institutions (such as World Bank Group) in the last 3 (three) years?
  - All provisions contained in curly parenthesis shall be suitably modified by the Applicant to reflect the particulars relating to such Applicants.

ANNEXURE C – Power of Attorney for Signing of the Application (Refer Clause 2.1.5)

Know all men by these presents, We, [\_\_\_\_\_] (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr [\_\_\_\_\_] / Ms[\_\_\_\_\_] , son/daughter/wife of[\_\_\_\_\_]and presently residing at [\_\_\_\_\_] , who is presently employed with us/ the Lead Member of our Consortium and holding the position of [\_\_\_\_\_] , as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Application for “Built, Operate and Transfer of Maintenance and Emergency Response Vessel” (the “Project”) being developed by the Ceylon Petroleum Corporation, Ministry of Petroleum Resources Development, Government of the Democratic Socialist Republic of Sri Lanka (“Authority”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

Terms not defined herein shall have the meaning ascribed to such terms in the EOI Documents.

IN WITNESS WHEREOF WE, [\_\_\_\_\_] , THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF [\_\_\_\_\_] , 20[\_\_\_]. For [\_\_\_\_\_]

(Signature)

Witnesses: (Name, Title and Address)

1.

2.

Accepted [Notarized]

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable laws and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

- Also, where ever required, the Applicant should submit for verification of the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.
- Power of Attorney should be executed on a non-judicial stamp paper of appropriate value as relevant to the place of execution.
- For a Power of Attorney executed and issued overseas, the document shall be legalized by the Sri Lankan Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

ANNEXURE D – Power of Attorney for Lead Member of Consortium (Refer Clause 2.1.5)

Whereas the Ceylon Petroleum Corporation, Ministry of Petroleum Resources Development, Government Democratic Socialist Republic of Sri Lanka (“Authority”) has invited Applications for Built, Operate and Transfer of Maintenance and Emergency Response Vessel PPP(the “Project”).

Whereas, [ ] and [ ](collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the EOI and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We,[ ]having our registered office at [ ], M/s.[ ], having our registered office at [ ], and M/s. [ ], having our registered office at [ ],the respective names and addresses of the registered office (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorize M/s [ ], having its registered office at [ ], being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”) and hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Bidding Process and, in the event the Consortium is awarded the concession, during the execution of the Project, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders’ and other conferences, respond to queries, submit information/documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Authority Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project and/ or upon award thereof till the Contract is entered into with the Authority.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/Consortium.

Terms not defined herein shall have the meaning ascribed to such terms in the EOI Documents.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 20[\_\_\_].

For \_\_\_\_\_

(Name & Title)

For \_\_\_\_\_ (Name & Title)

For \_\_\_\_\_ (Name & Title)

Witnesses:

1.

2.

(Executants) (To be executed by all the Members of the Consortium)

Notes:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable laws and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
- Also, wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.
- Power of Attorney should be executed on a non-judicial stamp paper of appropriate value as relevant to the place of execution.
- For a Power of Attorney executed and issued overseas, the document shall be legalized by the Sri Lankan Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

ANNEXURE E –Consortium Agreement (Refer Clause 2.2.4 (e)) (To be executed on Stamp paper of appropriate value)

THIS CONSORTIUM AGREEMENT is entered into on this the [\_\_\_\_\_] day of [\_\_\_\_\_] 20[\_\_\_].

AMONGST

1. {..... Limited, a company incorporated under the .....} and having its registered office at ..... (hereinafter referred to as the “First Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)5;

AND

2. {..... Limited, a company incorporated under the .....} and having its registered office at ..... (hereinafter referred to as the “Second Part” which expression shall, unless repugnant to the context include its successors and permitted assigns);

AND

3. {..... Limited, a company incorporated under the .....} and having its registered office at ..... (hereinafter referred to as the “Third Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)

The above mentioned parties of the First, Second and Third Part are collectively referred to as the “Parties” and each is individually referred to as a “Party”.

WHEREAS,

(A) The , Ceylon Petroleum Corporation, Ministry of Petroleum Resources Development , Government of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications (“Applications”) by its Request for Qualification No. [\_\_\_\_\_] dated [\_\_\_\_\_] (“EOI”) for pre-qualification and short-listing of bidders for the project “Built, and Emergency Response Vessel (MERV)”.

(B) The Parties are interested in jointly bidding for the Project as Members of a Consortium and in accordance with the terms and conditions of the EOI Documents and other bid documents in respect of the Project.

(C) It is a necessary condition under the EOI Documents that the Members of the Consortium shall enter into a Consortium Agreement and furnish a copy thereof with the Application.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

5 Number of Parties would be shown here, as applicable, subject to however a maximum of three.

In this Agreement, the capitalized terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the EOI.

## 2. Consortium

2.1 The Parties do hereby irrevocably constitute a joint venture, consortium or association (“Consortium”) for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/or through any other joint venture, consortium or association constituted for this Project, either directly or indirectly or through any of their Associates.

## 3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (“SPV”) under the Companies Act for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

## 4. Role of the Parties

The Parties hereby undertakes that Party of the First Part shall be the Lead Member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the commercial operations of the Project under the Concession Agreement when all the obligations of the SPV shall become effective.

## 5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the EOI, RFP and the Concession Agreement, until the commercial operations of the Project and in accordance with the Contract.

## 6. Shareholding in the SPV

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:

Second Party:

Third Party:

6.2 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the EOI and Concession Agreement.

## 7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorized by all necessary and appropriate corporate or Authority action and a copy of the extract of the charter documents and board resolution/power of attorney in favour of the person executing this Agreement



for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

- (i) require any consent or approval not already obtained;
  - (ii) violate any Applicable Law presently in effect and having applicability to it;
  - (iii) violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;
  - (iv) violate any clearance, permit, concession, grant, license or other Governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

## 8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the commercial operations of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not prequalified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not pre-qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

## 9. Miscellaneous

9.1 This Consortium Agreement shall be governed by laws of Sri Lanka.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED SIGNED, SEALED AND DELIVERED For and on behalf of For and on behalf of LEAD MEMBER by: SECOND PART

(Signature) (Signature)

(Name) (Name) (Designation) (Designation) (Address) (Address)

SIGNED, SEALED AND DELIVERED For and on behalf of THIRD PART

(Signature)

(Name) (Designation) (Address)

In the presence of:

- 1.
- 2.

Notes:

1. The mode of the execution of the Consortium Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the 44executants(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Consortium Agreement should attach a copy of the extract of the charter documents and documents such as resolution/power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.
3. For a Consortium Agreement executed and issued overseas, the document shall be legalized by the Sri Lankan Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

ANNEXURE F – Technical Capacity of the Applicant (Refer to Clauses 2.2.2(a), 3.3 and 3.4 of the EOI)

Provide details of only those projects that have been undertaken by the Applicant under its own name and/or by an Associate specified in Clause 2.1.8.

Technical Capacity – Built, Operate and Transfer of Maintenance and Emergency Response Vessel (MERV)

Name of the Applicant claiming the experience:

Name & detail description of the project & delivery model (BOT, BOO, BOOT or other similar basis)

Capacity of the MERV

Period of the Contract

Equity stake (%) in project company, during the period for which the experience is claimed

Client details

Note: Supportive documents to validate the given details must be provided (Clients/Employer's certificate/ Statutory Auditor's certificate for the equity stake).

Technical Capacity – Operation and maintenance capability

Name of the Applicant claiming the experience:

Name & description of the project

Location Capacity

Operation & maintenance period

Equity stake (%) in project company, during the period for

Client details

Note: Supportive documents to validate the given details must be provided (Clients/Employer's certificate).

ANNEXURE G – Financial Capacity of the Applicant (Refer to Clauses 2.2.2(b) and 2.2.3 (b) of the EOI)

(in US\$ million)

Name of the Applicant claiming the experience:

Name & description of the project including the sector/type of plant

Capacity, if applicable

Financing Details (Debt/Equity) including the period

Role of the entity in the project

Client details

Note: Supportive documents to validate the given details must be provided (Statutory Auditor's certificate).

Applicant type, Member Code, Proposed Equity, Shareholding in Consortium (%)

Net Worth

(1) (2) (3) (4) Single entity Bidder

Consortium Member 1

Consortium Member 2

Consortium Member 3

TOTAL

Instructions:

1. The Applicant/its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (three) years preceding the Application Due Date. The financial statements shall:
  - (a) reflect the financial situation of the Applicant or Consortium Members and its/ their Associates where the Applicant is relying on its Associate's financials;
  - (b) be audited by a statutory auditor;
  - (c) be complete, including all notes to the financial statements; and
  - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

2. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
3. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Application Due Date falls within 3 (three) months of the close of the latest financial year.
4. The applicant shall also provide the name and address of the Bankers to the Applicant.
5. The Applicant shall provide an Auditor's Certificate specifying the net worth of the Applicant and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.3 (b) of the EOI.

An Applicant consisting of a single entity should fill in details as per the row titled Single entity Applicant and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Applicant may be ignored.

Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead Member and OM means Other Member.

Net Worth is computed on the basis of financial statements as on the last date of the preceding financial year

## ANNEXURE H– Application Checklist

Item Checked by Applicant

Checked by Authority

1. Letter comprising the Application (Appendix III – Annexure A)
2. General Information of the Applicant (Appendix III – Annexure B)
3. Power of Attorney for signing of the Application in the prescribed format (Appendix III – Annexure C)
4. If applicable, the Power of Attorney for Lead Member of Consortium in the prescribed format (Appendix III – Annexure D)
5. Consortium Agreement (in case of Consortium) (Appendix III – Annexure E)
6. Technical Capacity of the Applicant (Appendix III – Annexure F)
7. Financial Capacity of the Applicant (Appendix III – Annexure G)
8. Application Amount as mentioned in Clause 2.1.4