

BID DOCUMENT

FOR

PROCUREMENT OF WATER BOTTLES (Single Stage One Envelope Procedure)

- Invitation to Bid
- Instructions to Bidders
- Technical Specifications
- Bid Form
- Schedules:
 - Schedule – A Special Stipulations
 - Schedule – B Price Schedule
- Bid Security Form
- Performance Security Form
- Contract Form

May , 2017

**INVITATION TO BID
FOR
PROCUREMENT OF WATER BOTTLES**

Sealed Bids are invited from Suppliers/Firms/Companies registered with Tax Department for “**Procurement of Water Bottles**”.

Bidding Document, in the English language, may be purchased by the interested bidders on the submission of a written application to the address below and upon payment of a nonrefundable fee of Pak Rs. 2,000/- which should be deposited in LWMC bank account No 3531-1, Liberty Branch, Bank of Punjab, Lahore. A pre-bid meeting will be held on **May 12, 2017 at 1100 hours**.

Bids must be delivered to the address below at or before **May 19, 2017 on 1500 hours**. Technical Bids will be opened on the same day at **1530 Hours** in the presence of the Bidders’ representatives who choose to attend at the address below.

Bid Documents are immediately available after date of publication. In case of official holiday on the day of submission, next day will be treated as closing date. Bid notice has also been posted on LWMC website (www.lwmc.com.pk).

General Manager (P & C)

Office No. 4&5, 4th Floor, Shaheen Complex, Egerton Road, Lahore

Ph: 092-42- 99205153-55, Fax: +92-42-99205156

Email: procurement@lwmc.com.pk

TENDER SPECIFIC INSTRUCTION FOR BIDDERS

PROCUREMENT OF WATER BOTTLES

1. **Estimated Price:**

The Estimated price of the items is Rs. 9,200,000/-.

2. **Bid Security:**

Each bidder will submit Bid Security of 2% (**PKR=18, 4000**) of total estimated price along with the bid in form of CDR/Bank Guarantee/ Demand Drat/ Pay Order. Bid Security against individual items is not acceptable.

3. **Filling of Price Schedule:**

Each bidder will fill the Price Schedule completely for all items. Partially filled Price Schedule will not be acceptable.

4. **Evaluation of Bids:**

Bids will be evaluated on the basis of Total Bid Price. Incomplete or partially filled bids will be considered as non-responsive.

5. **Payments:**

Payments will be made against delivered services only. The time period is defined in this bid document for payments against submitted bills.

6. **Sign and Stamp**

Bidder is required to stamp every page of the bid document along with signature at the required pages and submit back along with the bid.

INSTRUCTIONS TO BIDDERS

INTRODUCTION

1. Scope

- 1.1 The Purchaser wishes to receive Bid for the items / Equipment mentioned in Invitation to Bid at the earlier page (hereinafter referred to as Goods) and provide services such as installation, configuration, testing, training, support, after sale services and other such obligations specified hereinafter (hereinafter referred to as Services).
- 1.2 The bid is to be completed and submitted to the Purchaser in accordance with these Instructions to Bidders.

2. Eligible Bidder

- i) Registration with Income Tax Authorities
- ii) Taxpayers status for the last (02) Years
- iii) Income Tax Returns for Duration Corresponding with Taxpayer Status
- iv) Registration with Sales Tax Authorities (if applicable)
- v) Affidavit on Legal paper that firm is not black listed by any govt. agency/firm
- vi) Bank Statement showing financial Soundness.

3. Eligible Goods

- 3.1 The Goods and Services to be supplied under the Contract shall have their origin in eligible member countries.
- 3.2 For purposes of Clause 3.1 above, "origin" shall be considered to be the place where the Goods are produced or from which the Services are provided. Goods are produced when, through manufacturing, processing or substantial and major assembling of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.

4. Cost of Bidding

- 4.1 The bidder shall bear all costs associated with the preparation and delivery of its Bid, and the Purchaser will in no case be responsible or liable for those costs.

5. Joint Ventures

- 5.1 Bids submitted by a joint venture of two or more companies or partners shall comply with the following requirements:
 - a) The Bid, and in case of successful Bid, the Contract form, shall be signed by all so as to be legally binding on all the partners;

- b) One of the partners shall be authorized to be in charge; and this authority shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners;
- c) The partner in charge shall be authorized to incur liabilities, receive payments and receive instructions for and on behalf of any or all partners of the joint venture;
- d) All partners of the joint venture shall be liable jointly and severally for the executing of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under (b) above as well as in the Bid Form and the Form of Agreement (in case of a successful Bid); and
- e) A copy of the agreement entered into by the joint venture partners shall be submitted with the Bid.

6. Assurance

- 6.1 The successful bidder will be required to give satisfactory assurance of its ability and intention to supply the Goods and Services pursuant to the Contract, within the time set forth therein.

BIDDING DOCUMENTS

7. Contents of Bidding Documents

- 7.1 The Goods required, bidding procedures and Contract terms are prescribed in the bidding documents. In addition to the Invitation for Bid, the bidding documents include:
- a) Instructions to Bidders
 - b) Technical Specifications
 - c) Bid Form
 - d) Schedules:
 - Schedule – A Special Stipulations
 - Schedule – B Price Schedule
 - e) Bid Security Form
 - f) Performance Security Form
 - g) Contract Form
 - h) Conditions of Contract
- 7.2 The bidder is expected to examine all instructions, forms, terms and specifications in the Bidding Documents. Failure to furnish all information required by the Bidding documents or submission of a bid not substantially responsive to the bidding documents in every respect will result in the rejection of the bid.

8. Clarification of Bidding Documents

- 8.1 The prospective bidder requiring any further information or clarification of the bidding documents may notify the Purchaser in writing or by visiting at the following address:

General Manager (P&C)

Office No. 4-5, 4th. Floor, Shaheen Complex, Egerton Road, Lahore, Pakistan

Tel: +92-42-99205153-55, Fax: +92-42-99205156, procurement@lwmc.com.pk

General Manager (P&C)(LWMC) will respond in writing to any request for information or clarification of the bidding documents which it receives no later than three (03) days prior to the deadline for the submission of bid.

9. Amendment of Bidding Documents

- 9.1 At any time prior to the deadline for submission of bid, the Purchaser may, for any reason, whether at its own initiative or in response to a clarification requested by the prospective bidder, modify the bidding documents by amendment.
- 9.2 The amendment shall be part of the bidding documents, pursuant to Clause 7.1, will be notified in writing or by telex, or by fax to the prospective bidder who has received the bidding documents, and will be binding on him. Bidder is required to acknowledge receipt of any such amendment to the bidding documents.
- 9.3 In order to afford the prospective bidder reasonable time in which to take the amendment into account in preparing its bid, the Purchaser may, at its discretion, extend the deadline for the submission of bid.

PREPARATION OF BID

10. Language of Bid

- 10.1 The bid prepared by the bidder and all correspondence and documents relating to the bid exchanged by the bidder and the Purchaser shall be written in the English language. Any printed literature furnished by the bidder may be written in another language, provided at this literature is accompanied by an English translation, in which case, for purposes of interpretation of the bid, the English translation shall govern.

11. Documents Comprising the Bid

- 11.1 The evaluation of Bid submitted shall be inclusive of, but not be limited to, the following factors:

a) **Bid Form**

The Bidder shall complete the Bid Form in accordance with Clause 12.

b) Price Schedule

The Bidder shall complete the appropriate Price Schedule furnished in the Bidding Documents in accordance with Clauses 13 & 14.

c) Bid Security

The bidder shall furnish Bid Security in accordance with Clause 15.

12. Bid Form

12.1 The bidder shall complete the Bid Form duly signed by the authorized personnel along with the stamp of the company and all the Schedules furnished in the bidding documents.

13. Bid Prices

13.1 The bidder shall complete Schedule B, Price Schedule for all Item / Equipment as per the instructions contained in this document.

13.2 Prices quoted in the Price Schedule for the Goods and Services should be entered in the following manner:

- i) The price of the Goods will be quoted (FOR) Lahore in inclusive of after sale services at the address provided in Schedule A.
- ii) Bidders shall quote rate for all Items / Equipment in Price Bid Schedule (B).
- iii) The blank or partially / conditionally filled Price Bid Schedule B will be considered as non-responsive for the entire bid.
- iv) The price is to be submitted in Pak Rupees only and should include all taxes.
- v) Alternate financial Bids are not allowed.

13.3 Prices quoted by the bidder shall remain fixed and valid until completion of the Contract performance and will not be subject to variation on account of escalation.

14. Bid Currencies

14.1 Prices shall be quoted in Pak Rupees.

15. Bid Security

15.1 Pursuant to Clause 11.1(c), the bidder shall furnish, as part of its bid, a bid security in the amount of not less than **2% of the estimated price.**

- 15.2 The bid security shall be denominated in Pak Rupees and shall be in shape of call Deposit Receipt (CDR)/Bank Guarantee/Demand Draft/Pay Order in favor of Managing Director (LWMC), valid for a period 28 days beyond the Bid Validity date.
- 15.3 The bid not secured in accordance with Clauses 15.1 and 15.2 above will be rejected by the Purchaser as non-responsive.
- 15.4 An unsuccessful bidder's bid security will be discharged or returned, or both, as promptly as possible upon award of Contract.
- 15.5 The bidder's bid security will be returned, upon the bidder's executing the contract, pursuant to Clause 31, and furnishing the performance security, pursuant to Clause 32.
- 15.6 The bid security may be forfeited:
- (a) if the bidder withdraws its bid during the period of bid validity specified by the bidder on the Bid Form; or
 - (b) if the bidder does not accept the correction of the Total Bid Price pursuant to Clause 24; or
 - (c) if the bidder fails;
 - (i) to sign the contract in accordance with Clause 31, or
 - (ii) to furnish the performance security in accordance with Clause 32.

16. Period of Validity of Bid

- 16.1 The bid shall remain valid for Ninety (90) days from the date of bid closing prescribed by the Purchaser, pursuant to Clause 19.
- 16.2 Notwithstanding Clause 16.1 above, the Purchaser may solicit the bidder's consent to an extension of the period of bid validity. The request and the responses thereto shall be made in writing or by cable or fax. If the bidder agrees to the extension request, the validity of the bid security provided under Clause 15 shall also be suitably extended. The bidder may refuse the request without forfeiting its bid security. The bidder will not be required or permitted to modify its bid.

17. Format and Signing of Bid

- 17.1 The bidder shall submit dully filled original Bidding Document issued to him.
- 17.2 Prescribed Bid Form and Schedules shall be used and not to be retyped. The original bid shall be typed or written in indelible ink and shall be signed by the bidder or a person duly authorized to sign on behalf of the bidder. Such authorization shall be indicated by written power of attorney accompanying the bid. All pages of the bid where entries and amendments have been made shall be initialed by the person signing the bid.

- 17.3 The bid shall contain no interlineations, erasures or overwriting except as necessary to correct errors made by the bidder, in which case such corrections shall be initialed by the person or persons signing the bid.

**SUBMISSION OF BID
For
SINGLE STAGE ONE ENVELOPE BIDDING PROCEDURE**

18. Sealing and Marking of Bid

18.1 The bid shall seal the original bid in an envelope.

18.2 The envelope shall:

- (a) be addressed to the following address:

General Manager (P&C)
Office No. 4-5, 4th. Floor, Shaheen Complex, Egerton Road, Lahore, Pakistan
Tel: +92-42-99205153-55, Fax: +92-42-99205156,
procurement@lwmc.com.pk

- (b) bear the following identification:

Bid for “**PROCUREMENT OF WATER BOTTLES**”

DO NOT OPEN BEFORE **May 19, 2017.**

18.3 In addition the envelope shall indicate the name and address of the bidder to enable the bid to be returned unopened in case it is declared “Late”.

18.4 Fax bid will not be entertained.

19. Deadline for Submission of Bid

19.1 The original bid must be received by the Purchaser at the address specified in Clause 18.2 by **1500 hours on May 19, 2017.** Technical bid will be opened on the same day and same address at **1530 hours.**

19.2 The Purchaser may, at its discretion, extend the deadline for the submission of bids by amending the bidding documents in accordance with Clause 9, in which case all rights and obligations of the Purchaser and bidders previously subject to the deadline will thereafter be subject to the deadline as extended.

20. Late Bid

20.1.1 The bid received by the Purchaser after the deadline for submission of bid prescribed by the Purchaser, pursuant to Clause 19, will be rejected and returned unopened to the bidder.

21. Modification and Withdrawal of Bid

21.1 The bidder may modify or withdraw its bid after the bid's submission, provided that written notice of the modification or withdrawal is received by the Purchaser prior to the deadline prescribed for submission of bid.

21.2 The bidder's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions of Clause 18. A withdrawal notice may also be sent by telex or fax but must be followed by a signed confirmation copy, post marked not later than the deadline for submission of bid.

21.3 The bid may not be modified subsequent to the deadline for submission of bid.

21.4 The bid may not be withdrawn in the interval between the deadline for submission of bid and the expiration of the period of bid validity specified by the bidder on the Bid Form. Withdrawal of a bid during this interval may result in the bidder's forfeiture of its bid security, pursuant to Clause 15.

OPENING AND EVALUATION OF BID

22. Opening of Bid

- 22.1 The bid shall be opened by the Purchaser in the presence of the bidder's representatives who choose to attend at the time and date specified in Clause 19.1, at the office of the Purchaser, given in Clause 18.2 (a). The bidder's representatives who are present shall sign a register evidencing their attendance.
- 22.2 The bidder's name, bid price, modifications, bid withdrawal, and the presence or absence of the requisite bid security, and such other details as the Purchaser, at its discretion, may consider appropriate will be announced and recorded at the opening.

23. Clarification of Bid

- 23.1 To assist in the examination, evaluation and comparison of bid, the Purchaser may, at its discretion, ask the bidder for a clarification of its bid. All responses to requests for clarification shall be in writing, and no change in the price or substance of the bid shall be sought, offered or permitted except as required to confirm the corrections of arithmetical errors discovered in the evaluation of bid.

24. Determination of Responsiveness of Bid

- 24.1 Prior to the detailed evaluation of the bid, pursuant to Clause 26, the Purchaser will examine and determine the substantial responsiveness of the bid to the requirements of the bidding documents. A substantially responsive bid is one which:
- (a) meets the Eligibility Criteria specified in Clauses 2 and 3;
 - (b) has been properly signed on the Bid Form;
 - (c) is accompanied by the required Securities and these Securities are valid and in good order;
 - (d) the technical specifications for each item / equipment quoted in the price Bid Schedule B should meet the major technical criteria as specified for each item / equipment in technical specifications of this document;
 - (e) meets the delivery period set out in Schedule A Special Stipulations to Bid;
 - (f) meets the rate and limit of liquidated damages as specified in Schedule A Special Stipulations to Bid;
 - (g) offers fixed price quotations i.e. the bid do not offer an escapable price quotation;
 - (h) is otherwise complete and generally in order;
 - (i) conforms to all the terms, conditions and Specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one:
 - (i) which affects in any substantial way the scope, quality or performance of the Goods; or

- (ii) which limits in any substantial way, inconsistent with the bidding documents, the Purchaser's rights or the bidder's obligations under the Contract.
- 24.2 The bidder's responsiveness shall be based on the contents of the bid itself without recourse to extrinsic evidence.
- 24.3 The bid determined as not substantially responsive will be rejected by the Purchaser and may not subsequently be made responsive by the bidder by correction or withdrawal of the nonconforming deviation or reservation.
- 24.4 The Purchaser may waive any minor informality or non-conformity or irregularity in the bid.
- 24.5 Correction of Arithmetical Errors: Bid determined to be substantially responsive will be checked by the Purchaser for any arithmetic errors. Errors will be rectified as follows:
- (a) for the total bid price entered in paragraph of the Bid Form, if there is a discrepancy between the amounts in Figures and in words, the amount which tallies with the total Bid Price, shown in the Price Schedule, will govern unless the Bid Contains a specific statement confirming the total Bid Price.
 - (b) where there is a discrepancy between the unit rate and the total price resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern and the total price shall be corrected, unless in the opinion of the Purchaser, there is an obviously gross misplacement of the decimal point in the unit rate, in which case the total price for each item / equipment as quoted will govern and the unit rate will be corrected, and
 - (c) where there is a discrepancy in the total price quoted in the Price Schedule vis-à-vis addition of each item / equipment, the total of the itemized prices will govern.

The amount stated in the Bid Form will be adjusted by the Purchaser in accordance with the above procedure for the correction of errors, and shall be considered as binding upon the Bidder. If the Bidder does not accept the correction of the errors for any item / equipment in the Bid, his Bid will be rejected for the specific item / equipment and the Bid Security for that item / equipment will be forfeited in accordance with Clause 15.6.

Corrected Total Bid Price: The price as determined after the application of arithmetic corrections shall be termed as Corrected Total Bid Price.

25. Evaluation and Comparison of Bids

The Purchaser will evaluate and compare the bids previously determined to be substantially responsive, pursuant to Clause 24, as stated hereinafter.

25.1. Basis of Evaluation and Comparison of Bid

The Bids of only those Bidders who are substantially responsive to the requirements of the Bidding document will be considered for evaluation. The evaluation and comparison of the Bid will be done Total Bid price wise. The offer/ contract will be awarded to those Bidders whose corrected and evaluated total Bid Price is the lowest.

25.2. Evaluated Bid Prices

The Purchaser evaluation of a bid will take into account in addition to the Bid Price, the following factors (Adjustments) in the manner and to the extent stated hereinafter. Adjustment will be based on corrected Bid Prices. The price so determined after making such adjustments will be termed as Evaluated Bid Price. Correction of arithmetical errors as stated in Clause 24.5. The cost of making good any deficiency resulting from any acceptable, quantifiable variations and deviations from the Schedules, Conditions of Contract and Specifications, shall be added to the corrected Bid Price for comparison purposes only. For bid offering delivery period of the Service earlier than the period specified in the Schedule A Special Stipulations to Bid, no credit will be given. Terms of Payment: The bidder shall state their bid price for the payment terms outlined in the Conditions of Contract. The bid will be evaluated on the basis of this base price. The bidder may state alternate payment terms and indicate the reduction in bid price that wish to offer for such alternative payment terms. The Purchaser may consider the alternative payment terms offered by the bidder.

26. Contacting the Purchaser

26.1 Any effort by a bidder to influence the Purchaser in the Purchaser's decisions in respect of bid evaluation, or Contract award will result in the rejection of the bidder's bid.

27. Purchaser's Right to Accept the Bid or Reject the Bid

27.1 The Purchaser reserves the right to accept or reject any bid at his sole discretion and to annul the bidding process at any time prior to award of Contract, without thereby incurring any liability to the bidder or any obligation to inform the bidder of the grounds for the Purchaser's action.

AWARD OF CONTRACT

28. Post-qualification and Award Criteria

28.1 The Purchaser will determine to its satisfaction whether the bidder has offered Service at reasonable prices consistent with the current prevailing market prices and is qualified to satisfactorily perform the Contract

28.2 An affirmative determination will be prerequisite for award of the Contract to the bidder. A negative determination will result in rejection of the bidder's Bid.

28.3 Subject to Clause 27 above, the Purchaser will award the Contract to the bidder if its bid has been determined to be substantially responsive to the Bidding Documents and who has offered the lowest evaluated Bid Price and consistent with the current prevailing market prices as determined by the Purchaser, provided further that the bidder is determined to be qualified to satisfactorily perform the Contract.

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

29.1 The Purchaser reserves the right at the time of award of Contract to increase or decrease the quantity of goods specified in the Specifications, without any change in unit prices or other terms and conditions.

30. Notification of Contract Award

30.1 Prior to the expiration of the period of bid validity, the Purchaser will notify the bidder in writing by registered letter that its bid has been accepted. This letter is termed as Letter of Acceptance.

30.2 The notification of award will constitute the formation of a contract, until the Contract has been affected pursuant to Clause 31 below.

31. Signing of Contract

31.1 After the acceptance of performance security by the Purchaser, the Purchaser will send to the successful bidder the Contract Form provided in the bidding documents, incorporating all agreements between the parties.

31.2 Within **Five (5) days** of the receipt of such Contract Form, the bidder shall sign and date the Contract and return it to the Purchaser.

32. Performance Security

Within **fifteen (15) days** of the receipt of the Letter of Acceptance from the Purchaser, the bidder shall furnish the performance security, in accordance with the Conditions of Contract, in the performance security Form provided in the bidding documents or another form acceptable to the Purchaser.

ADDITIONAL INSTRUCTIONS

33. Instructions to Assist the Bidder

33.1 Bid shall be prepared and submitted in accordance with the instructions set forth herein. These instructions to Bidders are provided to assist in preparing their Bid and shall not constitute part of the Contract Documents.

34. Income Tax & General Sales Tax

34.1. The bidder may make inquiries on income tax to the concerned authorities of Income Tax and General Sales Tax Department, Government of Pakistan.

Sales tax to the extent as provided in the rules shall be deducted and withheld from the payment to be made to the service provider for depositing with Government of the Punjab.

DRAFT

TECHNICAL SPECIFICATIONS

- Made from high quality stainless steel
- Double vacuum insulated wall
- Beverages must be kept at preferred temperature for at least 12 hours
- Capacity of the bottle is 600 ml
- Approved color of the bottle is Red as per sample
- Good quality LWMC logo pasted
- High quality bottle carrying shoulder strap (picture attached)
- Light weight
- Sweat free

DRAFT

BID FORM BID SECURITY FORM

The Total Bid Security (02)% of estimated price amounting to Rs. _____ in shape of “Call Deposit Receipt” of the Bank (Name) _____ is attached in accordance with Clause 15 of the Instruction to Bidder for the supply of following Items.

Sr.#	Items	Bid Security @ 2% of Estimated Price (PKR)
1	PROCUREMENT OF WATER BOTTLES	

Stamp & Signature of Bidder _____



LAHORE WASTE MANAGEMENT COMPANY

Company Established under Section 42 of Companies Ordinance 1984

PERFORMANCE SECURITY FORM

To:

MANAGING DIRECTOR
Lahore Waste Management Company (LWMC)
Office No. 4-5, 4th. Floor, Shaheen Complex, Egerton Road, Lahore, Pakistan
Tel: +92-42-99205153-55, Fax: +92-42-99205156,
procurement@lwmc.com.pk

WHEREAS (Name of the Contractor)

hereinafter called "the Contractor" has undertaken, in pursuance of "Invitation to Bids / Short Tender", Procurement of following Equipment,

1. (Name Of Equipment / Item) 2. (Name Of Equipment / Item) etc.
(hereinafter called "the Contract").

AND WHEREAS it has been stipulated by you in the Contract that the Contractor shall furnish you with a bank guarantee by a recognized bank for the sum specified therein as security for compliance with the Contractor's performance obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor a Guarantee:

THEREFORE WE hereby affirm that we are Guarantor and responsible to you, on behalf of the Contractor, up to a total of _____ (Amount of the guarantee in words and figures), and we undertake to pay you, upon your first written demand declaring the Contractor to be in default under the Contract, and without cavil or argument, any sum or sums as specified by you, within the limits of _____ (Amount of Guarantee) as aforesaid without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until _____ day of _____, 2017, or twenty-eight (28) days of the issue of the Defects Liability Expiry Certificate, whichever is later.

[NAME OF GUARANTOR]

Signature _____

Name _____

Title _____

Address _____

Seal _____

Agreement No. LWMC/

Dated: -----

CONTRACT AGREEMENT

THIS CONTRACT made the -----, between Managing Director, Lahore Waste Management Company, Lahore (hereafter “the Purchaser”) of the one part and ----- (hereinafter "the Contractor") of the other part.

WHEREAS the Purchaser invited bids for Procurement of Equipment / Items for LWMC (hereafter “the Goods”) detail as under;

Sr.#	Items	Total Price (PKR)
1	PROCUREMENT OF WATER BOTTLES	
Total Price (Inclusive of All Applicable Taxes)		

and training thereof and has accepted a bid by the Contractor for the supply of those Goods and Services.

NOW THE CONTRACT WITNESS AS FOLLOWS

1. The following documents shall be deemed to form and be read and construed as part of this Contract.
 - (a) The Notification of Award / letter of Acceptance;
 - (b) The Bid and Schedules listed as under;
 - Schedule A Special Stipulations
 - Schedule B Price Schedule
 - (c) The Conditions of Contract;
 - (d) The Technical Specifications

This Contract shall prevail over all other contract documents. In the event of any discrepancy or inconsistency within the Contract Documents, then the Documents shall prevail in the order listed above.

2. In consideration of the payments to be made by the Purchaser to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Purchaser to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.



LAHORE WASTE MANAGEMENT COMPANY

Company Established under Section 42 of Companies Ordinance 1984

3. The Purchaser hereby covenants to pay the Contractor, in consideration of the provision of the Goods and Services and the remedying of defects therein, at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Contract to be executed in accordance with their respective laws the day and year first above written.

WITNESS

(PURCHASER)

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Seal: _____

WITNESS

(CONTRACTOR)

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

CONDITIONS OF CONTRACT

1. Definitions

- 1.1 In this Contract, the following terms shall be interpreted as indicated:
- 1.1.1 "Commencement Date of the Contract" means the date of signing of the Contract between the Purchaser and the Contractor.
- 1.1.2 "Contract" means the agreement entered into between the Purchaser and the Contractor, as recorded in the Contract Form signed by the parties, including all Schedules and Attachments thereto and all documents incorporated by reference therein.
- 1.1.3 "Contract Price" means the price payable to the Contractor under the Contract for the full and proper performance of its contractual obligations.
- 1.1.4 "Contractor" means the individual or firm / company / authorized dual supplier whose bid has been accepted by the Purchaser and the legal successors, in title to the Contractor.
- 1.1.5 "Contract Value" means that portion of the Contract Price adjusted to give effect to such additions or deductions as are provided for in the Contract which is properly apportionable to the Goods or Services in question.
- 1.1.6 "Defects Liability Expiry Certificate" means the certificate to be issued by the Client to the Contractor in accordance with Clause 15.7.
- 1.1.7 "Defects Liability Period (Warranty Period)" means the period stated in the Schedule A Special Stipulations, following the taking over, during which the Contractor is responsible for making good defects and damage in accordance with Clause 15.
- 1.1.8 "Client" means the specific Punjab Government Department for which the equipment has been procured or any other person for the time being or from time to time duly appointed in writing by the Purchaser to act as Client for the purposes of the Contract.
- 1.1.9 "Client's Representative" means any representative of the Client appointed from time to time by the Client under Clause 33.
- 1.1.10 "Goods" means all of the equipment, machinery, and/or other materials which the Contractor is required to supply to the Purchaser under the Contract.
- 1.1.11 "Purchaser" means the Lahore Waste Management Company, Lahore, Pakistan.
- 1.1.12 "Services" means services ancillary to the supply of the Goods, such as insurance, and any other incidental services, such as testing, training and other such obligations of the Contractor covered under the Contract.

1.1.13 "Taking-Over Certificate" means the certificate to be given by the Client to the Contractor in accordance with Clause 10.4.

1.1.14 "Works" means all Service to be provided and work to be done by the Contractor under the Contract.

1.2. Headings and Titles

The headings and titles in these Conditions shall not be deemed part thereof or be taken into consideration in the interpretation or construction of the Contract.

1.3. Interpretation

Words importing persons or parties shall include firms and corporations and any organization having legal capacity. Words importing the singular only also include the plural and vice versa where the context requires.

1.4. Periods

In these Conditions "day" means calendar day and week means seven (7) calendar days.

1.5. Notice, Consents and Approvals

Wherever in the Contract provision is made for the giving of notice, consent or approval by any person, such consent or approval shall not be unreasonably withheld. Unless otherwise specified, such notice, consent or approval shall be in writing and the word "notify" shall be construed accordingly.

2. Application

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

3. Country of Origin

3.1 All Goods and Services supplied under the Contract shall have their origin in eligible member countries.

3.2 For purposes of this Clause, "origin" shall be considered to be the place where the Goods were mined, grown or produced or from which the Services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.

3.3 The origin of Goods and Services is distinct from the nationality of the Contractor.

4. Standards

4.1 The Goods/Services supplied under this Contract shall conform to the authoritative latest standard appropriate to the Goods.

5. Use of Contract Documents and Information

5.1 The Contractor shall not, without the Purchaser's prior written consent, disclose the Contract, or any provision thereof, or any specification, drawings, pattern, sample or information furnished by or on behalf of the Purchaser in connection therewith, to any person other than a person employed by the Contractor in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.

5.2 The Contractor shall not, without the Purchaser's prior written consent, make use of any document or information specified in Clause 5.1 above, except for purposes of performing the Contract.

6. Patent Rights

6.1 The Contractor shall indemnify and hold the Purchaser harmless against all third party claims of infringement of patent, trademark or industrial design rights arising from use of the Service or any part thereof.

7. Performance Security

7.1 Within **fifteen (15) days** of receipt of the Letter of Acceptance from the Purchaser, the successful Bidder shall furnish to the Purchaser the performance security in the amount specified in the Schedule A Special Stipulations to Bid.

7.2 The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Contractor's failure to complete its obligations under the Contract. The Contractor shall cause the validity period of the performance security to be extended for such period(s) as the contract performance may be extended.

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

- (a) A bank guarantee/ CDR/ Pay Order,
 - (i) Issued by a bank acceptable to the Purchaser located in Pakistan; or
 - (ii) issued by a foreign bank through a correspondent bank acceptable to the Purchaser located in Pakistan, and in the form provided in the bidding documents or another form acceptable to the Purchaser; or

(b) a cashier's check or certified check.

7.4 The performance security will be returned by the Purchaser not later than twenty eight (28) days of the issue of the Defects Liability Expiry Certificate.

8. Inspection and Tests

8.1 The Purchaser or its representative shall have the right to inspect the work being carried out under this Contract and to test the Goods to confirm their conformity to the Specifications. The Special Conditions of Contract or the Specifications or both shall specify what inspections and tests the Purchaser requires and where they are to be conducted. The Purchaser shall notify the Supplier in writing of the identity of any representative retained for these purposes.

8.2 The inspections and tests may be conducted on the premises of the Supplier or its subcontractor(s), at point of delivery and at the Service final destination. Where conducted on the premises of the Supplier or its subcontractor(s), all-reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.

8.3 Should any inspected or tested Service fail to conform to the specifications, the Purchaser may reject them, and the Supplier shall either replace the rejected Service or make all alterations necessary to meet the requirements of the Specifications free of cost to the Purchaser.

8.4 The Purchaser's right to inspect, test and, where necessary, reject the Goods after the Goods arrival at the site of installation shall in no way be limited or waived by reason of the goods having previously been inspected, tested and passed by the Purchaser or its representatives prior to delivery of the Goods.

8.5 Nothing in this Clause 6 shall in any way release the Supplier from any Warranty or other obligations under the Contract.

9. Packing

9.1 The Contractor shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit and open storage.

10. Delivery and Documents

10.1 Delivery of the Goods shall be made by the Contractor at the address specified in Schedule A Special Stipulations.

10.2. **Contract Execution Schedule**

- 10.2.1 The delivery of the Goods at the site, its testing, and successful training shall be completed within the periods stated in the Schedule A Special Stipulations to Bid.
- 10.2.2 Within the time stated in Schedule A Special Stipulations to Bid, the Contractor shall bound to supply testing the goods and training as required under the control.
- 10.2.3 The Service shall remain at the risk and under the physical custody of the Contractor until the delivery and testing of the Goods is completed.
- 10.2.4 The Contractor shall ensure that the Goods shall be delivered complete to enable the testing and training to proceed without interruption. If it shall appear to the Client that the Goods have been or are likely to be delayed by reason of incomplete delivery or for any other reasons, he may require the Contractor at the expense of the Contractor to dispatch the missing items of the Goods or suitable replacements thereof to the site of delivery by the fastest available means including air freight.

10.3. **Documentation**

Before the Goods are taken over by the Purchaser, the Contractor shall furnish the operation manuals, service manuals and other information pertaining to the of the Goods.

10.4. **Taking-Over Certificate**

- 10.4.1 The Service or any portion thereof shall deemed to be taken over by the Purchaser when they have been delivered and tested for their intended purposes.
- 10.4.2 The Contractor shall apply by notice to the Client for a Taking-Over Certificate. The Goods will be delivered and tested at the place of delivery of Goods.
- 10.4.3 The Client will within twenty one (21) days after receipt of Contractor's application either:
- (a) issue the Taking-Over Certificate to the Contractor stating the date on which the Goods or any portion thereof were successfully tested and ready for taking over, or
 - (b) reject the application giving his reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued.
- 10.4.4 The issue of a Taking-Over Certificate shall not operate as an admission that the Works are completed in every respect.

11. **Marine Insurance of the Goods**

11.1 All marine insurance if Goods imported outside Pakistan shall be arranged and paid for by the Contractor, and the cost thereof shall be included in the Contract Price.

12. Transportation

12.1 Transport of the Goods to the place of destination as specified in the Contract shall be arranged and paid for by the Contractor, and the cost thereof shall be included in the Contract Price.

13. Incidental Services

13.1 The Contractor shall provide the following services:

- (a) start-up and testing of the supplied Goods;
- (b) furnishing of a detailed Operation and Service Manuals for each appropriate unit of the supplied Goods;
- (c) training of the personnel nominated by the Client, of the supplied Goods, as specified in the Specifications.

14. Spare Parts

14.1 The Contractor warrants to the Purchaser that the Service supplied by the Contractor under the Contract are standard and of exact Equipment , and that they incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The Contractor further warrants that all Service supplied under this Contract shall have no defect, arising from design, materials, or installation & configuration from any act or omission of the Contractor that may develop under normal use of the supplied Service.

15. Warranty and Defects Liability Expiry Certificate

15.1 The Contractor warrants to the Purchaser that the Goods supplied by the Contractor under the Contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The Contractor further warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship or from any act or omission of the Contractor, that may develop under normal use of the supplied Goods.

15.2 This warranty shall remain valid for three year or as specified in the Special Stipulations of this document, after the Goods, or any portion thereof, as the case may be, have been Taken Over, in accordance with Clause 10.4. This period is hereinafter referred as Warranty Period.

- 15.3 The Client shall promptly notify the Contractor in writing of any claim arising under this warranty.
- 15.4 Upon receipt of such notice, the Contractor shall, within a reasonable period as notified by the Client, repair or replace the defective Goods or parts thereof in Lahore (Pakistan), without any cost to the Purchaser.
- 15.5 If the Contractor, having been notified, fails to remedy the defect (s) in accordance with the Contract, the Purchaser may proceed to take such remedial action as may be necessary, at the Contractor's risk and cost. The Contractor's warranty pursuant to this Clause 15 is without prejudice to any other rights or remedies which the Purchaser may have against the Contractor under the Contract.
- 15.6. **Property in Replaced Components**
- Any defective component which has been replaced by the Contractor shall become the property of the Contractor as and where it lies.
- 15.7. **Defects Liability Expiry Certificate**
- When the Warranty Period of the Goods has expired, and the Contractor has fulfilled all his obligations under the Contract for defects in the Goods and has imparted training, the Client shall issue within four (4) weeks to the Purchaser with a copy to the Contractor a Defects Liability Expiry Certificate to that effect.
16. **Payment Terms**
- 16.1 Payment will be made by the Purchaser for the supply, delivery and installation of the equipment and provision of services and payment will be made as per after the issuance of taking over certificate.
- 16.2 The amounts and types of currencies in which payment shall be made to the supplier under the Contract shall be as specified in the Bid form.
- 16.3. **Method of Application**
- 16.3.1 The Contractor shall submit to the Client four (4) copies of application for payment in a form approved by the Client. Application shall be accompanied by
1. such invoices,
 2. receipts,
 3. a copy of Award Letter,
 4. a copy of SCHEDULE - B: PRICE SCHEDULE
 5. or other documentary evidence as the Client may require.

The application for payment shall state the amount claimed and shall set forth in detail, in the order of the Price Schedule, particulars of the Works executed.

16.4. **Payment to Contractor**

After receiving an application for payment which the Contractor was entitled to receive, the purchaser shall proceed for the payment to contractor subject to

That there are no:

- (a) Defects or short comings in the Goods and Services supplied.
- (b) The performance of the Goods and Services is satisfactory.

16.5. **Correction to Certificates of Payment**

The Client may in any certificate of payment make any correction or modification that properly be made in respect of any previous certificate.

16.6. **Payment**

The Client shall pay the amount certified within the period stipulated in Schedule-A, Special Stipulations to Bid, after the date of delivery of each certificate of payment to the Purchaser.

17. **Prices**

- 17.1 Prices charged by the Contractor for Services, Goods delivered, tested, and imparting training under the Contract shall not vary from the prices quoted by the Contractor in the Price Schedule.

18. **Change Orders**

- 18.1 The Client may at any time, by written notice to the Contractor, instruct the Contractor to alter, amend, omit, add to or otherwise change any part of the Works.

- 18.2 Upon notification by the Client of such change, the Contractor shall submit to the Client an estimate of costs for the proposed change (hereinafter referred to as the Change), within ten (10) calendar days of receipt of notice of the Change, and shall include an estimate of the impact (if any) of the Change on the delivery dates under the Contract, as well as a detailed schedule of execution of Works under the Contract.

- 18.3 The Contractor shall not perform Changes in accordance with Clause 18.1 above until the Client has authorized a Change Order in writing

- 18.4 Changes mutually agreed upon shall constitute a part of the work under this Contract, and the provisions and conditions of the Contract shall apply to said Change.

19. **Contract Amendments**

19.1 Subject to Clause 18, no variation in or modification of the conditions and terms of the Contract shall be made except by written amendment signed by the parties.

20. Assignment

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

21. Subcontracts

21.1 The Supplier shall not subcontract all or any part of the contract without first obtaining the Purchaser's approval in writing of the subcontracting and the subcontractor.

21.2 The Supplier guarantees that any and all subcontractors of the Supplier for performance of any part of the work under the contract will comply fully with the terms of the Contract applicable to such part of the work under the contract.

22. Extensions in the Contractor's Performance

22.1 Delivery of the Service and performance of the Services shall be made by the Contractor in accordance with the Contract Execution Schedule, pursuant to Clause 10.2 hereof.

22.2 If at any time during performance of the Contract, the Contractor should encounter conditions impeding timely delivery of the Goods and performance of Services, the Contractor shall promptly notify the Client in writing of the facts of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Contractor's notice, the Client shall evaluate the situation and may at its discretion extend the Contractor's time for performance.

22.3 Except as provided under Clause 25, a delay by the Contractor in the performance of its delivery obligations shall render the Contractor liable to the imposition of liquidated damages pursuant to Clause 23, unless an extension of time is agreed upon pursuant to Clause 22.2 without the application of liquidated damages.

23. Liquidated Damages

23.1 Subject to Clause 25 hereof, if the Contractor fails to deliver any or all of the Services or Goods within the time period(s) specified in the Contract, the Purchaser shall without prejudice to any other remedy it may have under the Contract, deduct from the Contract Price as liquidated damages, a sum of money equal to the percentage named in Schedule A Special Stipulations to Bid, of the Contract Value which is attributable to such part of the Services/Goods as cannot in consequence of the delay be put to the intended use for every day or part of a day between the scheduled delivery date with any extension of time thereof and the actual delivery date(s) provided that

the amount so deducted shall not exceed in the aggregate, the percentage named in the Schedule-A to Bid of the Contract Price.

24. Termination for Default

24.1 The Purchaser may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Contractor, terminate the Contract in whole or in part:

- (a) if the Contractor fails to deliver, test and impart training of any or all of the Goods within the time period(s) specified in the Contract, or any extension thereof granted by the Client pursuant to Clause 22; or
- (b) if the Contractor fails to perform any other obligation(s) under the Contract; and
- (c) if the Contractor, in either of the above circumstances, does not cure its failure within a period of two (2) weeks (or such longer period as the Client may authorize in writing) after receipt of a notice of default from the Client specifying the nature of the default(s).

24.2 In the event the Purchaser terminates the Contract in whole or in part, pursuant to Clause 24.1 above, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Contractor shall be liable to the Purchaser for any excess costs for such similar Goods or Services. However, the Contractor shall continue performance of the Contract to the extent not terminated.

25. Force Majeure

25.1 Notwithstanding the provisions of Clauses 22, 23 and 24, the Contractor shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

25.2 For purposes of this clause, "Force Majeure" means an event beyond the control of the Contractor and not involving the Contractor's fault or negligence and not foreseeable. Such events may include, but are not restricted to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

25.3 If a Force Majeure situation arises, the Contractor shall promptly notify the Purchaser in writing of such condition and the cause thereof with a copy to the Client. Unless otherwise directed by the Purchaser in writing, the Contractor shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

26. Termination for Insolvency

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

27. Termination for Convenience

27.1 The Purchaser may, by written notice sent to the Contractor, terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

27.2 The Service which are complete and ready for shipment within four (4) weeks after the Contractor's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:

- (a) to have any portion thereof completed and delivered at the Contract terms and prices and/or
- (b) to cancel the remainder and pay to the Contractor an agreed amount for partially completed Goods and for materials and parts previously procured by the Contractor for the purpose of the Contract, together with a reasonable allowance for overhead & profit.

28. Termination by the Client

The Client may, by a written notice of thirty (30) days to the contractor, terminate this Agreement. All accounts between the Client and the contractor shall be settled not later than thirty (30) days of the date of such termination.

29. Resolution of Disputes

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

29.2 If, after twenty-eight (28) days, from the commencement of such informal negotiations, the Purchaser and the Contractor have been unable to resolve amicably a Contract dispute, either party may, within one month, require that the dispute be referred for resolution by arbitration under the Rules of Pakistan Arbitration Act 1940, as amended, by one or more arbitrators selected in accordance with said Rules. The place for arbitration shall be Lahore, Pakistan. The award shall be final and binding on the parties.

30. Contract Language

30.1 The Contract shall be in the English language, and all documentation related hereto will also be in the English language. The Contractor hereby represents that it has sufficient knowledge of the English language fully to understand the Contract.

30.2 The Contractor shall bear all costs of translation to English and all risks of the accuracy of such translation.

31. Applicable Law

The Contract shall be governed by and interpreted in accordance with the laws of Pakistan.

32. Notices

32.1. Notice to Contractor

All certificates, notices, instructions or orders to be given to the Contractor by the purchaser or the Client under the terms of the Contractor, shall be served by sending the same by registered post, cable, telex or facsimile transmission to or leaving the same at the Contractor's principal office, or at the Contractor's office in Pakistan or such other addresses as the Contractor shall nominate for the purpose, or may by handing over to the Contractor's representative.

32.2. Notice to Purchaser

Any notice to be given to the Purchaser under the terms of the Contract shall be served by sending the same by registered post, telex or facsimile transmission to or leaving the same at the following office:

General Manager (P&C)

Lahore Waste Management Company (LWMC)

Office No. 4-5, 4th. Floor, Shaheen Complex, Egerton Road, Lahore, Pakistan

Tel: +92-42-99205153-55, Fax: +92-42-99205156, procurement@lwmc.com.pk

32.3. Notice to Client

Any notice to be given to the Client under the terms of the Contract shall be sent by post, cable, telex or facsimile transmission or be left at the addresses mentioned in clause 32.2:

33. Taxes and Duties

The Contractor shall be entirely responsible for all taxes, stamp duties and other such levies imposed outside or inside Pakistan.

34. Client and Client's Representative

34.1. Client's Duties

The Client shall carry out the duties specified in the Contract.

Except as expressly stated in the Contract, the Client shall have no authority to relieve the Contractor of any of his obligations under the Contract.

34.2. Client's Representative

The Client's Representative shall be appointed by and be responsible to the Client and shall only carry out such duties and exercise such authority as may be delegated to him by the Client under Clause 34.3.

34.3. Client's Power to Delegate

The Client may from time to time delegate to the Client's Representative any of the duties vested in the Client and may at any time revoke such delegation.

Any such delegation or revocation shall be in writing and shall not take effect until a copy thereof has been delivered to the Contractor and the Purchaser.

Any decision, instruction or approval given by the Client's Representative to the Contractor in accordance with such delegation shall have the same effect as though it had been given by the Client. However:

- (a) Any failure of the Client's Representative to disapprove any Goods or workmanship shall not prejudice the right of the Client to disapprove such Goods or workmanship and to give instructions for the rectification thereof;
- (b) If the Contractor questions any decision or instruction of the Client's Representative, the Contractor may refer the matter to the Client who shall confirm, reverse or vary such decision or instruction.

34.4. Client's Decisions and Instructions

The Contractor shall proceed with the decisions and instructions given by the Client in accordance with these Conditions.

35. Ownership of Goods

Goods to be supplied pursuant to the Contract shall become the property of the Purchaser when the Goods are Taken Over by the Purchaser.

36. Training

The Contractor shall arrange and undertake a comprehensive training program for the staff nominated by the Client to ensure that they shall acquire a good working knowledge of the operation, and general maintenance of the Goods to be supplied under the Contract.

In case of non-compliance with instructions, non-cooperation or other difficulties experienced by the Contractor with regard to any of these personnel, the Contractor shall apprise the Client. The Contractor shall then proceed to implement suitable remedial measures after consultation with the Client.

37. Compliance with Statues and Regulations

The Contractor shall in all matters arising in the performance of the Contract conform in all respects with the provisions of all Central, Provincial and Local Laws, Regulations and By-Laws in force in Pakistan, and shall give all notices and pay all fees required to be given or paid and shall keep the Purchaser indemnified against all penalties and liability of any kind for breach of any of the same.

38. Headings

Headings, whether of clauses or of other parts of the Contract, are for reference only and are not to be construed as part of the contract.

39. Waiver

Failure of either party to insist upon strict performance by the other party of any provision of the Contract shall in no way be deemed or construed to affect in any way the right of that party to require such performance.