

MADHYA PRADESH POWER TRANSMISSION CO. LTD.

SHAKTI BHAWAN RAMPUR: JABALPUR



VOLUME-I(Part-1)

(Comprising of Section I, V and VI)

**CONDITIONS OF TENDERING
GENERAL CONDITIONS & IMPORTANT INSTRUCTIONS
TO BIDDERS**

Booklet No.: MPPTCL/COMM/PROC/13/MAY 18

FOR

Supply of all materials and reconstruction/up-gradation of existing 132kV S/C Vinoba Bhave Tap line by constructing 132kV DCDS line for LILO of one circuit of 132kV DCDS Jabalpur-VFJ line at 132kV S/s Vinoba Bhave on turnkey basis.

(E-Bidding on SOR rate basis)

O/o CHIEF ENGINEER (PROCUREMENT)

Section I. Instructions to Bidders

Notes on Instructions to Bidders

Section-I, Instructions to Bidders, provides the information necessary for Bidders to prepare responsive Bids in accordance with the requirements of the Employer. It also gives information on Bid submission, opening, and evaluation, and on the award of the Contract.

The Instructions to Bidders will not be part of the Contract.

Section I. Instructions to Bidders**Table of Clauses**

| | |
|--|----|
| A. General | 5 |
| 1. Scope of Bid..... | 5 |
| 2. Source of Funds..... | 5 |
| 3. Corrupt and Fraudulent Practices..... | 5 |
| 4. Eligible Bidders..... | 6 |
| 5. Eligible Plant and Installation Services..... | 7 |
| B. Contents of Bidding Documents | 8 |
| 6. Sections of Bidding Documents..... | 8 |
| 7. Clarification of Bidding Documents, Site Visit, Pre-Bid Meeting..... | 8 |
| 8. Amendment of Bidding Documents..... | 10 |
| C. Preparation of Bids | 10 |
| 9. Cost of Bidding..... | 10 |
| 10. Language of Bid..... | 10 |
| 11. Documents Comprising the Bid..... | 10 |
| 12. Letters of Bid and Schedules..... | 12 |
| 13. Alternative Bids..... | 13 |
| 14. Documents Establishing the Eligibility of the Plant and Installation Services..... | 13 |
| 15. Documents Establishing the Eligibility and Qualifications of the Bidder..... | 13 |
| 16. Documents establishing conformity of the Plant and Installation Services..... | 13 |
| 17. Technical Proposal, Sub contractors..... | 14 |
| 18. Bid Prices and Discounts..... | 14 |
| 19. Currencies of Bid and Payment..... | 16 |
| 20. Period of Validity of Bids..... | 17 |
| 21. Bid Security..... | 17 |
| 22. Format and Signing of Bid..... | 17 |
| D. Submission and Opening of Bids | 18 |
| 23. Submission, Sealing and Marking of Bids..... | 18 |
| 24. Deadline for Submission of Bids..... | 25 |
| 25. Late Bids..... | 25 |
| 26. Withdrawal, Substitution, and Modification of Bids..... | 26 |

| | |
|--|-----------|
| 27. Bid Opening..... | 26 |
| E. Evaluation and Comparison of Bids..... | 27 |
| 28. Confidentiality..... | 27 |
| 29. Clarification of Bids..... | 28 |
| 30. Deviations, Reservations, and Omissions..... | 28 |
| 31. Preliminary Examination of Technical Bids..... | 28 |
| 32. Qualification of the Bidders..... | 29 |
| 33. Determination of Responsiveness of Technical Bids..... | 29 |
| 34. Nonmaterial Nonconformities..... | 29 |
| 35. Detailed Evaluation of Technical Bids..... | 30 |
| 36. Correction of Arithmetical Errors..... | 30 |
| 37. Conversion to Single Currency..... | 30 |
| 38. Evaluation of Price Bids..... | 31 |
| 39. Comparison of Bids..... | 31 |
| 40. Employer’s Right to Accept Any Bid, and to Reject Any or All Bids..... | 32 |
| F. Award of Contract..... | 32 |
| 41. Award Criteria..... | 32 |
| 42. Notification of Award..... | 32 |
| 43. Signing of Contract..... | 33 |
| 44. Performance Security..... | 33 |

INSTRUCTION TO BIDDERS (ITB)**Preamble**

This section (Section–I) of the Bidding Documents provides the information necessary for bidders to prepare responsive bids, in accordance with the requirements of the Employer. It also provides information of bid submission and uploading the bid on portal (<https://mptenders.gov.in>), on line bid opening, evaluation and contract award. This Section (Section I) contains provisions that are to be used unchanged unless Section II, which consists of provisions that supplement, amend, or specify in detail, information or requirements included in Section II and that are specific to each procurement, states otherwise. If there is a conflict between the provisions of Section – I & Section – II, the provisions of Section – II shall prevail.

The Section III stipulates Evaluation and Qualification Criteria for this Tender and Section VI indicates Employers requirements. However, provisions governing the performance of the Contractor, payments under the contract or matters affecting the risks, rights and obligations of the parties under the contract are not included in this section but instead under Section – V: General Conditions of Contract and/or Section – VI: Employers Requirement.

Further in all matters arising out of the provisions of this Section – I and the Section–II of the Bidding Documents, the laws of the Union of India shall be the governing laws and courts of Jabalpur shall have exclusive jurisdiction.

General

MPPTCL invites Tenders from prospective bidders on SCHEDULE OF RATE (SOR) COST BASIS on e-procurement portal of Govt. of MP. The total cost for supply of various Equipments/materials and installation activities including Civil works are indicated in Schedule-I “Summary of prices” of Section IV Bidding Forms of the Tender document. Further, the detailed item wise cost of works to be carried out are indicated in Section IV , Volume-I(Part-2).

The total estimated contract price is on the basis of SOR rate including taxes and duties. The bidder is required to quote his offered price as a percentage “Above/Below/At par” of total estimated contract price specified in the Bid.

1. **Scope of Bid**

1.1 In connection with the Invitation for Bids specified in the Bid Data Sheet (BDS) i.e. Section II, the Employer, as specified in the BDS, issues these Bidding Documents (here in after referred to as “Bidding Documents”) for the procurement of Plant and Installation Services as specified in Section VI, Employer’s Requirements. The name, Tender Specification number, and details of the works comprising this Domestic Competitive Bidding are specified in the BDS.

1.2 Throughout these Bidding Documents:

- (a) the term “in writing” means communicated in written form and delivered against receipt;
- (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
- (c) “day” means calendar day.

2. **Source of Funds**

2.1 The Owner named in the BDS intends to use domestic funding (Owner’s Internal Resources/Domestic Borrowings/Bonds) for this Project.

2.2 All eligible payments under the contract for the package for which this Invitation for Bids is issued shall be made by the Employer named in the BDS.

3. **Corrupt and Fraudulent Practices**

3.1. Employer requires that bidders, suppliers, and contractors observe the highest standard of ethics during the procurement and execution of contracts. In pursuance of this policy, the Employer defines, for the purposes of this provision, the terms set forth below as follows:

“Corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;

“fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

“coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

“collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

“obstructive practice” means (a) deliberately destroying, falsifying, altering or concealing of evidence material to a Employer’s investigation; (b) making false statements to investigators in order to materially impede a Employer’s investigation; (c) failing to comply with requests to provide information, documents or records in connection with an investigation; (d) threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (e) materially impeding Employer’s contractual rights of audit or access to information.

will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract.

4. **Eligible Bidders**

4.1 This Invitation for Bids, issued by the Employer is open to all firms including company(ies), Government owned Enterprises registered and incorporated in India as per Companies Act, 1956, barring Government Department as well as foreign bidders/MNCs not registered and incorporated in India and those bidders with whom business is banned by the Employer.

4.2 A Bidder may be a firm that is a single entity or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a JV.

- (a) all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms.
- (b) the JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the partners of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.
- (c) The individuals or firms in a JVA (Joint Venture, Consortium or Association) shall be jointly and severally liable. Original copy of JVA Agreement in prescribed format (form of undertaking by the Joint Venture Partners) enclosed in Section IV bidding Forms, indicating joint and several liability among the parties to the Joint Venture, should be provided with the bid. JVA may be formed of a maximum of not more than FOUR partners.
- (d) Lead Partner of JVA:
 - (i) One of the partners responsible for performing a key component of the contract shall be designated as lead partner; this authorization shall be evidenced by submitting with the bid a power of attorney signed by legally authorized signatories.
 - (ii) It would be essential for the Lead Partner to sign each & every document in the bid submitted. Signature by any other JVA partners on the basis of Power of Attorney shall not be accepted.
 - (iii) The lead partner shall sign and submit the Bid to Employer and shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the JVA and will not give power of attorney to any other partner for submission of Bid. The entire execution of the contract, including payment, shall be done exclusively with the lead partner, provided otherwise requested by the joint venture and agreed between the Employer and the lead partner.

-
- (iv) The lead partner shall be responsible for timely execution & completion of all the activities according to the Bid Document.
 - (v) An agreement for authorizing one partner to act as Lead partner in prescribed format (form of power of attorney for Joint Venture) enclosed in Section IV should be provided with the bid.
 - (vi) In case of the Bidder being Successful, the JV / Consortium Agreement shall be registered at any place in India so as to be legally valid and binding on all partners / members
 - (vii) Once contract is awarded on a company participating as Joint Venture concern, it may be explicitly noted that lead partner of the Joint Venture after award of contract shall not be permitted to change his status or any of the responsibilities on the basis of which the lead partner of Joint Venture has participated against bid invitation.

4.3 A Bidder shall not have a conflict of interest. A Bidder shall not be employed under any of the circumstances set forth below throughout the bidding/selection process and/or the execution of the Contract unless the conflict has been resolved in a manner acceptable to Employer.

- (a) A firm shall be disqualified from providing goods or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of a project that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm. This provision does not apply to the various firms (consultants, contractors, or suppliers) only due to the reason that those firms together are performing the Contractor's obligations under a turnkey or design and build contract.
- (b) A firm that has a close business relationship with the Borrower's professional personnel, who are directly or indirectly involved in any part of: (i) the preparation of the prequalification and Bidding Documents for the Contract, (ii) the prequalification and Bid evaluation, or (iii) the supervision of such Contract, shall be disqualified.
- (c) Based on the "One Bid Per Bidder" principle, which is to ensure fair competition, a firm and any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm shall not be allowed to submit more than one Bid, either individually or as a member in a JV. A firm (including its affiliate), if acting in the capacity of a Subcontractor in one Bid, may participate in other Bids, only in that capacity.
- (d) A firm having any other form of conflict of interest other than (a) through (c) above shall be disqualified.

4.4 A Bidder shall provide such evidence of its continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.

5. **Eligible Plant and Installation Services**

5.1 For the purposes of these Bidding Documents, the words "facilities," "plant and equipment," "installation services," etc., shall be construed in accordance with the respective definitions given to them in the General Conditions of Contract.

5.2 All plant and equipment to be supplied and installed and services carried out under the contract shall have their origin in any country barring those countries against whom sanction for conducting business is imposed by Government of India and barring those firms with whom business is banned by the Employer.

- 5.3 For purposes of this clause, “origin” means the place where the plant and equipment or component parts thereof are mined, grown, or produced. Plant and equipment 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.
- 5.4 The origin of the plant, equipment, and services is distinct from the nationality of the Bidder.

B. Contents of Bidding Documents

6. Sections of Bidding Documents

- 6.1 The facilities required, bidding procedures, contract terms and technical requirements are prescribed in the Bidding Documents. The Bidding Documents comprise of the documents as detailed in BDS and shall include amendments, if any, thereto:
- 6.2 The Invitation for Bids issued by the Employer is not part of the Bidding Documents.
- 6.3 As this is a E-Tender and all relevant document are available on E-Tender Portal of GoMP (<https://mptenders.gov.in>) hence the Employer is not responsible for the completeness of the Bidding Documents, responses to requests for clarifications, the minutes of the pre-bid meeting (if any), or Addenda to the Bidding Documents in accordance with ITB 8 (Downloaded / Uploaded by Bidder). In case of any contradiction, documents available / uploaded on E-Tender portal of Employer shall prevail.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents, and to furnish with its Bid all information and documentation as is required by 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 be at the Bidder’s risk and may result in rejection of its bid.
- 6.5 The documents including the Bid Documents and all attached documents provided by Employer are and shall remain or become the property of Employer and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. The provisions of this Para shall also apply mutatis mutandis to the Bids and all other documents submitted by the Bidders, and Employer will not return to the Bidders any Bid, document or any information provided along therewith.

7. Clarification of Bidding Documents, Site Visit, Pre-Bid Meeting

- 7.1 A Bidder requiring any clarification of the Bidding shall contact the Employer in writing at the Employer’s address specified in the BDS or raise his enquiries during the pre-bid meeting if provided for in accordance with ITB7.9. The Employer will respond in writing to any request for clarification provided that such request is received not later than fourteen (14) days prior to the deadline for submission of Bids. The Employer shall forward copies of its response to all prospective Bidders. Responses to any request for clarification, if any, will, as appropriate be published on the Employer’s web page <http://www.mptenders.gov.in>. Should the clarification result in changes to the essential elements of the Bidding Documents, the Employer

-
- shall amend the Bidding Documents following the procedure under ITB 8and ITB 24.2.
- 7.2 All correspondence from Employer pertaining to this Bid till award of the work shall be done by the authorized representative of Employer. The Bidders are advised to regularly check their email ID registered with their user account at e-tendering portal <http://www.mptenders.gov.in> for any update/addendum/corrigendum/pre-bid and post-bid queries/any other correspondence by the Employer.
- 7.3 Any site information given in this bidding document is for guidance only. It shall be deemed that the Bidder has undertaken a visit to the Site of the Works and is aware of and has ascertained itself, the site conditions, location, surroundings, climate, availability of power, sand, metal, water and other utilities for construction, access to Site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by it prior to the submission of the Bid.
- 7.4 Should the Bidder for any reason whatsoever, be in doubt about the meaning of anything contained in the Bid Documents or the extent of detail in the Works Requirements (General Specification and Technical Specification) and Bidding Drawings, the Bidder shall seek clarification from Employer, not later than the date specified.
- 7.5 Employer will comply with the principle of equal opportunity and fair treatment to respond to the questions/queries raised or clarifications sought by the Bidders on or before the date of pre-bid meeting. All reply of queries & clarification, in writing shall be up loaded on e tender portal of Employer, accessible to all prospective bidder. No verbal clarification shall be replied except the queries pertaining to the procedures of submission & uploading of bid on e-tender portal.
- 7.6 The Bidder is advised to visit and examine the site where the plant is to be installed and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Bid and entering into a contract for the provision of Plant and Installation Services. The costs of visiting the site shall be at the Bidder's own expense.
- 7.7 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 7.8 Employer may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by Employer shall be deemed to be part of the Bid Documents.
- 7.9 The Bidder's designated representative is invited to attend a pre-bid meeting, if so specified in the BDS. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.10 The Bidder is requested to submit any questions in writing, to reach the Employer not later than one (1) week before the meeting.

- 7.11 Minutes of the pre-bid meeting, if applicable, including the text of the questions asked by Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all prospective Bidders. Any modification to the Bidding Documents that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting. Non attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.
8. **Amendment of Bidding Documents**
- 8.1 At any time prior to the deadline for submission of Bids, the Employer may amend the Bidding Documents by issuing addenda.
- 8.2 Addendum will be uploaded on the e tendering portal <http://www.mptenders.gov.in> within the date given in NIT, which shall be available for all the prospective Bidders who have purchased the Bidding Documents in the Bid period. The provisions in any such addenda shall take priority over the Invitation to Bidders and Bidding Documents previously issued. Bidder shall ensure these documents should be submitted along with their original Bid documents submission. All these addendums, corrigendum and clarifications shall be part of the contract agreement.
- 8.3 To give Bidders reasonable time considering addendum for preparing their Bids, the Employer may extend the deadline for the submission of Bids, pursuant to ITB24.2.

C. Preparation of Bids

9. **Cost of Bidding**

The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process. The cost of Bid document is as specified in the BDS.

10. **Language of Bid**

- 10.1 The Bid, as well as all correspondence and documents relating to the Bids shall be written in English.
- 10.2 All correspondence/ exchange shall be in the **English language**. Language for translation of supporting documents and printed literature is **English**.

11. **Documents Comprising the Bid**

11.1 General Requirements

- (a) All documents issued for the purposes of bidding as described in ITB 7, and any amendments issued thereof shall be deemed as incorporated in the Bid.
- (b) The Bidder shall, on or before the date and time given in the Notice of Invitation to Bid, upload his Bid on e-tendering portal <http://www.mptenders.gov.in> in accordance with provisions in ITB 23.1.
- (c) The Bidder shall, on or before the date given in NIT, submit his Bid online and follow the procedure and steps of E-Tender portal of Employer. Details have been given in Clause ITB 23.
- (d) Cost of the bid: To be paid online through E-Tender portal.
- (e) Bid Security: Scanned Copy of BG issued by scheduled commercial bank in India/Nationalized bank to be uploaded.

-
- (f) Technical Bid: To be submitted at appropriate place i.e. Technical Envelope on e-tender portal.
 - (g) Financial Bid: Price Schedule to be filled in and uploaded in the Price Bid Envelope (Envelope-C) only on e-tender portal and not anywhere else.
 - (h) Bidder should ensure that the no part of the Price Bid should be uploaded anywhere in the technical envelope, if the bidder does so then his bid will be rejected out rightly.
 - (i) For Bid Security: refer BDS ITB 21 below
 - (j) Technical and Financial Proposal
 - (k) The Bidder shall submit/ upload (through digital signature of authorized person in e-tender portal of Employer) in the Technical proposal of its Bid the following documents, duly completed, which in the event of acceptance of the Bid, shall form part of the Contract:-

Envelope A

- (i) Scanned copy of Bank Guarantee of Bid Security
- (ii) Scanned copy of print out the system generated receipt towards payment of Cost of the Bid document.
- (iii) Letter of Technical Bid.

Envelope B

- (i) Physical Sign & seal of bidder on each page of bid documents available online is not required.
- (ii) Copy of Power of Attorney signing the bid of bidder or of Lead member in case of JV/Consortium
- (iii) Scanned copy of Power of Attorney (POA) of each member & Lead member in case of JV/ Consortium
- (iv) All relevant formats given in Section IV: Bidding forms except price schedules,
- (v) Physically signed by authorized signatory / POA of bidders or Lead member in case of JV/ Consortium.
- (vi) Certificate of registration and other statutory documents of formation of bidder's company or JV/ Consortium or each members of JV/ Consortium (If not incorporated yet) issued by appropriate authority.
- (vii) Copy of all financial documents as directed in Section-III
- (viii) Relevant work experience certificate (in line of Section III: Evaluation and Qualification Criteria) and other qualifications certificates as given in Evaluation of Qualification under Section III
- (ix) All Format of Section-IV and other enclosure, certificates stated above or desired elsewhere in the bid documents, Schedules shall be physically filled, signed & stamped by authorized signatory / POA of bidder or POA of Lead member of JV/Consortium and scanned copies of such enclosures/documents should be uploaded on e-tender portal of Employer along with bid documents.

Envelope C

- (i) Scanned copy of Letter of Price Bid.
- (ii) Price Schedules provided by the Employer in e-procurement portal are to be downloaded by the bidder and the same are required to be filled in and uploaded and submitted.

Envelope D (Applicable only in case of SNAP Bidding)

- (l) The Envelope A, Envelope B and Envelope C shall be uploaded on E-Tender Portal of Employer. Further the Hard copies of all documents uploaded in Envelope A and Envelope B must be submitted in Employer's office in two copies (Original and one Copy) in a sealed envelope super scribing "Techno-commercial bid for Tender Specification No. TR-07/2019".

12. Letters of Bid and Schedules

- 12.1 Tenders are invited on SCHEDULE OF RATE (SOR) COST BASIS. The total cost for supply of various Equipments/materials and installation activities including Civil works are indicated in Schedule-I Summary of prices of Section IV Bidding Forms. Further, the detailed item wise cost of works to be carried out are indicated in Section IV , Volume-I(Part-2). The SOR cost includes the following:-
- (a) Ex-Works cost of the equipments/ material
 - (b) Freight and transit Insurance Charges from manufacturer's works up to site store considered @2%.
 - (c) Applicable Goods and Services Tax @18% as applicable on Works Contract on supply of Equipment/materials and Installation charges including civil works.
- 12.2 The total estimated contract price on the basis of SOR rate including taxes and duties has been indicated in Schedule-I. The bidder is required to quote his offered price as a percentage "Above/Below/At par" of total estimated contract price in Schedule-I. Bidders may please note that they will have to work out the offered percentage carefully and MPPTCL will not accept any responsibility if the actual cost of procurement of any Equipment/material (including all taxes and duties and cess etc.) or actual cost of carrying out any installation activity is higher than the cost worked out after applying the percentage offered by the Bidder on SOR price. The "Letter of Price Bid" as per prescribed format given in the document duly signed by the bidder is required to be uploaded in .pdf format in "Envelope-C" only. In case, if the "Letter of Price Bid" is submitted in hard copy, the offer may be rejected.
- 12.3 If any tax is exempted or any concession is available in applicable Goods and Services Tax then provide details in Schedule-II of Volume-VI. If no details are provided then Goods and Services Tax as applicable will be considered for reverse calculation if there is any change in tax.
- 12.4 The bidders are required to offer their price as single percentage up to two digit of decimal in Schedule-I. Further, bidders are not allowed to quote separate percentages on Estimated cost breakup (Prices of Schedule-I(A1) , I(A2), I(A3), I(A4) and I(A5)) and if a bidder quotes separate percentages, his bid will be rejected.
- 12.5 In case any items, not specified in Estimated cost breakup (Schedule-I(A1) , I(A2), I(A3), I(A4) and I(A5)) but covered in the item list of SOR of MPPTCL on the basis of which Estimated contract price has been worked out, is required to be supplied or erected for successful completion of the scope of work as per Specification, the payment of the same will be made considering the percentage "Above/Below/At par" as considered for award of contract.
- 12.6 The Bidder shall complete the Letters of Technical Bid and Price Bid, including the appropriate Technical and Price Schedules, using the relevant forms furnished in Section IV. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.
- 12.7 The Letters of Technical Bid and Price Bid with all Schedules / Forms shall be completed and signed by a duly authorized and empowered representative of the Bidder. If the Bidder comprises a JV/Consortium, the Letters of Technical Bid and Price Bid shall be signed by a duly authorized representative of the Lead Member. Signatures on the Letters of Technical Bid and Price Bid shall be witnessed and dated. Copies of relevant powers of attorney shall be attached.

- 12.8 The Financial Bid should be separately completed, each page duly signed and stamped and submitted / uploaded as per procedure in e-tender portal. No pricing information shall be submitted in any manner except in the Financial Bid. The Pricing Document or any pricing information, if submitted by the Bidder along with the Technical Bid or in any other manner other than the Financial Bid's Envelope C, will render the bid liable for rejection.
- 12.9 The prices shall be entered at the prescribed place in the Pricing Document. These prices should include all costs associated with, or required to be incurred for the purpose of execution of the Contract in accordance with the terms thereof.

13 Alternative Bids

- 13.1 Alternative Bids are not permitted. If submitted, the offer will be liable for rejection.
- 13.2 Alternatives to the Time Schedule are not permitted. If submitted, the offer will be liable for rejection.
- 13.3 Alternative technical solutions are not permitted. If submitted, the offer will be liable for rejection.

14. Documents Establishing the Eligibility of the Plant and Installation Services

To establish the eligibility of the Plant and Installation Services in accordance with ITB 5, Bidders shall complete the country of origin declarations in the Price Schedule Forms, if included in Section IV.

15. Documents Establishing the Eligibility and Qualifications of the Bidder

In accordance with Section III, Evaluation and Qualification Criteria, if the prequalification process was conducted prior to the bidding process, the Bidder shall provide in the corresponding information sheets included in Section-IV,(i) updated information on any assessed aspect that changed from that time to establish that the Bidder continues to meet the criteria used at the time of prequalification and (ii) the requested information on the additional qualification criteria stated in Section III, Evaluation and Qualification Criteria, or if the assessment of qualification criteria was not conducted prior to the bidding process, the Bidder shall provide the information requested in the corresponding information sheets included in Section-IV.

Any change in the structure or formation of a Bidder after being prequalified and invited to bid (including, in the case of a JV, any change in the structure or formation of any member there to) shall be subject to the written approval of the Employer prior to the deadline for submission of Bids. Such approval shall be denied if (i) such change has not taken place by the free choice of the firms involved; (ii) as a consequence of the change, the Bidder no longer substantially meets the qualification criteria set forth in the Prequalification Documents; or (iii) in the opinion of the Employer, the change may result in a substantial reduction in competition. Any such change should be submitted to the Employer not later than fourteen (14) days after the date of the Invitation for bids.

16. Documents establishing conformity of the Plant and Installation Services

The documentary evidence of the conformity of the Plant and Installation Services with the Bidding Documents may be in the form of literature, drawings and data, and shall include:

-
- (a) a detailed description of the essential technical and performance characteristics of the Plant and Installation Services, including the guarantees of the proposed Plant and Installation Services, in response to the Specifications. The guarantees of the proposed Plant and Installation Services shall be stated in Section-VI.
 - (b) a list giving full particulars, including available sources, of all spare parts, special tools, etc., necessary for the proper and continuing functioning of the plant for the period is ten (10) years, following completion of Plant and Installation Services in accordance with the provisions of Contract; and
 - (c) adequate evidence demonstrating the substantial responsiveness of the Plant and Installation Services to those Specifications. Bidders shall note that standards for workmanship, materials and equipment designated by the Employer in the Bidding Documents are intended to be descriptive (establishing standards of quality and performance) only and not restrictive. The Bidder may substitute alternative standards, brand names and/or catalog numbers in its Technical Proposal, provided that it demonstrates to the Employer's satisfaction that the substitutions are substantially equivalent or superior to the standards designated in the Specifications.

17. **Technical Proposal, Subcontractors**

- 17.1 The Bidder shall furnish a Technical Proposal, including a statement of work methods, equipment, personnel, schedule, safety plan, and any other information as stipulated in Section IV in sufficient detail to demonstrate substantial responsiveness of the Bidder's proposal to the Employer's Requirements and the completion time.
- 17.2 For major items of Plant and Installation Services as listed by the Employer in Section III, Evaluation and Qualification Criteria, which the Bidder intends to purchase or subcontract, the Bidder shall give details of the name and nationality of the proposed Subcontractors, including manufacturers, for each of those items. In addition, the Bidder shall include in its Technical Proposals information establishing compliance with the requirements specified by the Employer for these items.

Bidders are free to list more than one Sub contractor against each item of the Plant and Installation Services. Quoted rates and prices will be deemed to apply to whichever Subcontractor is appointed, and no adjustment of the rates and prices will be permitted.

- 17.3 The Bidder shall be responsible for ensuring that any Sub contractor proposed complies with the requirements of ITB 4, and that any Plant or Installation Services to be provided by the Sub contractor comply with the requirements of ITB 5 and ITB 16.

18. **Bid Prices and Discounts**

- 18.1 Unless otherwise specified in the Bid, bidders shall quote for the entire facilities on a "single responsibility" basis such that the total bid price covers all the Contractor's obligations mentioned in or to be reasonably inferred from the Bidding Documents in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the facilities including supply of mandatory spares (if any). This includes all requirements under the Contractor's responsibilities for testing, Pre-commissioning and commissioning of the facilities and, where so required by the Bidding Documents, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training

services and such other items and services as may be specified in the Bidding Documents, all in accordance with the requirements of the General Conditions of Contract. Items against which no price is entered by the Bidder will not be paid for by the MPPTCL when executed and shall be deemed to be covered by the prices for other items.

18.2 Bidders are required to quote the price for the commercial, contractual and technical obligations outlined in the Bidding Documents in Schedule-I as a percentage "Above/Below/At par" the estimated contract price indicated by MPPTCL. If a Bidder wishes to make a deviation, such deviation shall be listed in Schedule-XIII of its bid. The offered percentage will be applied uniformly on each item of supply and installation activities for the purpose of payment after award of contract.

18.3 MPPTCL has given breakdown of the prices in the following Schedules:

| | | | |
|---|----------------|---|--|
| 1 | Schedule-I(A1) | : | Estimated Cost based on SOR price for equipments and materials to be supplied for sub-stations and feeder bays |
| 2 | Schedule-I(A2) | : | Estimated Cost based on SOR price for materials to be supplied for transmission lines |
| 3 | Schedule-I(A3) | : | Estimated Cost based on SOR price for Civil Works. |
| 4 | Schedule-I(A4) | : | Estimated Cost based on SOR price for Erection, Testing & Commissioning of Outdoor & Indoor Equipments |
| 5 | Schedule-I(A5) | : | Estimated Cost based on SOR price for Erection, Testing & Commissioning of Transmission line |

Bidders shall note that the plant and equipment included in Schedule-I (A1 & A2) above exclude materials used for civil, building and other construction works for sub-stations and transmission lines. All such materials are included and priced in Schedule-I(A3), I(A4) & I(A5). Please note that total quantities for supply of equipment and materials and construction activities are indicated in the price schedule.

18.4 It shall be the responsibility of the bidders to pay all statutory taxes, duties and levies to the concerned authorities for such surplus material, which would otherwise have been, lawfully payable. The bidders shall submit an indemnity bond to keep MPPTCL harmless from any liability, before release of such material to the bidder.

18.5 Bidder may please note the following:

- (a) Unit SOR price of various Equipments/materials indicated in Schedule-I(A1/A2) and I(A2/A5) is deemed to include all cost as well as duties and taxes (viz., customs duties & levies, duties, GST (Goods & Service Tax) etc. whichever is applicable) paid or payable on **components, raw materials** and finished material any other items used for manufacturing of the Plant & Equipment including Transportation and other Services incidental to delivery of the Plant & Equipment. Goods and Services Tax applicable for destination site/state are indicated separately. Due credit under the GST as per the relevant Government policies wherever applicable shall be taken into account by the Bidder while quoting bid price.
- (b) SOR Charges for Civil work of sub-stations and feeder bays, are indicated in Volume-III and includes rates and prices for all labor, Contractor's equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, for the proper execution of all installation services.

-
- (c) SOR Charges for Installation/ Erection, Testing & Commissioning for creation of new sub-stations and feeder bay works are indicated in Schedule-I(A4)) and includes rates and prices for all labor, Contractor's equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, provision of operations and maintenance manuals, etc. wherever identified in the Bidding Documents as necessary for the proper execution of all installation services except those priced in other Schedules.
- (d) It is obligatory on the part of Bidder to provide free services of their team of erection & commissioning engineer to supervise erection, testing & commissioning of major equipments (Transformers, GIS equipments, Circuit Breakers, Control & Relay Panels and Isolators etc.), if they themselves are the manufacturer, in case of bought out equipments, services of manufacturers for these equipments shall be made available on free of cost basis.
- (e) SOR charges for Installation/ Erection, Testing & Commissioning for transmission lines are indicated separately in Schedule-I(A5) and include rates and prices for all labour, Contractor's equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, as necessary for the proper execution of all installation services.
- (f) The bidder may please note that all taxes for services to be performed, as applicable is also deemed to be included in SOR price and MPPTCL would not bear any liability on this account.
- 18.6 Discount(s)/ rebate(s) offered by the bidder shall be indicated as a percentage in Letter of Price Bid only. Discount offered elsewhere in the offer will not be considered.
- 18.7 The prices shall be either fixed or adjustable as specified in the BDS.
- (a) In the case of Fixed Price, prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account. A Bid submitted with an adjustable price quotation will be treated as non-responsive and rejected.
- (b) In the case of Adjustable Price, prices quoted by the Bidder shall be subject to adjustment during performance of the Contract to reflect changes in the cost elements such as labor, material, transport and Contractor's equipment in accordance with the procedures specified in the corresponding Appendix to the Contract Agreement. A Bid submitted with a fixed price quotation will be treated as non-responsive and rejected.
- 18.8 If so indicated in ITB 1.1, Bids are being invited for individual lots (contracts) or for any combination of lots (packages). Bidders wishing to offer any price reduction (discount) for the award of more than one Contract shall specify in their Letter of Price Bid the price reductions applicable to each package, or alternatively, to individual Contracts with in the package and the manner in which the price reductions will apply.
- 18.9 Bidders wishing to offer any unconditional discount shall specify in their Letter of Price Bid the offered discounts and the manner in which price discounts will apply.
- 19. Currencies of Bid and Payment**

The currency of the Bid shall be, Indian Rupees (INR). Payment of the Contract Price shall be made accordingly.

20. Period of Validity of Bids

20.1 Bids shall remain valid for the period specified in the BDS after the Bid submission dead line date prescribed by the Employer pursuant to ITB 24.1. A Bid valid for a shorter period shall be rejected by the Employer as non-responsive.

20.2 In exceptional circumstances, prior to the expiration of the Bid validity period, the Employer may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. The Bid Security shall also be extended for twenty-eight (28) days beyond the dead line of the extended validity period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its Bid, except as provided in ITB 26.3.

21. Bid Security

21.1 The Bidder shall furnish as part of its Bid a Bid Security in the amount specified in the BDS.

21.2 The bid security must be submitted in the form of bank guarantee and scanned copy must be uploaded as provided in the Bidding Documents. In case, the Bid is submitted by a JV, the bid security shall be uploaded & submitted in the name of lead partner of JV.

21.3 The bid security shall be a bank guarantee from a scheduled commercial bank selected by the bidder and located in India. The format of the bank guarantee shall be in accordance with the form of bid security included in the Bidding Documents. Bid security shall remain valid for a period of thirty (30) days beyond the original bid validity period, and beyond any extension subsequently requested.

21.4 Any bid not accompanied by an acceptable bid security shall be rejected by the MPPTCL and shall be returned unopened.

21.5 In case any discrepancy is noticed in the amount of bid security mentioned in figures and in words, the amount mentioned in words shall be considered to verify adequacy of bid security.

21.6 The bid securities of non-responsive bidders will be returned as promptly as possible. Bid securities of all responsive bidders shall be returned after submission of performance security by the successful bidder.

21.7 The bid security may be forfeited

(a) If the Bidder withdraws its bid during the period of bid validity specified by the Bidder in the Bid Form; or

(b) In case the Bidder does not withdraw the deviations proposed by him, if any, at the cost of withdrawal stated by him in the bid; or

(c) If a Bidder does not accept the corrections to arithmetical errors identified during preliminary evaluation of his bid; or

(d) In the case of a successful Bidder, if the Bidder fails within the specified time limit to sign the Contract Agreement, or to furnish the required performance security (ies).

22. Format and Signing of Bid

22.1 The Bidder shall prepare an original and one number of copy of the bid, clearly marking each one as "Original Bid" and "Copy No 1", as appropriate. In the event of any discrepancy between them, the original shall govern.

- 22.2 The original and copy of the bid, shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the contract. The letter authorization shall be indicated by written power of attorney accompanying the bid and submitted. All pages of the bid, except for un-amended printed literature, shall be initialed by the person or persons signing the bid.
- 22.3 The bid shall contain no alterations, omissions or additions, unless such corrections are initialed by the person or persons signing the bid.
- 22.4 In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 22.5 Any interlineations, erasures, or over writing shall be valid only if they are signed or initialed by the person signing the Bid.

D. Submission and Opening of Bids

23. Submission, Sealing and Marking of Bids

23.1. Uploading of offers following E-Bidding Procedures:

Bidders are requested to submit their offer as per conditions of this bid document. Any deviation from conditions as specified herein; the offer will not be accepted. Bidders are required to furnish the bid electronically on e-procurement website at <http://www.mptenders.gov.in> by following procedure given below:-

(a) Registration with e-procurement site: -

- 1) For participation in e-bidding module of MPPTCL, it is mandatory for prospective bidders to get registration on website <http://www.mptenders.gov.in> for submission of their offer online. Therefore, it is advised to all prospective bidders to get registration by online payment of registration fees at the earliest. Offline offer shall not be entertained by the MPPTCL for the bids published on e-procurement platform. Bidders are required to enroll on the e-Procurement module of the Central Public Procurement Portal (URL: <https://mptenders.gov.in/nicgep/app>) by clicking on the link “**Online bidder Enrolment**” on the MP TENDERS Portal
- 2) As part of the enrolment process, the bidders will be required to choose a unique username and assign a password for their accounts.
- 3) Bidders are advised to register their valid email address and mobile numbers as part of the registration process. These would be used for any communication from the MP TENDERS Portal.
- 4) Upon enrolment, the bidders will be required to register **their valid Digital Signature Certificate (Class III Certificates with signing key usage)** issued by any Certifying Authority recognized by CCA India, with their profile.
- 5) Only one valid DSC should be registered by a bidder. Please note that the bidders are responsible to ensure that they do not lend their DSC’s to others which may lead to misuse.
- 6) Bidder then logs in to the site through the secured log-in by entering their user ID / password and the password of the DSC / e-Token.

(b) Payment of Transaction Fee: - It is mandatory for all the participant Bidders to electronically pay a Non-refundable Transaction fee to E-portal <http://www.mptenders.gov.in> the service provider through “Payment Gateway Service on E-Procurement platform”.

(c) Bid Document: - The Bid documents can be purchased ONLY online. The Bid shall be available for purchase to concerned eligible bidders immediately after online release of the Bid and upto scheduled date and time as set in the key dates. The bid document can be down loaded without making any payment, however the same cannot be used for bid submission. The Bidders are requested to download the bid document and read all the terms and conditions mentioned in the bid Document and seek clarification if any from the Bid Inviting Authority. Arrangements have been made for the bidders to make payments online. In case of online bidding, the application form for the purchase of bid documents shall not be required.

The bidders can purchase the bid documents online from website <http://www.mptenders.gov.in> by making online payment for the bid document fees as specified in clause (c) above using the service of the secure electronic payments gateway (see point (d) below for further details), and should print out the system generated receipt for their reference which can be produced whenever required. Service and gateways charges shall be borne by the bidders.

Only in case if the bid is dropped without opening, the bid fee shall be refunded after deduction of necessary portal charges. Manual purchase of bid is not allowed.

(d) Electronic Payment Account: As the bid documents shall be available for purchase only online, bidders are required to pay the Bid Document fees online using the Online Payments Gateway Service integrated into the e-Procurement System.

For the list of available modes of electronic payments that are presently accepted on the Online Payments Gateway Service, please check the link, List of e-Payments accepted Online’ on <http://www.mptenders.gov.in>.

(e) Digital Certificate authentication:-

The bids submitted online should be signed electronically with a Class III Digital Certificate to establish the identity of the bidder submitting the bid online. The bidders may obtain Class III Digital Certificates issued by an approved Certifying Authority authorized by the Controller of Certifying Authorities, Government of India.

A Class-III Digital Certificate is issued upon receipt of mandatory identity proofs along with an Application Form. Only upon the receipt of the required documents, a Digital Certificate can be issued.

Note: - It may take upto 7 to 10 working days for issuance of Class III Digital Certificate; hence the bidders are advised to obtain them at the earliest.

Important Note: Offer for a particular bid can be submitted during the ONLINE BID SUBMISSION stage only using the Digital Certificate that is used to encrypt the data.

In case, during the process of a particular bid, the bidder loses his Digital Certificate because of any problem (such as misplacement, virus attack, hardware problem, operating system problem, etc.); he may not be able to submit his bid online.

Hence, the bidders are advised to keep their Digital Certificates in a safe place under proper security to be used whenever required.

The digital certificate issued to the Authorized User of a Partnership firm / Private Limited Company / Public Limited Company / Joint Venture and

used for online bidding will be considered as equivalent to a no-objection certificate / power of attorney to that user.

In case of Partnership Firm, majority of the Partners have to authorize a specific individual through Authority Letter signed by majority of the Partners of the firm.

In case of Private Limited Company, Public Limited Company, the Managing Director / any other Person (having designated authority to authorize a specific individual) has to authorize a specific individual through Authority Letter.

Unless the certificate is revoked, it will be assumed to represent adequate authority of the specific individual to bid on behalf of the Organization for online bids as per Information Technology Act 2000. This Authorized User will be required to obtain a Digital Certificate. The Digital Signature executed through the use of Digital Certificate of this Authorized User will be binding on the firm. It shall be the responsibility of Management / Partners of the concerned firm to inform the Certifying Authority, if the Authorized User changes, and apply for a fresh digital certificate for the new Authorized User.

(f) Set up of Bidder's Computer System :

In order for a bidder to operate on the e-Procurement System, the Computer System of the bidder is required to be set up for Operating System, Internet Connectivity, Utilities, Fonts, etc. Any queries relating to the process of online bid submission or queries relating to MP TENDERS Portal in general may be directed to the 24x7 MP TENDERS Portal Helpdesk telephone No 0120-4001002

(g) Publishing of NIT :

For the Bids processed using the e-Procurement System, only a brief Advertisement related to the Bid shall be published in the newspapers, our company's website www.mptransco.in and the Detailed Notice shall be published on the e-Procurement System. The bidders can view the Detailed Notice and the time schedule for all the bids processed using the e-Procurement System on the website <http://www.mptenders.gov.in>

(h) Information useful for submitting online bids on the MP TENDERS Portal may be obtained at <https://mptenders.gov.in/nicgep/app> wherein the details and relevant links are available in the Bidders Manual Kit on the right pane of website which is also given as under:

Bidders Manual Kit - Open Source Software Link

| S. No | Particulars | Downloads |
|-------|---------------------------|---|
| 1 | Notice to Bidders | notice_to_bidders_v906.pdf |
| 2 | Registration of Bidders | Bidder_Registration_Manual_Updated_v906.pdf |
| 3 | Uploading of My Documents | MyDocument_Updated_v906.pdf |
| 4 | Online e-Bid Submission | Three_Cover_Bid_Submission_New_v906.pdf |
| | | Two cover bid submission new v906.pdf |
| | | Four_cover_bid_submission_new_v906.pdf |
| | | Single_Cover_bid_submission_New_v906.pdf |
| 5 | Online Bid Withdrawal | bid_withdrawal_updated_v906.pdf |

| | | |
|---|---|-----------------------------------|
| 6 | Online Bid Re-submission | Bid_Resubmission_Updated_v906.pdf |
| 7 | Clarifications (Tender Status, My Archive...) | Enquiry_Updated_v906.pdf |
| 8 | Trouble Shooting | troubleshoot_document_v906.pdf |
| 9 | BoQ Preparation Guidelines | ItemWise_BOQ_New_v906.pdf |
| | | Percentage_BOQ_Updated_v906.pdf |
| | | ItemRate_BOQ_Updated_v906.pdf |

(i) Key Dates :

The bidders are strictly advised to follow the time schedule (Key Dates) of the bid for their side for tasks and responsibilities to participate in the bid, as all the stages of each bid are locked before the start time and date and after the end time and date for the relevant stage of the bid as set by the concerned Department Official. Hence, once the time schedule for a particular stage is lapsed then that task will be locked and the bidders who have not completed the task in time may not be able to participate in the bid. It should be appreciated that sufficient time duration is given for each stage and therefore, it is the responsibility of bidders to complete the process well within time rather than waiting for the last day of submission. MPPTCL & Service Provider holds no responsibility for the non submission of bids due to such delay/ negligence of the bidders.

(j) Bid submission :

Bidder should duly upload the documents and fill the bid. The online bid should be submitted before Bid Submission End date.

i. Submission of Earnest Money Deposit (Bid Security) :

The Bid Security of respective amount as indicated against the bid is to be submitted by bidder, only in the form of Bank Guarantee from scheduled bank as per prescribed format for BG with validity of seven months from the date of opening of bid. The BG shall be physically submitted in a sealed envelope super scribing "Security Deposit of INR ₹ 13.88 lakh in the form of BG against bid no. TR-07/2019".

The prospective bidders, who are submitting Bid security envelope in physical form as detailed above for respective bid, will upload scanned self certified copies of requisite Bid security documents on the website along with bid offer.

If bidder is opting for submission of Bank Guarantee towards EMD then bidder has to opt for "exemption" option on the website and upload the scanned self certified copy of EMD document as per NIT towards exemption from e-submission of EMD amount. The original should be posted/couriered/given in person to the concerned official, latest by the last date of bid submission or as specified in the tender documents. The details of the Bank Guarantee, physically sent, should tally with the details available in the scanned copy and the data entered during bid submission time.

Any mismatch, if found in the documents submitted in physical form and that uploaded online, the documents submitted online shall be considered final and no justification in this regard shall be entertained by MPPTCL.

ii. Techno Commercial Bid :

Bidders must positively complete online e-bidding procedure at <http://www.mptenders.gov.in>. They shall have to submit the following documents online in the website. Any queries relating to the process of online bid submission or queries relating to MP TENDERS Portal in general may be directed to the 24x7 MP TENDERS Portal Helpdesk telephone No 0120-4001002

Their complete techno-commercial offer containing detailed material description, specification and all commercial terms and conditions. This document should not contain any price part.

Techno-commercial information in the form of questionnaire and schedules as enclosed in Section IV of the Bid Document.

Hard copies of above techno-commercial offer, questionnaire and schedules (uploaded in the website) must be submitted in a separate sealed envelope superscribing "Techno-commercial bid for bid no. TR-07/2019".

iii. Price Offer :

Bidder shall have to submit the price offer documents downloaded from website and uploaded as per instructions therein. Physical submission of price bid will not be considered. The price offer of techno-commercially qualified bidder shall be opened online at the notified date at <http://www.mptenders.gov.in> Bidders can view information of date of price offer opening by logging in to website.

23.2. Opening of Tenders:

During the online Techno Commercial offer opening, the Bid Security/ bid cost part of all the Bidders will be opened first and after the verification of the uploaded as well as physical copy of Bid Security/ bid cost, the offers will be short listed for Techno-Commercial opening. Subject to fulfillment of conditions related to bid cost / Bid Security, the techno-commercial offers shall be opened and after evaluation of the same, the decision will be taken for selection of offers for the purpose of opening of price bid.

23.3. Change in date & time of opening of tenders:

Bid shall be opened on the due date and time as notified in the presence of the Bidders or their authorized representative who may be present. If the due date of opening / submission of bid documents is declared a holiday by the Central/State Govt. or Local administration, it will automatically get shifted to the next working day, for which no prior intimation shall be given. The bid opening shall be continued on subsequent dates in case the opening of all the bids is not completed on the date of opening.

In the event of any issue, the tender/bid data in question shall be liable for a due process of verification by the authorized officer of e-procurement system of Madhya Pradesh Power Transmission Co. Ltd., Jabalpur.

It may please be noted that the due date/time of opening can be altered, extended, if desired by the company without assigning any reason thereof. However, due intimation shall be given / published.

23.4. Hard Copies:-

All the bidders shall invariably upload the scanned copies of BG, towards bid security and system generated money receipt for online payment for bid cost in e-procurement system and this will be the primary requirement to consider the tender/bid responsive.

The evaluation of qualifying requirement and Techno-commercial offer shall be carried out based on the uploaded certificates/ documents, BG towards bid security, system generated receipt for bid Cost in the e-procurement system.

The bidders shall invariably furnish the original BG towards bid security, system generated receipt for bid cost, hard copies of Certificates/ Documents uploaded including Schedules (except Price Schedule) to the Bid Inviting Authority within the date and time specified in the bid, either personally or through courier or post and the receipt of the same within the stipulated date shall be the responsibility of the bidder. The department will not take any responsibility for any delay in receipt/ non-receipt of original BG towards bid security/bid cost, Certificates/Documents from the bidders before the stipulated time. On receipt of documents, the department shall ensure the genuineness of the BG towards bid security/bid cost and all other Certificates/ Documents uploaded by the bidder in e-procurement system in support of the qualification criteria before opening of Price offer.

If any bidder fails to submit the original hard copies of uploaded certificate / documents, BG towards bid security/bid cost within stipulated time or if any variation is noticed between the uploaded documents and the hard copies submitted by the bidder, his offer shall not be considered for opening.

The bidder has to keep track of any changes by viewing the addendum/corrigendum/amendment issued by the bid Inviting Authority on time-to-time basis on e-Procurement platform. The department calling for bid shall not be responsible for any claims/problems arising out of this.

23.5. Important Bid Details and Key Dates:

A: Important BID Details: “as specified in BDS/ NIT”

B: Key Dates: “as specified in BDS/ NIT”

Note:-

The bidder has to quote their rates online only in price Schedule and to be kept in Envelope-C and uploaded online as per key dates. Please note that, the Schedules of Price “Schedule-I” i.e. Financial bid/Price bid (Envelope-C) will not be accepted physically. In case Envelope-C is submitted physically the offer/bid will be rejected. The Price Bid part of the offer shall be submitted with a “Letter of Price Bid” as per prescribed format given in Section-IV duly filled and signed and uploaded online in .pdf format. Discount, if any, shall be offered in the “Letter of Price Bid” only. No other discount letter will be entertained.

The offer of the eligible bidders for the respective item shall be opened online as per key dates.

Last date for submission of physical documents in two copies (Original +One Copy) will be as specified in key dates. The same shall be opened (online & physical) as per key dates.

The bidders have to submit bid security in Envelope-A in physical form & upload scanned copy of the same online as per key dates.

The bidders have to submit documents in Envelope–B as detailed in clause 11 of this Section.

The date of opening of financial bid/ price bid may vary depending upon time taken in techno-commercial evaluation. The bidders may please keep themselves updated of price bid opening date from the e-portal.

23.6. Physical Sealing and Marking of Bids for Hard Copies

- (a) The bidder should submit his techno-commercial part of the offer along with a “Letter of Technical Bid” as per prescribed format given in Section IV of the document.
- (b) The Bid shall be submitted in a sealed envelope containing three separate inner envelopes duly sealed and marked “Bid Security and Cost of the Bid document”, “Qualifying requirement”, and “Techno-Commercial Bid”
- (c) The first envelope marked with “Bid Security and Cost of the Bid document” should contain copy of system generated receipt of cost of bid document, Bid Security and “Letter of Technical Bid” duly filled-in & signed.
- (d) The second envelope marked with “Qualifying Requirement” should contain following documents in “original”, and “copy-1”:
- (e) The Financial Schedules alongwith supporting financial statements in compliance to clause “Financial Criteria” of Section-III are required to be submitted in a separate envelope. This envelope shall be marked with “Financial Statements”.
- (f) Information towards Technical Experience criteria alongwith supporting experience/ performance certificates and copy of executed orders in compliance to clause “Experience Criteria” of Section-III are required to be submitted in a separate envelope. This envelope shall be marked with “Technical Experience Statements”.
- (g) The third envelope marked with “Techno-Commercial Bid” should contain the details in accordance with Bid Document including Schedules as per Section-IV except Price Bid (Schedule-I) and documents already mentioned in (c) above. All copies of the Bid shall be kept in two separate sealed envelopes, duly marking the envelopes as “original”, and “copy-1” Bid and then all envelopes are to be kept inside the envelope marked with “Techno-Commercial Bid”.
- (h) The “Price Bid (Schedule-I)” and “Letter of Price Bid” shall not be submitted in hard copy.
- (i) All the envelopes shall be addressed as under:
Chief Engineer (Procurement),
Block No.3, Shakti Bhawan, Rampur
M. P. Power Transmission Co. Ltd.,
JABALPUR 482 008 (M.P.).
- (j) The outer main envelope containing the above envelopes shall bear the following identification:
“TENDER No. ----- (tender specification No. & date) due on -----
(due date of opening) for -----
The words “DO NOT OPEN BEFORE -----” (date of Bid opening) should also appear on it.
- (k) The outer and inner envelopes shall also indicate the name and full mailing address of the Bidder to enable the Bid to be returned unopened in case it is declared “Late” or otherwise not acceptable.
If the outer envelope is not sealed and not marked as indicated above, the MPPTCL will assume no responsibility for the Bid’s misplacement or premature opening.
- (l) When Bids are delivered by special messenger, they should be deposited in the office of the C.E.(Procurement), MPPTCL, Jabalpur on working days as per

Key Dates. Nobody is authorized to receive or grant receipt for offer delivered by hand.

(m) Bid (s) submitted by Fax/Telex Cable/Telegram shall not be accepted.

(n) If the outer envelope is not sealed and marked as per requirement indicated in Clause (g) above, MPPTCL will assume no responsibility for the bid's misplacement or premature opening. If the outer envelope discloses the Bidder's identity, MPPTCL will not guarantee the anonymity of the bid submission, but this disclosure will not constitute grounds for bid rejection.

23.7. Correction in the Bid document after submission:

The bidder may please note that any online correction in the bid after its submission (uploading) is permissible. To avail this facility Bidders are required to withdraw their bids first from online portal and after correction resubmit the bid online. Bidder may please note that without withdrawing the **bid** no correction in the bid is permissible. The details are given in "Bidders manual kit" at S. no. 5 & 6 above and may also consult to help desk Telephone No.0120-4001002/4000462/ 4001005/6277787.

24. Deadline for Submission of Bid

24.1 Bids must be received by the Employer at the address and no later than the date and time specified in the BDS/NIT.

24.2 The Employer may, at its discretion, extend the deadline for the submission of Bids by amending the Bidding Documents in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

24.3 Physical Bids must be submitted at the address specified hereunder;

**The Chief Engineer (Procurement),
Block No. 3, Shakti Bhawan, Rampur,
M. P. Power Transmission Co. Ltd.,
Jabalpur (M.P.) - 482008**

23.4 In the event of the specified date for the submission of bids being declared a holiday for MPPTCL, the bids will be received upto the appointed time on the next working day. Bids once received by the MPPTCL shall not be returned except otherwise provided in the Bidding Documents.

24.4 The MPPTCL may, at its discretion, extend this deadline for submission of bids by amending the Bidding Documents for the reasons specified therein at any time prior to opening of bids by MPPTCL, in which case all rights and obligations of MPPTCL and bidders will thereafter be subject to the deadline as extended.

25. Late Bids

25.1 The Employer shall not consider any Bid that arrives after the deadline for submission of Bids, in accordance with ITB 24. Any Bid received by the Employer after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.

25.2 Bids received after due date and time of opening shall not be accepted. Employer will not be responsible for any delay, internet connection failure or any error in uploading the Bid submission. The Bidders are advised to upload their submissions

well before the due date and time of Bid submission to avoid any problems and last minute rush.

26. **Withdrawal, Substitution, and Modification of Bids**

26.1 A Bidder may withdraw, substitute, or modify its Bid Technical or Price-after it has been submitted by sending a written notice, duly signed by authorized representative, and shall include a copy of the authorization in accordance with ITB 22.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be:

(a) prepared and submitted in accordance with ITB 22 and ITB 23 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” “MODIFICATION;” and

(b) received by the Employer prior to the deadline prescribed for submission of Bids, in accordance with ITB 24.

26.2 Bids requested to be withdrawn in accordance with ITB 26.1 shall be returned unopened to the Bidders.

26.3 No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Bids and the expiration of the period of Bid validity specified by the Bidder on the Letter of Technical Bid and on the Letter of Price Bid or any extension thereof.

26.4 Withdrawal request received after deadline prescribed for submission of bid shall be rejected forthwith i.e. in case, a Bidder withdraws the bid after deadline prescribed for submission of bid, the bid shall not be read, the Bid Security shall be forfeited and the Hard copy of Bid shall be returned to the Bidder.

27. **Bid Opening**

27.1 MPPTCL will open the bids on key date electronically first and verify whether bid cost, bid form and bid security has been properly paid/uploaded on e-portal or not. After verification of these documents, the physically received bids of the responsive bidders will only be opened in public, including withdrawals and modifications in the presence of bidders’ designated representatives who choose to attend, at the location stipulated hereunder:

**The Chief Engineer (Procurement),
Block No. 3, Shakti Bhawan, Rampur,
M. P. Power Transmission Co. Ltd.,
Jabalpur (M.P.) - 482008**

27.2 The bidders’ representatives who are present shall sign an attendance sheet evidencing their attendance. In the event of the specified date for the submission of bids being declared a holiday for MPPTCL, the bids will be received and opened upto the appointed time on the next working day.

27.3 Envelopes marked “Withdrawal” shall be opened first and the name of the Bidder shall be read out. Bids for which an acceptable notice of withdrawal has been submitted shall be returned unopened.

27.4 The bid shall be opened in following manner.

- Part-I Bid Security and Cost of the Bid document
- Part-II Qualifying requirement
- Part-III Techno- Commercial Bid

These parts shall comprise all sections except schedule of quoted prices (Schedule-I) and Letter of Price Bid and will invariably include information as sought in the Specification. The Bidders names, modifications, Bid withdrawals and the presence or absence of the requisite Bid security and such other details as the MPPTCL, at its discretion, may consider appropriate will be announced at the time of opening of the Bids.

Bids not opened and read out at bid opening shall not be considered further for evaluation, irrespective of the circumstances and shall be returned to the Bidder unopened.

27.5 MPPTCL will determine to its satisfaction whether the bids are qualified, as per the Qualification Requirement to satisfactorily perform the contract. MPPTCL shall be the sole judge in this regard and the MPPTCL's interpretation of the Qualification Requirement shall be final and binding.

The determination will take into account the Bidder's financial, technical capabilities including production capabilities, in particular the Bidder's contract work in hand, future commitments & current litigation and past performance. It will be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder in the bid, as well as such other information as the MPPTCL deems necessary and appropriate. MPPTCL will also examine the bids to determine whether required sureties have been furnished, whether the documents have been properly signed, and whether the bids are generally in order.

27.6 The Employer shall prepare a record of the opening of Technical Bids that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; and the presence or absence of a Bid Security. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the content and effect of the record.

27.7 At the end of the evaluation of Technical Bids, the Employer will invite Bidders who have submitted substantially responsive Technical Bids and who have been determined as being qualified for award to attend the opening of the Price Bids. The opening date should allow Bidders sufficient time to make arrangements for attending the opening.

27.8 The Employer will notify, in writing, Bidders who have been rejected on the grounds of their Technical Bids being substantially non-responsive to the requirements of the Bidding Documents and return their Bid Security.

E. Evaluation and Comparison of Bids

28. Confidentiality

28.1 Information relating to the evaluation of Bids and recommendation of Contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders in accordance with ITB42.

28.2 Any attempt by a Bidder to influence the Employer in the evaluation of the Bids or Contract award decisions may result in the rejection of its Bid.

28.3 Notwithstanding ITB28.2, from the time of Bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it shall do so in writing.

29. **Clarification of Bids**

29.1 To assist in the examination, evaluation, and comparison of the Technical and Price Bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its Bid, giving a reasonable time for a response. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change in the substance of the Technical Bid or prices in the Price Bid, including any voluntary increase or decrease in the prices, shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids, in accordance with ITB 36.

29.2 If a Bidder does not provide clarification so fits Bid by the date and time set in the Employer's request for clarification, its Bid may be rejected.

30. **Deviations, Reservations, and Omissions**

30.1 During the evaluation of Bids, the following definitions apply:

- (a) "Deviation" is a departure from the requirements specified in the Bidding Documents;
- (b) "Reservation" is the setting of limiting conditions or with holding from complete acceptance of the requirements specified in the Bidding Documents; and
- (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Documents.

31. **Preliminary Examination of Technical Bids**

31.1 The Employer shall examine Technical Bids to confirm that all documents and technical documentation requested in ITB 11 have been provided, and to determine the completeness of each document submitted.

31.2 The Employer shall confirm that the following documents and information have been provided in the Technical Bid. If any of these documents or information is missing, the Bid shall be rejected.

- (a) Letter of Technical Bid;
- (b) Written confirmation of authorization to commit the Bidder;
- (c) Bid Security; and
- (d) Technical Proposal.

32. **Qualification of the Bidders**

-
- 32.1 The Employer shall determine to its satisfaction whether Bidders are eligible and qualifying requirements detailed in bid document.
- 32.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 15.
- 32.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the Bid, in which event the Employer shall return Bid Security to the Bidder.
33. **Determination of Responsiveness of Technical Bids**
- 33.1 The Employer's determination of a Technical Bid's responsiveness is to be based on the contents of the Bid itself, as defined in ITB 11.
- 33.2 A substantially responsive Technical Bid is one that meets the requirements of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,
- (a) if accepted, would:
 - (i) affect in any substantial way the scope, quality, or performance of the Plant and Installation Services specified in the Contract; or
 - (ii) limit in any substantial way, in consistent with the Bidding Documents, the Employer's rights or the Bidder's obligations under the proposed Contract; or
 - (b) if rectified, would unfairly affect the competitive position of other Bidders resending substantially responsive Bids.
- 33.3 The Employer shall examine the technical aspects of the Technical Bid submitted in accordance with ITB 17, in particular, to confirm that all requirements of Technical Specifications have been met without any material deviation, reservation, or omission.
- 33.4 If a Technical Bid is not substantially responsive to the requirements of the Bidding Documents, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
34. **Non material Non conformities**
- 34.1 Provided that a Technical Bid is substantially responsive, the Employer may waive any nonconformity in the Technical Bid that does not constitute a material deviation, reservation or omission.
- 34.2 Provided that a Technical Bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify non material non conformities in the Technical Bid related to documentation requirements. Requesting information or documentation on such non conformities shall not be related to any aspect of the price of the Price Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.
- 34.3 Provided that a Technical Bid is substantially responsive, the Employer shall rectify quantifiable non material non conformities related to the Bid Price. To this effect, the

Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component.

35. Detailed Evaluation of Technical Bids

35.1 The Employer will carry out a detailed technical evaluation of the Bids not previously rejected as being substantially non-responsive, in order to determine whether the technical aspects are in compliance with the Bidding Documents. The Bid that does not meet minimum acceptable standards of completeness, consistency and detail, and the specified minimum (or maximum, as the case may be) requirements for specified functional guarantees, will be rejected for non-responsiveness. In order to reach such a determination, the Employer will examine and compare the technical aspects of the Bids on the basis of the information supplied by the Bidders, taking into account the following:

- (a) over all completeness and compliance with the Employer's Requirements; conformity of the Plant and Installation Services offered with specified performance criteria, including conformity with the specified minimum (or maximum, as the case may be) requirement corresponding to each functional guarantee, as indicated in the Specification and in Section III, Evaluation and Qualification Criteria; suitability of the Plant and Installation Services offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the Bid;
- (b) type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services; and
- (c) other relevant factors, if any, listed in Section III, Evaluation and Qualification Criteria.

36. Correction of Arithmetical Errors

36.1 During the evaluation of Price Bids, If after evaluating the schedule of L1 bidder by taking into consideration the words and figures, and correction of multiplication and totaling mistakes:-

- (a) If the amount arrived at is less than the e-procurement amount, the lesser amount shall be taken for award of contract.
- (b) If the amount arrived at is more than the e-procurement amount, the e-procurement amount shall be taken for award of contract and accordingly the offered percentage will be adjusted to match the e-procurement amount.

36.2 If there is difference in the price quoted in Schedule-I & Letter of Price Bid, then lower of the two amounts will be considered for evaluation and award of contract.

36.3 Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction, in accordance with ITB 36.1, shall result in the rejection of the Bid and the Bid Security shall be forfeited.

37. Conversion to Single Currency

For evaluation and comparison purposes, the currency (ies) of the Bid shall be converted in to a single currency i.e, INR.

38. Evaluation of Price Bids

- 38.1 The Employer shall use the criteria and methodologies indicated in this Clause. No other evaluation criteria or methodologies shall be permitted.
- 38.2 To evaluate a Price Bid, the Employer shall consider the following:
- (a) the Bid Price and the provision, if any, for the price Schedules;
 - (b) price adjustment for correction of arithmetic errors in accordance with ITB36.1;
 - (c) price adjustment due to discounts offered in accordance with ITB 18.8 or ITB 18.9;
 - (d) price adjustment due to quantifiable non material non conformities in accordance with ITB 34.3;
 - (e) converting the amount resulting from applying (a) to (d) above, if relevant, to a single currency in accordance with ITB37; and
 - (f) the evaluation factors indicated in Section III, Evaluation and Qualification Criteria.
- 38.3 If price adjustment is allowed in accordance with ITB 18.7, the estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in Bid evaluation.
- 38.4 If these Bidding Documents allow Bidders to quote separate prices for different lots(contracts), and the award to a single Bidder of multiple lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Letter of Price Bid, is specified in Section III, Evaluation and Qualification Criteria.
- 38.5 It may please be noted that the services of e-portal have been availed by MPPTCL for the purpose of inviting the tenders. The portal itself works out the prices & indicates name of the L1 bidder, However MPPTCL will carry out detail evaluation of prices as per the criteria stipulated in the tender document and determine the lowest substantially responsive bidder. The lowest substantially responsive bidder determined by MPPTCL will be considered for award of order/contract. The bidders may please also note that MPPTCL reserves the right to reject any or all tenders or to accept any tender considered advantageous to the MPPTCL whether it is the lowest offer/ bid or not. No reasons will be assigned by the MPPTCL for this and this will be binding on the bidders.

39. **Comparison of Bids**

- 39.1 The Employer shall compare the evaluated prices of all substantially responsive Bids in accordance with ITB 38.2 to determine the lowest evaluated Bid.
- 39.2 In case of tie, the tender will be decided through revised offers of L1 bidders. However, bidders are not allowed to increase the rate.

39.3 **SNAP BIDDING**

"In case the prices received are found to be on much higher than the cost estimated by the Employer, order placed by other utility for similar works, the Employer reserves the right to opt for Snap Bidding, in which case following conditions shall be applicable:-

- i. In case the Employer opts for snap bidding, all the initial Price Bids shall be discarded and all the responsive Bidders, whose Price Bids were earlier opened, shall be invited to submit the new Price Bids as per terms and conditions of the bidding document. The timeline for submission and Price Bid opening of such Price Bids shall be intimated separately to all such Bidders by the Employer.

Bidders submitting new Price Bids electronically shall follow the electronic Bid submission procedures specified for resubmission of Price Bids.

The lowest evaluated price received under initial bidding shall be communicated to the responsive Bidders and they shall not be allowed to quote above the lowest evaluated price in the new Price Bid. If any Bidder's new price is found to be higher than the lowest evaluated price during the initial bidding, it's Bid shall be treated as non-responsive and the Bidder shall not be considered for award.

- ii. In case, any of the invited Bidder does not submit new Price Bid during the snap bidding then, the Bidder shall not be considered for any further evaluation by the Employer.
- iii. Re-submitted new Price bids shall be again evaluated by the Employer as per terms and conditions of the Bidding document. The Employer shall evaluate the Price Bids and derive the lowest evaluated Bid (L_1). However, even after submission of new Price Bids by the Bidders, the Employer reserves the right to reject the lowest Evaluated Bid Price. If the Bid is rejected by the Employer then the entire Bidding process shall be annulled."

The detailed procedure in this regard will be intimated to all substantially responsive bidders at the time of inviting revised price offers if SNAP bidding is adopted-

In case, if snap bidding could not be possible due to limitation of e-portal, in that case negotiation of the prices shall be done as per above.

40. **Employer's Right to accept any Bid, and to reject any or all Bids**

The Employer reserves the right to accept or reject any Bid, and to annul the bidding process and reject all Bids at any time prior to Contract award, without thereby incurring any liability to Bidders. In case of annulment, all Bids submitted and specifically, Bid Securities shall be promptly returned to the Bidders.

F. Award of Contract

41. **Award Criteria**

Subject to ITB 40 , the Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated Bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be eligible and qualified to perform the Contract satisfactorily.

42. **Notification of Award**

- 42.1 Prior to the expiration of the period of Bid validity, the Employer shall notify the successful Bidder, in writing, that its Bid has been accepted. The notification letter (here in after and in the Conditions of Contract and Contract Forms called the "Notification of Award") shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Plant and Installation Services (here in after and in the Conditions of Contract and Contract Forms called "the Contract Price").

- 42.2 At the same time, the Employer shall also notify all other Bidders of the results of the bidding.

-
- 42.3 Until a formal Contract is prepared and executed, the Notification of Award shall constitute a binding Contract.
- 42.4 After notification of award, unsuccessful Bidders may request, in writing, to the Employer a debriefing seeking explanations on the grounds on which their Bids were not selected. The Employer shall promptly respond, in writing, to any unsuccessful Bidders who, after the notification of award in accordance with ITB 42.1, request a debriefing.
43. **Signing of Contract**
- 43.1 Promptly upon notification, the Employer shall send the successful Bidder the Contract Agreement.
- 43.2 Within twenty-eight (28) days from the date of Notification of Award, the successful Bidder shall execute the contract agreement.
44. **Performance Security**
- 44.1 Within twenty-eight (28) days from the date of Notification of Award, the successful Bidder shall furnish the Performance Security in accordance with the General Conditions of Contract, using for that purpose the Performance Security Form included in **Section-VII**.
- 44.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose Bid is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

Section V. General Conditions of Contract (GCC)

Preamble

This Section (Section –V) of the Bidding Documents [named as General Conditions of Contract (GCC)] provides all the rights and obligations of the parties under the Contract. This Section contains provisions that are to be used unchanged.

Table of Clauses

| | | |
|-----------|---|-----------|
| A | Contract and Interpretation | 5 |
| | 1. Definitions..... | 5 |
| | 2. Contract Documents..... | 8 |
| | 3. Interpretation..... | 8 |
| | 4. Communications..... | 9 |
| | 5. Law and Language..... | 9 |
| | 6. Corrupt or Fraudulent Practices | 10 |
| B. | Subject Matter of Contract..... | 10 |
| | 7. Scope of Facilities..... | 10 |
| | 8. Time for Commencement and Completion..... | 11 |
| | 9. Contractor’s Responsibilities..... | 11 |
| | 10. Employer’s Responsibilities..... | 12 |
| C. | Payment..... | 12 |
| | 11. Contract Price..... | 12 |
| | 12. Terms of Payment..... | 13 |
| | 13. Securities..... | 13 |
| | 14. Taxes and Duties..... | 14 |
| D. | Intellectual Property..... | 15 |
| | 15. Copy Right..... | 15 |
| | 16. Confidential Information..... | 15 |
| E. | Execution of the Facilities..... | 16 |
| | 17. Representatives..... | 16 |
| | 18. Work Program..... | 18 |
| | 19. Sub contracting..... | 19 |
| | 20. Design and Engineering..... | 20 |
| | 21. Procurement..... | 21 |
| | 22. Installation..... | 23 |
| | 23. Test and Inspection..... | 34 |
| | 24. Completion of the Facilities..... | 36 |
| | 25. Commissioning and Operational Acceptance..... | 37 |
| F. | Guarantees and Liabilities..... | 39 |
| | 26. Completion Time Guarantee..... | 39 |
| | 27. Defect Liability..... | 40 |
| | 28. Functional Guarantees..... | 41 |

29. Patent Indemnity..... 42

30. Limitation of Liability..... 43

G. Risk Distribution..... 43

31. Transfer of Ownership..... 43

32. Care of Facilities.....44

33. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification44

34. Insurance.....45

35. Unforeseen Conditions..... 47

36. Change in Laws and Regulations..... 48

37. Force Majeure..... 48

38. War Risks..... 49

H. Change in Contract Elements.....51

39. Change in the Facilities..... 51

40. Extension of Time for Completion..... 54

41. Suspension..... 55

42. Termination..... 56

43. Assignment..... 61

I. Disputes and Arbitration..... 61

44. Settlements of Disputes..... 61

45. Arbitration..... 62

A. Contract and Interpretation

1. Definitions

- 1.1 The following words and expressions shall have the meanings hereby assigned to them:
- (a) “Employer” means Madhya Pradesh Power Transmission Company Limited, Jabalpur 482 008 (M.P.) India.
 - (b) “Arbitrator” means the person or persons appointed by agreement between the Employer and the Contractor to make a decision on or to settle any dispute or difference between the Employer and the Contractor referred to him or her by the parties pursuant to GCC Clause 45 (Arbitration) hereof.
 - (c) “Commissioning” means operation of the Facilities or any part thereof by the Contractor as specified in the Technical Specifications, which operation is to be carried out by the Contractor, as provided in GC Sub-Clause 25.1 (Commissioning) hereof, for the purpose of carrying out Trial operation.
 - (d) “Completion” means that the Facilities (or a specific part thereof where specific parts are specified in the Contract) have been completed operationally and structurally and put in a tight and clean condition, that all work in respect of Pre commissioning of the Facilities or such specific part thereof has been completed, and Commissioning followed by Trial – Operation has been completed as provided in GC Clause 24 (Completion) hereof.
 - (e) “Construction Manager” means the person appointed by the Contractor’s Representative in the manner provided in GC Sub-Clause 17.2.4.
 - (f) “Contract” means the Contract Agreement entered into between the Employer and the Contractor, together with the Contract Documents referred to therein;
 - (g) “Contract Documents” means the documents listed in Article 1.1 (Contract Documents) of the Contract Agreement (including any amendments thereto).
 - (h) “Contract Price” means the sum specified in Article 2.1 (Contract Price) of the Contract Agreement, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract.
 - (i) “Contractor” means the person(s) whose Bid to perform the Contract has been accepted by the Employer and is named as Contractor in the Contract Agreement, and includes the legal successors or permitted assigns of the Contractor.
 - (j) “Contractor’s Equipment” means all facilities, equipment, machinery, tools, apparatus, appliances or things of every kind

required in or for installation, completion and maintenance of Facilities that are to be provided by the Contractor, but does not include Plant, or other things intended to form or forming part of the Facilities.

- (k) “Contractor’s Representative” means any person nominated by the Contractor and approved by the Employer in the manner provided in GC Sub-Clause 17.2 (Contractor’s Representative and Construction Manager) hereof to perform the duties delegated by the Contractor.
- (l) “day” means calendar day of the Gregorian Calendar.
- (m) “Defect Liability Period” means the period of validity of the warranties given by the Contractor commencing at Operational Acceptance of the Facilities or a part thereof, during which the Contractor is responsible for defects with respect to the Facilities (or the relevant part thereof) as provided in GCC Clause 27 (Defect Liability) hereof.
- (n) “Effective Date” means the date of Notification of Award from which the Time for Completion shall be determined.
- (o) “Facilities” means the Plant and Equipment to be supplied and installed, as well as all the Installation Services to be carried out by the Contractor under the Contract.
- (p) “GCC” means the General Conditions of Contract hereof.
- (q) “Guarantee Test(s)” means the test(s) specified in the Technical Specifications to be carried out to ascertain whether the Facilities or a specified part thereof is able to attain the Functional Guarantees specified in the Technical Specifications in accordance with the provisions of GCC Sub-Clause 25.4 (Guarantee Test) hereof during/after successful Commissioning followed by Trial - Operation.
- (r) “Installation Services” means all those services ancillary to the supply of the Plant for the Facilities, to be provided by the Contractor under the Contract, such as transportation and provision of marine or other similar insurance, inspection, expediting, site preparation works (including the provision and use of Contractor’s Equipment and the supply of all construction materials required), installation, testing, pre commissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc. as the case may require.
- (s) “Notification of Award” means the official notice issued by the Employer notifying the Contractor that his bid has been accepted.
- (t) “Mandatory Spare Parts” means spare parts required up to Operational Acceptance of the Facilities (or any part of the

Facilities where the Contract provides for acceptance of the Facilities in parts).

- (u) "Month" means calendar month of the Gregorian Calendar.
- (v) "Operational Acceptance" means the acceptance by the Employer of the Facilities (or any part of the Facilities where the Contract provides for acceptance of the Facilities in parts), which certifies the Contractor's fulfillment of the Contract in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of GC Clause 28 (Functional Guarantees) hereof after successful Commissioning followed by Trial - Operation.
- (w) "Owner" means Madhya Pradesh Power Transmission Company Limited, Jabalpur 482 008 (M.P.) India..
- (x) "Party" means the Employer or the Contractor, as the context requires, and "Parties" means both of them.
- (y) "Performance Security" means the security (or securities, if any) under GC Sub-Clause 13.3 (Performance Security).
- (z) "Plant and Equipment" means permanent plant, equipment, machinery, apparatus, materials, articles and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Contract (including the spare parts to be supplied by the Contractor under GC Sub-Clause 7.3 hereof), but does not include Contractor's Equipment.
- (aa) "Pre-commissioning" means the testing, checking and other requirements specified in the Technical Specifications that are to be carried out by the Contractor in preparation for Commissioning as provided in GC Clause 24 (Completion) hereof.
- (bb) "Project Manager" means the person appointed by the Employer in the manner provided in GC Sub-Clause 17.1 (Project Manager) hereof. The Employer shall appoint and notify the contractor in writing of the name of the Project Manager within 14 days of signing of the contract agreement.
- (cc) "Site" means the land and other places upon which the Facilities are to be installed, and such other land or places as may be specified in the Contract as forming part of the Site.
- (dd) "Subcontractor"/"vendor"/"sub-vendor" means firms/ corporations/ government entities to whom execution of any part of the Facilities, including preparation of any design or supply of any Plant and Equipment, is sub-contracted directly or indirectly by the Contractor with the consent of the Employer in writing, and includes its legal successors or permitted assigns.

(ee) “Taking Over” means the Employer’s written acceptance of the Facilities under the Contract, after successful Trial – Operation for the specified period in accordance with the Contract, as provided in GCC Sub-Clause 25.2.2.

(ff) “Time for Completion” means the time within which Completion of the Facilities as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained, as referred to in GC Clause 8 (Time for Commencement and Completion) and in accordance with the relevant provisions of the Contract.

(gg) “Year” means 365 days.

2. Contract Documents

Subject to Article 1.2 (Order of Precedence) of the Contract Agreement, all documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.

3. Interpretation

3.1 In the Contract, except where the context requires otherwise:

- (a) Words indicating one gender include all genders;
- (b) Words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) Provision including the word “agree,” “agreed,” or “agreement” require the agreement to be recorded in writing;
- (d) The word “Tender” is synonymous with “Bid,” “tenderer,” with “Bidder,” and “Tender Documents” with “Bidding Documents;” and
- (e) “written” or “in writing” means hand- written, type- written, printed or electronically made, and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

3.2 Entire Agreement

Subject to GC Sub-Clause 16.4 hereof, the Contract constitutes the entire agreement between the Employer and Contractor with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) of Parties with respect thereto made prior to the date of Contract.

3.3 Amendment

No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of Each Party hereto.

3.4 Independent Contractor

The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the Parties hereto. Subject to the provisions of the Contract, the

Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by the Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Employer, and nothing contained in the Contractor in any subcontract awarded by the Contract or shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and the Employer.

3.5 Non-Waiver

3.5.1 Subject to GC Sub-Clause 3.6.2 below, no relaxation, forbearance, delay or indulgence by either Party in enforcing any of the terms and conditions of the Contract or the granting of time by either Party to the other shall prejudice, affect or restrict the rights of that Party under the Contract, nor shall any waiver by either Party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

3.5.2 Any waiver of a Party's rights, powers or remedies under the Contract must be in writing, must be dated and signed by an authorized representative of the Party granting such waiver, and must specify the right and the extent to which it is being waived.

3.6 Severability

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

3.7 Country of Origin

"Origin" means the place where the Plant and component parts thereof are mined, grown, produced or manufactured, and from which the services are provided. Plant components are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that is substantially different in its basic characteristics or in purpose or utility from its components.

4. Communications

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

- (a) in writing and delivered against receipt; and
- (b) Delivered, sent or transmitted to the address for the recipient's communications as stated in the contract agreement.

5. Law and Language

5.1 The Contract shall be governed by and interpreted in accordance with laws of Union of India and the Courts of Jabalpur shall have exclusive jurisdiction in all matters arising under this Contract.

- 5.2 The ruling language of the contract shall be English.
- 5.3 The language for communications shall be English.

6. Corrupt or Fraudulent Practices

- 6.1 If the employer determines, based on reasonable evidence, that the contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the contract, Then the employer may, after giving fourteen (14) day's notice to the contractor, terminate the Contractor's employment under the contract and expel him from the Site, and the provisions of GC Clause 42 shall apply as if such expulsion had been made under GC Sub-Clause 42.2.1 (c).
- 6.2 Should any employee of the contractor be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice during the execution of the contract, then that employee shall be removed in accordance with GC Sub-Clauses 17.2.5.

B. Subject Matter of Contract

7. Scope of Facilities

7.1 unless otherwise expressly limited in the Technical Specifications, the Contractor's obligations cover the provision of all Plant and the performance of all Installation Services required for the design, and the manufacture (including procurement, quality assurance, construction, installation, associated civil works, Pre-commissioning and delivery) of the Plant, and the installation, completion and commissioning of the Facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in Technical Specifications. Such specifications include the provision of supervision and engineering services; the supply of labor, materials, equipment, spare parts (as specified in GC Sub-Clause 7.3 below) and accessories; Contractor's Equipment; construction utilities and supplies; temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works and services that will be provided or performed by the Employer, as set forth in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer, or any other requirements specified in the Contract.

7.2 The Contractor shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract.

7.3 In addition to the supply of Mandatory Spare parts included in the Contract, the Contractor agrees to supply spare parts required for the operation and maintenance of the facilities for a minimum period of 15 years from Completion of the Facilities.. The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the plant and equipment. If so desired by the Employer, the Contractor shall submit the specifications, price and the terms and conditions relating to the supply thereof for such spares identified by the Employer with validity period of 6 months within 30 days of receipt of request from Employer for its consideration and placement of order.

8. Time for Commencement and Completion

8.1 The Contractor shall commence work on the Facilities immediately after award of contract without prejudice to GC Sub- Clause 26.2 here of, the Contractor shall there after proceed with the facilities in accordance with the time schedule Specified in the Appendix to the Contract Agreement titled Time Schedule.

8.2 The Contractor shall attain Completion of the Facilities or of a part where a separate time for Completion of such part is specified in the Contract, within the Specified in the Appendix to the Contract Agreement titled Time Schedule or with in such extended time to which the Contractor shall be entitled under GC Clause40 hereof.

9. Contractor's Responsibilities

9.1 The Contractor shall design, manufacture including associated purchases and/or subcontracting install and complete the Facilities in accordance with the Contract. When completed, the Facilities should be fit for the purposes for which they are intended as defined in the Contract.

9.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the facilities including any data as to boring tests provided by the employer, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site if access there to was available and of other data readily available to it relating to the facilities as of the Base Date. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the facilities.

9.3 The Contractor shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service under takings which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's equipment. The Contractor shall acquire all other permits, approval sand/or licenses that are not the responsibility of the employer under GC Sub-Clause 10.3hereof and that are necessary for the performance of the Contract.

9.4 The Contractor shall comply with all laws in force in India. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GC Sub-Clause10.1 hereof.

9.5 All plant and installation services that will be incorporated in or be required for the facilities and other supplies shall have their origin as specified under GC Clause3.8 (Country of Origin).

9.6 If the Contractor is a joint venture (JV) of two or more partners, all such partners shall be jointly and severally bound to the employer for the fulfillment of the provisions of the Contract, and shall designate one of such partners to act as a Lead partner with authority to bind the JV. The composition or the constitution of the JV shall not be altered without the prior consent of the Employer.

10. Employer's Responsibilities

10.1 The Employer shall ensure the accuracy of all information and/or data to be supplied by the Employer as described in the appendix to the Contract agreement titled Scope of Works and Supply by the employer, to the Contract, except when otherwise expressly stated in the Contract.

10.2 The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access there to, and for providing possession of and access to all other areas reasonably required for the proper execution of the contract, including all requisite rights of way, as specified in the appendix to the contract agreement titled Scope of works and Supply by the Employer. The Employer shall give full possession of and accord all rights of access thereto on or before the date (s) specified in that Appendix.

10.3 The Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in India which (a) such authorities or undertakings require the Employer to obtain in the Employer's name, (b) are necessary for the execution of the contract, including those required for the performance by both the Contractor and the Employer of the irrespective obligations under the Contract, and (c) are specified in the appendix (scope of works and supply of the employer)

10.4 If requested by the Contractor, the Employer shall use its best endeavors to assist the contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or under takings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case maybe, to obtain.

10.5 Unless otherwise specified in the contractor agreed upon by the Employer and the Contractor, the Employer shall provide sufficient, properly qualified operating and maintenance personnel to properly carry out pre-commissioning, Commissioning and Guarantee tests, all in accordance with the provisions of the appendix to the contract agreement titled scope of works and supply by the employer, at or before the time specified in the program furnished by the contractor under GC Sub-Clause 18.2 hereof and in the manner there upon specified or as otherwise agreed upon by the Employer and the Contractor.

10.6 All costs and expenses involved in the performance of the obligations under this GC clause 10 shall be the responsibility of the employer, save those to be incurred by the contractor with respect to the performance of Guarantee tests, in accordance with GC Sub-Clause 25.2.

C. Payment

11. Contract Price

11.1 The Contract price shall be as specified in article 2 (Contract price and terms of payment) of the contract agreement.

11.2 Unless an adjustment clause is provided in the Appendix to the contract agreement **as per provision in ITB 18.7** the Contract price shall be a firm lump sum not subject to any alteration, except in the event of a change in the Facilities or as otherwise provided in the Contract.

11.3 Subject to GC Sub-Clauses 9.2, 10.1 and 35 hereof, the contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the contract price, which shall, except as otherwise provided for in the contract, cover all its obligations under the contract.

12. Terms of Payment

12.1 The contract price shall be paid as specified in the Appendix-1 to the contract agreement titled terms and procedures of payment,

12.2 No payment made by the employer here in shall be deemed to constitute acceptance by the employer of the facilities or any part(s) thereof.

12.3 All payments under the Contract shall be made in Indian Rupees.

13. Securities

13.1 Issuance of Securities

The Contractor shall provide the securities specified below in favor of the employer at the times, and in the amount, manner and form specified below.

13.2 Advance Payment Security

13.2.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security in an amount calculated in accordance with the appendix to the contract agreement titled terms and procedures of payment.

13.2.2 The security shall be in the form of Bank Guarantee issued by a reputable bank acceptable to the Employer, in the format included in Section VII. The security shall be returned to the contractor immediately after its expiration.

13.3 Performance Security

13.3.1 The Contractor shall, within twenty-eight (28) days of the notification of award, provide a performance security for the due performance of the Contract in the amount equivalent to Ten percent (10%) of the Contract Price, with a validity up to ninety (90) days beyond the Defect Liability Period. The same shall be extended by the Contractor time to time till ninety (90) days beyond the actual Defect Liability Period, as may be required under the Contract.

13.3.2 The performance security shall be in the Form of unconditional Bank Guarantee attached in Section-VII of Volume-I (Part-2) of the Bidding documents.

13.4 Issuing Banks

The Bank Guarantee for Performance Security is to be provided by the Contractor, which should be issued either:

(a) by a Public Sector Bank located in India, or

- (b) a scheduled Indian Bank having paid up capital (net of any accumulated losses) of Rs. 1,000 Million or above (the latest annual report of the Bank should support compliance of capital adequacy ratio requirement), or
- (c) by a foreign bank or a subsidiary of a foreign bank, located in India with overall international corporate rating or rating of long term debt not less than A- (A minus) or equivalent by a reputed rating agency.

13.5 Indemnity Bond

- 13.5.1 For the equipment/material to be provided by the Contractor, it will be the responsibility of the Contractor to take delivery, unload and store the materials at Site and execute an Indemnity Bond and obtain authorisation letter from Employer as per proforma enclosed at Section-VII of Volume-I (Part-2) , in favour of the Employer against loss, damage and any risks involved for the full value of the materials. This Indemnity Bond shall be furnished by the Contractor before commencement of the supplies and shall be valid till the scheduled date of Taking Over of the equipment by the Employer.
- 13.5.2 In case of divisible Contracts, where MPPTCL hands over his equipment to the Contractor for executing the Contract, then the Contractor shall, at the time of taking delivery of the equipment through Bill of Lading or other dispatch documents, execute an Indemnity Bond for Plant, Equipment and Materials, in favor of MPPTCL in the form acceptable to MPPTCL for keeping the equipment in safe custody and to utilize the same exclusively for the purpose of the said Contract. MPPTCL shall also issue a separate Authorization Letter to the Contractor to enable him to take physical delivery of plant, equipment and materials from MPPTCL.

14. Taxes and Duties

- 14.1 For supply of plants/Equipments/materials, Installation services including civil works applicable Goods & Service Tax (GST) is separately indicated in the price Schedules and the same is payable separately by the Employer.
- 14.2 The Cess applicable on 'Contract Price' @ 1% (present rate), shall be deducted by MPPTCL from Supply, Installation and Civil R.A. bills before release of payment.
- 14.3 In case of delay beyond contractual period /extended period (without penalty), GST prevailing on the date of actual delivery/execution of work OR the GST prevailing within the contractual period /extended period (without penalty), whichever is lower shall be payable.
- 14.4 In respect of raw materials and intermediary components etc., neither MPPTCL nor the Contractor shall be entitled to any claim arising due to increase or decrease in the rate of Tax, introduction of a new Tax or abolition of an existing Tax in the course of the performance of the Contract.

The contractor shall bear and pay all taxes, duties, levies and charges assessed on the contractor, its subcontractors or their employee by all municipal, state or national government authorities in connection with the facilities. If it is statutory requirement to make deductions towards such taxes and duties or any other applicable taxes and duties,

the same shall be made by the Employer and a certificate for the same shall be issued to the Contractor.

- 14.5 The Contractor shall be solely responsible for the taxes that may be levied on the Contractor's persons or on earnings of any of his employees and shall hold the Employer indemnified and harmless against any claims that may be made against the Employer. The Employer does not take any responsibility whatsoever regarding taxes under Indian Income Tax Act, for the Contractor or his personnel. If it is obligatory under the provisions of the Indian Income Tax Act, deduction of Income Tax at source shall be made by the Employer.
- 14.6 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2(Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date seven (07) days prior to the last date of bid submission (hereinafter called "Tax" in this GCC Sub-clause 14.3). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of the Contract, which was or will be assessed on the Contractor in connection with performance of the Contract, an equitable adjustment of the Contract price shall be made to fully take into account any such change by addition to the Contract price or deduction therefrom, as the case may be,. However, these adjustments would be restricted to direct transactions between the Employer and the Contractor for which the taxes and duties are reimbursable by the Employer as per the Contract. These adjustments shall not be applicable on procurement of raw materials, intermediary components etc by the Contractor and also not applicable on the bought out items dispatched directly from sub-vendor's works to site.

D. Intellectual Property

15. Copy Right

15.1 The copyright in all drawings, documents and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Employer directly or through the Contractor by any third party, including supplies of materials, the copyright in such materials shall remain vested in such third party.

The Employer shall however be free to reproduce all drawings, documents and other material furnished to the Employer for the purpose of the Contract including, if required, for operation and maintenance.

15.2 The copyright in all drawings, documents and other materials containing data and information furnished to the Contractor by the Employer herein shall remain vested in the Employer.

16. Confidential Information

16.1 The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other Party hereto, divulge to any third Party any documents, data or other information furnished directly or indirectly by the other Party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s)

such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GC Clause 16.

16.2 The employer shall not use such documents, data and other information received from the Contractor for any purpose other than the operation and maintenance of the facilities. Similarly, the contractor shall not use such documents, data and other information received from the employer for any purpose other than the design, procurement of plant, construction or such other work and services as are required for the performance of the contract.

16.3 The obligation of a party under GC Sub-Clauses 16.1 and 16.2 above, however, shall not apply to that information which:

- (a) Now or here after enters the public domain through no fault of that party.
- (b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party here to; and
- (c) Otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

16.4 The above provisions of this GC clause 16 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the contract in respect of the facilities or any part thereof.

16.5 The provisions of this GC Clause 16 shall survive termination, for whatever reason, of the contract.

E. Execution of the Facilities

17. Representatives

17.1 Project Manager

If the Project Manager is not named in the contract, then within fourteen (14) days of the effective date, the employer shall appoint and notify the contractor in writing of the name of the Project Manager. The employer may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the facilities. Such appointment shall only take effect upon receipt of such notice by the contractor. The Project Manager shall represent and act for the employer at all times during the performance of the contract. All notices, instructions, orders, certificates, approvals and all other communications under the contract shall be given by the Project Manager, except as herein otherwise provided.

All notices, instructions, information and other communications given by the contractor to the employer under the contract shall be given to the Project Manager, except as herein otherwise provided.

17.2 Contractor's Representative & Construction Manager

17.2.1 If the contractor's representative is not named in the contract, then within fourteen (14) days of the effective Date, the Contractor shall appoint the contractor's Representative

and shall request the employer in writing to approve the person so appointed. If the employer makes no objection to the appointment within fourteen (14) days, the contractor's Representative shall be deemed to have been approved. If the employer objects to the appointment within fourteen (14) days giving the reasons therefor, then the contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GC Sub-Clause 17.2.1 shall apply thereto.

17.2.2 The contractor's Representative shall represent and act for the contractor at all times during the performance of the contract and shall give to the project Manager all the contractor's notices, instructions, information and all other communications under the contract.

All notices, instructions, information and all other communications given by the employer or the Project Manager to the contractor under the contract shall be given to the contractor's Representative or, in its absence, its deputy, except as hereinafter otherwise provided.

The contractor shall not revoke the appointment of the contractor's Representative without the employer's prior written consent, which shall not be unreasonably withheld. If the employer consents thereto, the contractor shall appoint some other person as the contractor's Representative, pursuant to the procedure set out in GC Sub-Clause 17.2.1.

17.2.3 The contractor's Representative may, subject to the approval of the employer which shall not be unreasonably withheld, at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the contractor's Representative, and shall specify the powers, functions and authorities there by delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the employer and the Project Manager.

Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GC Sub-Clause 17.2.3 shall be deemed to be an act or exercise by the contractor's Representative.

17.2.4 From the commencement of installation of the facilities at the site until completion, the contractor's representative shall appoint a suitable person as the construction Manager. The construction Manager shall supervise all work done at the site by the contractor and shall be present at the site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Construction Manager is absent from the site, a suitable person shall be appointed to act as the construction Manager's deputy.

17.2.5 The employer may by notice to the contractor object to any representative or person employed by the contractor in the execution of the contract who, in the reasonable opinion of the employer, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the site regulations provided under GC Sub-Clause 22.4. The Employer shall provide evidence of the same, whereupon the contractor shall remove such person from the facilities.

17.2.6 If any representative or person employed by the contractor is removed in accordance with GC Sub- clause 17.2.5, the contractor shall, where required, promptly appoint a replacement.

18. Work Program

18.1 Contractor's Organization

The contractor shall supply to the employer and the Project Manager a chart showing the proposed organization to be established by the contractor for carrying out work on the facilities within twenty-one (21) days of the effective date. The chart shall include the identities of the key personnel and the curricula vitae of such key personnel to be employed shall be supplied together with the chart. The contractor shall promptly in form the employer and the Project Manager in writing of any revision or alteration of such an organization chart.

18.2 Program of Performance

Within twenty-eight (28) days after the effective date, the contractor shall submit to the Project Manager a detailed month wise programme of supply of various items of plant and completion of various activities of Installation work in the form of "BAR CHART" and "SUB BAR CHARTS" This 'BAR CHART' will, for all purposes, form a part of the contract. The BAR CHARTS will be made in a form acceptable to the Project Manager and showing the sequence in which it proposes to design, manufacture, transport, assemble, install and pre-commission the facilities, as well as the date by which the contractor reasonably requires that the employer shall have fulfilled its obligations under the contract so as to enable the contractor to execute the contract in accordance with the program and to achieve completion, commissioning and acceptance of the facilities in accordance with the contract. The program so submitted by the contractor shall accord with the time schedule included in the appendix to the contract agreement titled time schedule, and any other dates and periods specified in the contract. The contractor shall up date and revise the program as and when appropriate or when required by the Project Manager, but without modification in the times for completion specified in the Time for completion (Appendix-4 of the contract agreement) and any extension granted in accordance with GC Clause 40, and shall submit all such revisions to the Project Manager.

18.3 Progress Report

The contractor shall monitor progress of all the activities specified in the program referred to in GC Sub-Clause 18.2 above, and supply a progress report to the Project Manager every fortnight.

The progress report shall be in a form acceptable to the Project Manager and shall indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; and (b) where any activity is behind the program, giving comments and likely consequences and stating the corrective action being taken.

18.4 Progress of Performance

(a) If at any time the contractor's actual progress falls behind the program referred to in GC Sub-Clause 18.2, or it becomes apparent that it will so fall behind, the contractor shall, at the request of the employer or the Project Manager, prepare and submit to the

Project Manager a revised program, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain completion of the facilities within the time for Completion under GC Sub-Clause 8.2, any extension thereof entitled under GC Sub-Clause 40.1, or any extended period as may otherwise be agreed upon between the employer and the Contractor.

- (b) Besides above, a periodical review meeting between Contractor and Employer shall be held quarterly to analyze the scheduled and actual progress, targets for the next quarter and to sort out bottlenecks, if any, to ensure completion of work within the Time schedule specified in the contract. The Contractor will attend the above meetings along with necessary information in respect of supply and installation activities.

18.5 Procedures

The Contractor may execute the Contract in accordance with its own standard project execution plans duly approved by the Employer and procedures to the extent that they do not conflict with the provisions contained in the Contract.

18.6 Safety Plan

(i) The Contractor shall include concrete safety measure in the programme. Employer shall review the programme submitted by the contractor from the point of view of securing the safety during construction and may ask to submit further details if necessary.

(ii) During the supervision of installation work, Employer shall confirm that an Accident Prevention Officer, proposed by the contractor is duly appointed at the Project site & that the construction work is carried out according to the Safety Plan as well as the safety measures prescribed in the programme. If Employer observes any short comings regarding the safety measures in general, the contractor shall make appropriate improvements.

19. Subcontracting

19.1 The Appendix to the contract agreement titled list of Major Items of Plant and Installation services and list of approved subcontractors, specifies major items of supply or services and a list of approved Subcontractors against each item, including manufacturers. Insofar as no subcontractors are listed against any such item, the contractor shall prepare a list of Subcontractors for such item for inclusion in such list. The contractor may from time to time propose any addition to or deletion from any such list. The contractor shall submit any such list or any modification thereto to the employer for its approval in sufficient time so as not to impede the progress of work on the facilities. Such approval by the employer for any of the Subcontractors shall not relieve the contractor from any of its obligations, duties or responsibilities under the contract.

19.2 The contractor shall select and employ its Subcontractors for such major items from those listed in the lists referred to in GC Sub-Clause 19.1.

19.3 For items or parts of the facilities not specified in the appendix to the Contract agreement titled list of Major Items of plant and Installation services and list of approved Sub contractors, the contractor may employ such Subcontractors as it may select, at its discretion.

19.4 Each subcontract shall include provisions which would entitle the Employer to require the sub contract to be assigned to the employer under GC Sub-Clause 19.5 (if and when applicable), or in event of termination by the employer under GC Sub-Clause 42.2.

19.5 If a subcontractor's obligations extend beyond the expiry date of the relevant defects liability period and the Project Manager, prior to that date, instructs the contractor to assign the benefits of such obligations to the employer, then the Contractor shall do so.

20. Design and Engineering

20.1 Specifications and Drawings

20.1.1 Complete design shall be made available by MPPTCL. Any further design required will be under the scope of the Contractor at no extra cost. Subject always to GC10.1, the contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not.

20.1.2 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designated by or on behalf of the employer, by giving a notice of such disclaimer to the Project Manager.

20.2 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the Base Date shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied subject to approval by the Employer and shall be treated in accordance with GC Clause 39.

20.3 Approval/Review of Technical Documents by Project Manager/Employer

20.3.1 The Contractor shall prepare or cause its Subcontractors to prepare, and furnish to the Project Manager the documents listed in the Appendix to the Contract Agreement titled List of Documents for Approval or Review, for its approval or review as specified and in accordance with the requirements of GC Sub-Clause 18.2 (Program of Performance).

Any part of the Facilities covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof.

GCC Sub-Clauses 20.3.2 through 20.3.7 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

20.3.2 Within twenty one (21) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GC Sub-Clause 20.3.1, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefore and the modifications that the Project Manager proposes.

If the Project Manager fails to take such action within the said twenty one (21) days, then the said document shall be deemed to have been approved by the Project Manager.

20.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with the Contract or that it is contrary to good engineering practice.

20.3.4 If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager's approval in accordance with GC Sub-Clause 20.3.2. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.

20.3.5 If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled between the Parties within a reasonable period, then such dispute or difference may be referred to an Arbitrator for determination in accordance with GCC Sub-Clause 45.3 hereof. If such dispute or difference is referred to a Dispute Board, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Dispute Board upholds the Contractor's view on the dispute and if the Employer has not given notice under GCC Sub-Clause 45.3 hereof, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Dispute Board shall decide, and the Time for Completion shall be extended accordingly.

20.3.6 The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.

20.3.7 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and obtained the Project Manager's approval thereof, pursuant to the provisions of this GCC Sub-Clause 20.3.

If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of GCC Clause 39 shall apply to such request.

21. Procurement

21.1 Plant

Subject to GCC Sub-Clause 14.2, the Contractor shall procure and transport all Plant in an expeditious and orderly manner to the Site.

21.2 Employer-Supplied Plant

If the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer provides that the Employer shall furnish any specific items to the Contractor, the following provisions shall apply:

- 21.2.1 The Employer shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the Parties and make such item available to the Contractor at the time specified in the program furnished by the Contractor, pursuant to GCC Sub-Clause 18.2, unless otherwise mutually agreed.
- 21.2.2 Upon receipt of such item, the Contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect or default. The Employer shall immediately remedy any shortage, defect or default, or the Contractor shall, if practicable and possible, at the request of the Employer, remedy such shortage, defect or default at the Employer's cost and expense. After inspection, such item shall fall under the care, custody and control of the Contractor. The provision of this GCC Sub-Clause 21.2.2 shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item, or shall apply to defective items that have been repaired.
- 21.2.3 The foregoing responsibilities of the Contractor and its obligations of care, custody and control shall not relieve the Employer of liability for any undetected shortage, defect or default, nor place the Contractor under any liability for any such shortage, defect or default whether under GCC Clause 27 or under any other provision of Contract.

21.3 Transportation

- 21.3.1 The Contractor shall at its own risk and expense transport all the materials and the Contractor's Equipment to the Site.
- 21.3.2 Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the materials and the Contractor's Equipment.
- 21.3.3 Upon dispatch of each shipment of materials and the Contractor's Equipment, the Contractor shall notify the Employer by facsimile or email, of the description of the materials and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival at the Site. The Contractor shall furnish the Employer with relevant shipping documents to be agreed upon between the Parties.
- 21.3.4 The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the materials and the Contractor's Equipment to the Site. The Employer shall use its best endeavors in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any claim for damage to roads, bridges or any other traffic facilities that may be caused by the transport of the materials and the Contractor's Equipment to the Site.

21.4 Packing

- 21.4.1 The Contractor shall provide such packing of the Goods as it 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. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods final destination and the absence of heavy handling facilities at all points in transit.
- 21.4.2 The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract and, subject to any subsequent instruction ordered by MPPTCL consistent with the requirements of the Contract.

22 Installation

22.1 Setting Out/Supervision

- 22.1.1 Bench Mark: The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Employer.
- 22.1.2 If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level or alignment of the Facilities, the Contractor shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the Employer, the expense of rectifying the same shall be borne by the Employer.
- 22.1.3 The Contractor shall obtain necessary vendor, drawing, Guaranteed technical particulars and Type test approvals as per specification and IS for equipments/materials.
- 22.1.4 All manufacturing, fabrication and installation work under the scope of contractor, prior to approval of the drawings shall be at the Contractor's risk. The work shall be carried out based on approved design and other details given in technical specification (Volume-II). Deviations, if any, from the approved/specified conditions shall be brought to the notice of Project Manager before taking up the work. The rectification work if any may be taken up by the contractor only on receipt of permission from the employer.
- 22.1.5 If at a later date, it is found that the works carried out by the Contractor are not according to the approved design, drawing & specifications and are without specific approval, the entire payments made to the Contractor for carrying out such works shall be withheld from subsequent bills and the Contractor will have to rectify the same without extension of time.
- 22.1.6 Contractor's Supervision: The Contractor shall give or provide all necessary superintendence during the installation of the Facilities, and the Construction Manager or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

22.2 Labour

During continuance of the contract, the Contractor and his sub-contractors shall abide at all times by all applicable existing labour enactments and rules made thereunder, regulations notifications and byelaws of the State or Central Government or local authority and any other labour law (including rules), regulations by laws that may be passed or notification that may be issued under any labour law in future either by the State or the Central Government or the local authority.

22.2.1 Engagement of Staff and Labour

- (a) Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.
- (b) The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labour that has the necessary skills.
- (c) The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labour and personnel to be employed on the Site. The Employer will, if requested by the Contractor, use his best endeavors in a timely and expeditious manner to assist the Contractor in obtaining any local, state, and national or government permission required for bringing in the contractor's personnel.
- (d) The Contractor shall at its own expense provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to the place where they were recruited or to their domicile. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Employer may provide the same to such personnel and recover the cost of doing so from the Contractor.
- (e) If the Contractor propose to use contract labour for carrying out various installation activities, necessary permission as per Contract Labour (Regulation & Abolition) Act 1970, Article 12 D (1) may please be obtained from Labour, Commissioner, and submitted to the Order Placing Authority.
- (f) Payment to daily wages workers shall be made by the contractor in accordance with minimum wages prescribed by the State Govt. in presence of Employer's representative not below the rank of an Assistant Engineer and ensure EPF deduction according to the EPF Act, 1952 with latest amendments. Every employee shall have to be enrolled for the membership of Employees Provident Fund from the date of his joining i.e. deductions towards E.P.F. are to be effected from the 1st day of employment. The contractor shall have to maintain paid muster roll and obtain a certificate from the Employer regarding payment of minimum wages and EPF deductions made in his presence. The paid muster roll shall be produced for inspection of Govt. Inspector or Employer's Officer as and when called for.

- (g) If the Employer is caused to pay under any law as principal employer such amounts as may be necessary to cause or observe, or for non observance of the provisions stipulated in the notifications/ byelaws/Acts/ Rules/regulations including amendments, if any, on the part of the Contractor, the Employer shall have the right to deduct any money due to the Contractor under this contract or any other contract with the employer including his amount of performance security for adjusting the aforesaid payment. The Employer shall also have right to recover from the Contractor any sum required or estimated to be required for making good the loss or damage suffered by the Employer.
- (h) In case the contractor fails to make payment of wages or remittance of EPF contribution in accordance with provision of Law, Employer shall be liable to make payment of unpaid amount of wages to labour employed by contractor and to EPF Authorities and recover amount so paid from contractor from thier next unpaid bill under any contract.
- (i) It may explicitly be noted by the Contractor that any cost to be incurred by the employer due to default in compliance of minimum wage, EPF act provisions or any other act related to wages, the same shall be recovered from Contractor.
- (j) "The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Employer may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative if applicable, who:
- persists in any misconduct or lack of care,
 - carries out duties incompetently or negligently,
 - fails to conform with any provisions of the Contract, or
 - persists in any conduct which is prejudicial to safety, health, or the protection of the environment.
- If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person."
- (k) The Contractor shall submit, to the Employer, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Employer, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.
- (l) "The Contractor may bring in to the Country any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Employer will, if requested by the Contractor, use his best endeavours in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national, or government permission required for bringing in the Contractor's personnel.
- (m)The Contractor shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in the Country of any of these personnel or members of their families, the Contractor shall

similarly be responsible for making the appropriate arrangements for their return or burial."

22.2.2 Persons in the Service of Employer

The Contractor shall not recruit, or attempt to recruit, staff and labor from amongst the Employer's Personnel.

22.2.3 Labor Laws

The Contractor shall comply with all the relevant labor Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Contractor shall at all times during the progress of the Contract use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its employees and the labor of its Subcontractors.

The Contractor shall, in all dealings with its labour and the labour of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labour.

22.2.4 Rates of Wages and Conditions of Labour

The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages and allowances as are chargeable under the Laws for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

22.2.5 Working Hours

No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours, unless:

- (a) Otherwise stated in the Contract;
- (b) The Project Manager gives consent; or
- (c) The work is unavoidable, or necessary for the protection of life or property or for the safety of the Facilities, in which case the Contractor shall immediately advise the Project Manager.

If and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Project Manager's consent thereto, the Project Manager shall not unreasonably withhold such consent.

This Sub-Clause shall not apply to any work which is customarily carried out by rotary or double-shifts.

22.2.6 Facilities for Staff and Labour

Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Specification.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Plant.

22.2.7 Health and Safety

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the performance of the Contract, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

The Contractor shall send, to the Project Manager, details of any accident and incidents as soon as practicable after its occurrence. The contractor(s) shall promptly within 3 working days after the occurrence of any of the events set out in this Sub-clause, supply to Employer (i) details of any incident of an environmental nature (including without limitation any explosion, spill or workplace accident which results in death, serious or multiple injuries or material environmental contamination) or any incident of a social nature (including without limitation any violent labour unrest or dispute with local communities), occurring on or nearby any site, plant, equipment or facility of the project which has or is reasonably likely to have a material negative impact on the environment, the health, safety and security situation, or the social and cultural context, together with, in each case, a specification of the nature of the incident or accident and the on-site and off-site effects of such events and (ii) details of any action the contractor(s) proposes to take in order to remedy the effects of these events, and shall keep MPPTCL informed about any progress in respect of such remedial action.

The Contractor shall throughout the Contract (including the Defects Liability Period): (i) conduct Information, Education and Consultation Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labor (including all the Contractor's employees, all Subcontractors and Employer's and Project Manager's employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behavior with respect to Sexually Transmitted Diseases (STD)—or Sexually Transmitted Infections (STI) in general and HIV/AIDS in

particular; (ii) provide male or female condoms for all Site staff and labor as appropriate; and (iii) provide for STI and HIV/AIDS screening, diagnosis, counseling and referral to a dedicated national STI and HIV/AIDS program, (unless otherwise agreed) of all Site staff and labor.

The Contractor shall include in the program to be submitted for the execution of the Facilities under GCC Sub-Clause 18.2 an alleviation program for Site staff and labor and their families in respect of STI and STD, including HIV/AIDS. The STI, STD and HIV/AIDS alleviation program shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this GCC Sub-Clause and the related specification. For each component, the program shall detail the resources to be provided or utilized and any related subcontracting proposed. The program shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for preparation and implementation of this program shall not exceed the Provisional Sum dedicated for this purpose

22.2.8 Funeral Arrangements

In the event of the death of any of the Contractor's Personnel or accompanying members of their families, the Contractor shall be responsible for making the appropriate arrangements for their return or burial.

22.2.9 Records of Contractor's Personnel

The Contractor shall keep accurate records of the Contractor's Personnel, including the number of each class of Contractor's Personnel on the Site and the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis in a form approved by the Project Manager and shall be available for inspection by the Project Manager until the Contractor has completed all work.

22.2.10 Supply of Foodstuffs

The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract.

22.2.11 Supply of Water

The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.

22.2.12 Measures against Insect and Pest Nuisance

The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce their danger to health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

22.2.13 Alcoholic Liquor or Drugs

The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift barter or disposal by Contractor's Personnel.

22.2.14 Arms and Ammunition

The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.

22.2.15 Prohibition of All Forms of Forced or Compulsory Labor

The Contractor shall not employ "forced or compulsory labor" in any form. "Forced or compulsory labor" consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.

22.2.16 Prohibition of Harmful Child Labor

The Contractor shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.

22.2.17 The Contractor shall submit the procedures & programme on regular basis for Environmental Monitoring during construction activity and execution of work;

- (a) Air quality: All precautionary steps will be taken to minimize air pollution
- (b) Surface Ground Water: All construction activities will be strictly monitored to avoid contamination of water due to oil spill, disposal of solid wastes, spoils, construction material and waste water.
- (c) Noise/ Ground Vibration: This attribute will be monitored to minimize the noise emission due to construction activities and ground vibration due to blasting and compacting activities.

Employer shall check all these measures for Environmental Monitoring and submit the report and monitoring results to JICA on Half Yearly basis.

22.2.18 Salient features of some major laws applicable to establishments engaged in building and other construction works:

- a) Workmen Compensation Act 1923: The Act provides for compensation in case of injury by accident arising out of and during the course of employment.
- b) The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996
- c) Payment of Gratuity Act 1972: Gratuity is payable to an employee under the Act on satisfaction of certain conditions on separation if an employee has completed 5 years service or more or on death at the rate of 15 days wages for every completed year of service. The Act is applicable to all establishments employing 10 or more employees.
- d) Employee P.F. and Miscellaneous Provision Act 1952: The Act provides for monthly contribution by the employer plus workers @10% or 8.33%. The benefits under the Act are:
 - a. Pension or family pension on retirement or death, as the case may be.
 - b. Deposit linked insurance on death in harness of the worker.
 - c. Payment of P.F. accumulation on retirement/death etc.
- e) Maternity Benefit Act 1951: The Act provides for leave and some other benefits to women employees in case of confinement or miscarriage etc.

- f) Contract Labour (Regulation & Abolition) Act 1970: The Act provides for certain welfare measures to be provided by the Contractor to contract labour and in case the Contractor fails to provide, the same are required to be provided, by the Principal Employer by law. The Principal Employer is required to take Certification of Registration and the Contractor is required to take Licence from the designated Officer. The Act is applicable to the establishments or Contractor of Principal Employer if they employ 20 or more labour contract labour.
- g) Minimum Wages Act 1948: The Employer is supposed to pay not less than the Minimum Wages fixed by appropriate Government as per provision of the Act if the employment is a scheduled employment. Construction of Buildings, Roads, Runways are scheduled employments.
- h) Payment of Wages Act 1936: It lays down as to by what date the wages are to be paid, when it will be paid and what deductions can be made from the wages of the workers.
- i) Equal Remuneration Act 1979: The Act provides for payment of equal wages for work of equal nature to Male and Female workers and for not making discrimination against Female employees in the matters of transfers, training and promotions etc.
- j) Payment of Bonus Act 1965: The Act is applicable to all establishments employing 20 or more employees. The Act provides for payments of annual bonus subject to a minimum of 8.33% of wages and maximum of 20% of wages to employees drawing Rs. 3500/- per month or less. The bonus is to be paid to employees getting Rs. 2500/- per month or above upto Rs. 3500/- per month shall be worked out by taking wages as Rs. 2500/- per month only. The Act does not apply to certain establishments. The newly set-up establishments are exempted for five years in certain circumstances. Some of the State Governments have reduced the employment size from 20 to 10 for the purpose of applicability of this Act.
- k) Industrial Dispute Act 1947: the Act lays down the machinery the procedure for resolution of Industrial disputes, in what situations a strike or lock-out becomes illegal and what are the requirements for laying off or retrenching the employees or closing down the establishment.
- l) Industrial Employment (Standing Orders) Act 1946: It is applicable to all establishments employing 100 or more workmen (employment size reduced by some of the States and Central Government to 50). The Act provides for laying down rules governing the conditions of employment by the Employer on matters provided in the Act and get the same certified by the designated Authority.
- m) Trade Unions Act 1926: The Act lays down the procedure for registration of trade unions of workmen and employers. The Trade Unions registered under the Act have been given certain immunities from civil and criminal liabilities.
- n) Child Labour (Prohibition & Regulation) Act 1986: The Act prohibits employment of children below 14 years of age in certain occupations and processes and provides for regulation of employment of children in all other occupations and processes. Employment of Child Labour is prohibited in Building and Construction Industry.
- o) Inter-State Migrant workmen's (Regulation of Employment & Conditions of Service Act 1979): The Act is applicable to an establishment which employs 5 or more inter-

state migrant workmen through an intermediary (who has recruited workmen in one state for employment in the establishment situated in another state). The Inter-State migrant workmen, in an establishment to which this Act becomes applicable, are required to be provided certain facilities such as housing, medical aid, traveling expenses from home upto the establishment and back, etc.

- p) The Building and Other Construction workers (Regulation of Employment and Conditions of Service) Act 1996 and the Cess Act of 1996 :All the establishments who carry on any building or other construction work and employ 10 or more workers are covered under this Act. All such establishments are required to pay cess at the rate not exceeding 2% of the cost of construction as may be modified by the Government. The Employer of the establishment is required to provide safety measures at the Building or construction work and other welfare measures, such as Canteens, First-Aid facilities, Ambulance, Housing accommodations for workers near the work place etc. The Employer to whom the Act applies has to obtain a registration certificate from the Registering Officer appointed by the government.
- q) Factories Act 1948: The Act lays down the procedure for approval at plans before setting up a factory, health and safety provisions, welfare provisions, working hours, annual earned leave and rendering information regarding accidents or dangerous occurrences to designated authorities. It is applicable to premises employing 10 persons or more with aid of power or 20 or more persons without the aid of power engaged in manufacturing process.

22.3 Contractor's Equipment

- 22.3.1 All Contractor's Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without the Project Manager's consent that such Contractor's Equipment is no longer required for the execution of the Contract.
- 22.3.2 Unless otherwise specified in the Contract, upon completion of the Facilities, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.
- 22.3.3 The Employer will, if requested, use its best endeavors to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.
- 22.3.4 All equipment used in construction and erection by Contractor shall meet Indian/International Standards and where such standards do not exist, the Contractor shall ensure these to be absolutely safe. All equipment shall be strictly operated and maintained by the Contractor in accordance with manufacturer's Operation Manual and safety instructions and as per Guidelines/rules of Employer in this regard.
- 22.3.6 Periodical examinations and all tests for all lifting/hoisting equipment & tackles shall be carried-out in accordance with the relevant provisions of Factories Act 1948, Indian Electricity Act 1910, Electricity Act 2003 and associated Laws/Rules in force from time to time. A register of such examinations and tests shall be properly maintained by the

Contractor and will be promptly produced as and when desired by the Engineer or by the person authorized by him.

22.4 Site Regulations and Safety

The Employer and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Employer, with a copy to the Project Manager, proposed Site regulations for the Employer's approval, which approval shall not be unreasonably withheld.

Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Facilities, gate control, sanitation, medical care, and fire prevention.

22.5 Opportunities for Other Contractors

22.5.1 The Contractor shall, upon written request from the Employer or the Project Manager, give all reasonable opportunities for carrying out the work to any other contractors employed by the Employer on or near the Site.

22.5.2 If the Contractor, upon written request from the Employer or the Project Manager, makes available to other contractors any roads or ways for the maintenance of which the Contractor is responsible, permits the use by such other contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other contractors, the Employer shall fully compensate the Contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and shall pay to the Contractor reasonable remuneration for the use of such equipment or the provision of such services.

22.5.3 The Contractor shall also so arrange to perform its work as to minimize, to the extent possible, interference with the work of other contractors. The Project Manager shall determine the resolution of any difference or conflict that may arise between the Contractor and other contractors and the workers of the Employer in regard to their work.

22.5.4 The Contractor shall notify the Project Manager promptly of any defects in the other contractors' work that come to its notice, and that could affect the Contractor's work. The Project Manager shall determine the corrective measures, if any, required to rectify the situation after inspection of the Facilities. Decisions made by the Project Manager shall be binding on the Contractor.

22.6 Emergency Work

If, by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Facilities, the Contractor shall immediately carry out such work.

If the Contractor is unable or unwilling to do such work immediately, the Employer may do or cause such work to be done as the Employer may determine is necessary in order to prevent damage to the Facilities. In such event the Employer shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons therefor. If the work done or caused to be done by the Employer is work that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Employer in connection

therewith shall be paid by the Contractor to the Employer. Otherwise, the cost of such remedial work shall be borne by the Employer.

22.7 Site Clearance

22.7.1 Site Clearance in Course of Performance: In the course of carrying out the Contract, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any Contractor's Equipment no longer required for execution of the Contract.

22.7.2 Clearance of Site after Completion: After Completion of all parts of the Facilities, the Contractor shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site and Facilities in a clean and safe condition.

22.8 Watching and Lighting

The Contractor shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Facilities, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.

22.8 Protection of Environment

The Contractor shall take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as consequence of his methods of operation.

During continuance of the Contract, the Contractor and his Sub-contractors shall abide at all times by all existing enactments on environmental protection and rules made there under, regulations, notifications and bye-laws of the State or Central Government, or local authorities and any other law, bye-law, regulations that may be passed or notification that may be issued in this respect in future by the State or Central Government or the local authority.

Salient features of some of the major laws that are applicable are given below:

The Water (Prevention and Control of Pollution) Act, 1974, This provides for the prevention and control of water pollution and the maintaining and restoring of wholesomeness of water. 'Pollution' means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.

The Air (Prevention and Control of Pollution) Act, 1981, This provides for prevention, control and abatement of air pollution. 'Air Pollution' means the presence in the atmosphere of any 'air pollutant', which means any solid, liquid or gaseous substance

(including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.

The Environment (Protection) Act, 1986, This provides for the protection and improvement of environment and for matters connected therewith, and the prevention of hazards to human beings, other living creatures, plants and property. 'Environment' includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.

The Public Liability Insurance Act, 1991, This provides for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling hazardous substances and for matters connected herewith or incidental thereto. Hazardous substance means any substance or preparation which is defined as hazardous substance under Environment (Protection) Act, 1986, and exceeding such quantity as may be specified by notification by the Central Government.

23. Test and Inspection

- 23.1 The contractor shall give Employer reasonable notice in writing, at least 15 days in advance, of the date and the place at which Plant and any part of the Facilities will be ready for testing and/or inspection as provided in the contract. The Employer shall attend at the place so named otherwise grant waiver of inspection on receipt of satisfactory work's test reports from the Contractor.
- 23.2 No Plant may be despatched and delivered to site without Employer's written permission in the form of "Test Certificate approval and Despatch Clearance"
- 23.3 The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Plant and any part of the Facilities as are specified in the Contract.
- 23.4 The Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Employer shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 23.5 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third Party or manufacturer any necessary permission or consent to enable the Employer and the Project Manager or their designated representatives to attend the test and/or inspection.
- 23.6 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.

If the Employer or Project Manager or their designated representatives fails to attend the test and/or inspection, or if it is agreed between the Parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.

23.7 The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.

23.8 If any Plant or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GCC Sub-Clause 23.3.

In case of Power Transformers, it may be noted that the guaranteed losses shall not exceed the maximum ceiling limit for transformer losses. During final testing if the measured losses (No Load Loss and Load loss including Stray Losses plus Auxiliary Losses i.e total losses – no load losses) exceeds the maximum ceiling limit for transformer losses as specified in Section-III of Volume-I, the transformer shall be rejected.

23.9 If any dispute or difference of opinion shall arise between the Parties in connection with or arising out of the test and/or inspection of the Plant or part of the Facilities that cannot be settled between the Parties within a reasonable period of time, it may be referred to a Arbitrator for determination in accordance with GCC Sub-Clause 45.

23.10 The Contractor shall afford the Employer and the Project Manager, at the Employer's expense, access at any reasonable time to any place where the Plant are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor a reasonable prior notice.

23.11 The Contractor agrees that neither the execution of a test and/or inspection of Plant or any part of the Facilities, nor the attendance by the Employer or the Project Manager, nor the issue of any test certificate pursuant to GCC Sub-Clause 23.4, shall release the Contractor from any other responsibilities under the Contract.

23.12 No part of the Facilities or foundations shall be covered up on the Site without the Contractor carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable notice to the Project Manager whenever any such parts of the Facilities or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.

23.13 The Contractor shall uncover any part of the Facilities or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.

If any parts of the Facilities or foundations have been covered up at the Site after compliance with the requirement of GCC Sub-Clause 23.10 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Employer, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has

thereby been delayed or impeded in the performance of any of its obligations under the Contract.

24. Completion of the Facilities

- 24.1 As soon as the Facilities or any part thereof has, in the opinion of the Contractor, been completed operationally and structurally and put in a tight and clean condition as specified in the Employer's Requirements, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Employer in writing.
- 24.2 Within seven (7) days after receipt of the notice from the Contractor under GCC Sub-Clause 24.1, the Project Manager shall supply the operating and maintenance personnel specified in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer for Pre-commissioning of the Facilities or any part thereof.
- 24.3 As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the Employer and the other materials, have been provided by the Employer in accordance with GCC Sub-Clause 24.2, the Contractor shall commence Pre-commissioning of the Facilities or the relevant part thereof in presence of the Employer's representatives, as per procedures detailed in Technical Specifications in preparation for Commissioning.
- 24.4 As soon as all works in respect of Pre-commissioning are completed and, in the opinion of the Contractor, the Facilities or any part thereof is ready for Commissioning, the Contractor shall so notify the Project Manager in writing.
- 24.5 The Project Manager shall, within thirty (30) days after receipt of the Contractor's notice under GCC Sub-Clause 24.4, notify the Contractor in writing of any defects and/or deficiencies.

If the Project Manager notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies, and shall repeat the procedure described in GCC Sub-Clause 24.4.

If the Project Manager is satisfied that the Facilities or that part thereof have reached Completion, the Project Manager shall, within seven (7) days after receipt of the Contractor's repeated notice, issue a Completion Certificate stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's repeated notice.

If the Project Manager is not so satisfied, then it shall notify the Contractor in writing of any defects and/or deficiencies within seven (7) days after receipt of the Contractor's repeated notice, and the above procedure shall be repeated.

- 24.6 If the Project Manager fails to issue the Completion Certificate and fails to inform the Contractor of any defects and/or deficiencies within thirty (30) days after receipt of the Contractor's notice under GCC Sub-Clause 24.4 or within seven (7) days after receipt of the Contractor's repeated notice under GCC Sub-Clause 24.5, or if the Employer makes use of the Facilities or part thereof, then the Facilities or that part thereof shall be deemed to have reached Completion as of the date of the Contractor's notice or repeated notice, or as of the Employer's use of the Facilities, as the case may be.

24.7 Within three months after Completion, the Contractor shall complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Contract, failing which the Employer will undertake such completion and deduct the costs thereof from any monies owing to the Contractor. In case, work is completed and commissioned within contractual time for completion but some of the work remains balance for completion then in such a case, liquidated damages for delay in completion of these works shall be applicable after a period of three months at the prescribed rate specified in clause 26.2 on the cost of left out works.

25. Commissioning and Operational Acceptance

25.1 Commissioning

25.1.1 Commissioning of the Facilities or any part thereof shall be commenced by the Contractor immediately after issue of the Completion Certificate by the Project Manager, pursuant to GCC Sub-Clause 24.5, or immediately after the date of the deemed Completion, under GCC Sub-Clause 24.6.

25.1.2 In accordance with the requirements of the Contract, the Contractor's and Project Manager's advisory personnel shall attend the Commissioning, including the Guarantee Test, and shall advise and assist the Employer.

25.2 Trial – Operation

25.2.1 Trial – Operation of the Facilities or any part thereof shall be commenced by the Contractor immediately after the Commissioning is completed pursuant to GCC Sub-Clause 25.1.1.

25.2.2 Trial – Operation of the Facilities or any part thereof shall be completed by the Contractor for the period specified in Technical Specification (or for a continuous period of 24 hours where such period is not specified in Technical Specification) and as per procedures detailed in Technical Specifications.

25.2.3 At any time after the events set out in GCC Sub-Clause 25.2.2 have occurred, the Contractor may give a notice to the Project Manager requesting the issue of an Taking Over Certificate in the form provided in the Bidding Documents or in another form acceptable to the Employer in respect of the Facilities or the part thereof specified in such notice as of the date of such notice.

25.2.4 The Project Manager shall within twenty-one (21) days after receipt of the Contractor's notice, issue an Taking Over Certificate.

25.3 Taking Over

25.3.1 Upon successful Trial – Operation of the Facilities or any part thereof, pursuant to GCC Sub-Clause 25.2, the Project Manager shall issue to the Contractor a Taking Over Certificate as a proof of the acceptance of the Facilities or any part thereof. Such certificate shall not relieve the Contractor of any of his obligations which otherwise survive, by the terms and conditions of Contract after issue of such certificate.

25.3.2 If within twenty one (21) days after receipt of the Contractor's notice, the Project Manager fails to issue the Taking Over Certificate or fails to inform the Contractor in

writing of the justifiable reasons why the Project Manager has not issued the Taking Over Certificate, the Facilities or the relevant part thereof shall be deemed to have been Taken Over as at the date of the Contractor's said notice.

25.3.3 Upon Taking Over of the Facilities or any part thereof, the Employer shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof.

25.4 Guarantee Test

25.4.1 The Guarantee Test and repeats thereof shall be conducted by the Contractor during Commissioning of the Facilities or the relevant part thereof to ascertain whether the Facilities or the relevant part can attain the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees or if otherwise required as per the Technical Specifications. The Contractor's and Project Manager's advisory personnel may witness the Guarantee Test. The Contractor shall promptly provide the Employer with such information as the Employer may reasonably require in relation to the conduct and results of the Guarantee Test (and any repeats thereof).

25.4.2 If for reasons not attributable to the Contractor, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the time stipulated in the Technical Specifications the period for completing the same shall be as agreed upon by the Employer and the Contractor.

25.3 Operational Acceptance

25.3.1 Operational Acceptance shall occur in respect of the Facilities or any part thereof as mentioned below:

- (I) In case no Functional Guarantees are applicable, Operational Acceptance shall occur when the Facilities or part thereof have been successfully Commissioned and Trial – Operation for the specified period have been successfully completed.
- (II) In case Functional Guarantees are applicable, Operational Acceptance shall occur when the Functional Guarantees are met or the Contractor has paid liquidated damages specified in GCC Sub-Clause 28.3 hereof; or

25.3.2 At any time after any of the events set out in GC Sub-Clause 25.3.1 has occurred, the Contractor may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate in the form provided in the Bidding Documents or in another form acceptable to the Employer in respect of the Facilities or the part thereof specified in such notice as of the date of such notice.

25.3.3 The Project Manager within twenty-one (21) days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.

25.3.4 Upon Operational Acceptance, pursuant to GCC Sub-Clause 25.3.2, the Project Manager shall issue to the Contractor a Operational Acceptance Certificate as a proof of the final acceptance of the Plant and Equipment. Such certificate shall not relieve the Contractor of any of his obligations which otherwise survive, by the terms and conditions of Contract after issue of such certificate.

25.3.5 If within twenty-one (21) days after receipt of the Contractor's notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Facilities or the relevant part thereof shall be deemed to have been accepted as of the date of the Contractor's said notice.

25.4 Partial Acceptance

25.4.1 If the Contract specifies that Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Commissioning including the Trial – Operation and Guarantee Test shall apply to each such part of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.

F. Guarantees and Liabilities

26. Completion Time Guarantee

26.1 The Contractor guarantees that it shall attain Completion of the (or a part for which a separate time for completion is specified) within the Time for Completion specified in the Appendix 4 of the contract agreement, or within such extended time to which the Contractor shall be entitled under GC Clause 40 hereof.

26.2 If the Contractor fails to attain Completion of the Facilities or any part thereof within the Time for Completion or any extension thereof under GC Clause 40, the Contractor shall pay to the Employer liquidated damages @ 0.5% of the total contract price of work per week or part thereof subject to maximum of 10% of the contract price of that particular work which shall be deducted from the contractor's R.A. bills of that work. Once the "Maximum" i.e. 10% is reached, the Employer may consider termination of the Contract, pursuant to GC Sub-Clause 42.2.2. Further, GST, applicable as per prevailing rates, on amount of Liquidated damages shall also be recovered from the contractor.

26.3 On completion of work, the contract price will stand modified to "Actual value of work done" and accordingly penalty and Performance Bank Guarantee shall be adjusted.

26.4 It may be noted that if the sum of applicable Liquidated Damages or any other liabilities exceeds the balance amount due for payment to the contractor for the work, then in such case, the same shall be recovered from the pending bills of the other works and in case, if some amount still remains to be recovered, the same shall be recovered from the Bank Guarantee available with Employer towards Advance Payment Guarantee/ Retention Money Guarantee/ Performance Guarantee.

26.5 Such payment shall completely satisfy the Contractor's obligation to attain Completion of the Facilities or the relevant part thereof within the Time for Completion or any extension thereof under GC Clause 40. The Contractor shall have no further liability whatsoever to the Employer in respect thereof.

However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Facilities or from any other obligations and liabilities of the Contractor under the Contract.

Save for liquidated damages payable under this GC Sub-Clause 26.2, the failure by the Contractor to attain any milestone or other act, matter or thing by any date specified in the Appendix to the Contract Agreement titled Time Schedule, and/or other program of work prepared pursuant to GC Sub-Clause 18.2 shall not render the Contractor liable for any loss or damage thereby suffered by the Employer.

27. Defect Liability

27.1 The contractor warrants that the facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Plant supplied and of the work executed.

27.2 The Defect Liability Period in respect of the facilities (or, where Operational Acceptance of any part of the Facilities occurs, of such part) shall commence upon the date of Operational Acceptance and expire sixty (60) months thereafter.

If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Plant supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good as the Contractor shall determine at its discretion, such defect as well as any damage to the Facilities caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Facilities arising out of or resulting from any of the following causes:

- (a) Improper operation or maintenance of the Facilities by the Employer;
- (b) Operation of the Facilities outside Specifications provided in the Contract; or
- (c) Normal wear and tear.

27.3 The Contractor's obligations under this GC Clause 27 shall not apply to:

- (a) any materials that are supplied by the Employer under GC Sub-Clause 21.2, are normally consumed in operation, or have a normal life shorter than the Defect Liability Period stated herein;
- (b) any designs, Specifications or other data designed supplied or specified by or on behalf of the Employer or any matters for which the Contractor has disclaimed responsibility herein; or
- (c) any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GC Sub-Clause 27.7.

27.4 The Employer shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Employer shall afford all reasonable opportunity for the Contractor to inspect any such defect.

27.5 The Employer shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this GC Clause 27.

The Contractor may, with the consent of the Employer, remove from the Site any Plant or any part of the Facilities that are defective if the nature of the defect, and/or any damage

to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.

- 27.6 If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Employer may give to the Contractor a notice requiring that tests of the defective part of the Facilities shall be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such tests.

If such part fails the tests, the Contractor shall carry out further repair, replacement or making good, as the case may be, until that part of the Facilities passes such tests. The tests shall be agreed upon by the Employer and the Contractor.

- 27.7 If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Facilities caused by such defect within a reasonable time (which shall in no event be considered to be less than fourteen (14) days), the Employer may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Employer in connection therewith shall be paid to the Employer by the Contractor or may be deducted by the Employer from any monies due the Contractor or claimed under the Performance Security.

- 27.8 If any major defect is made good under this GC 27, the Defect Liability Period for the item which has been made good shall extend for a period of twelve (12) months. However, in no event shall the Defect Liability Period extend beyond seventy two (72) months after the date of Operational Acceptance of the Plant or the relevant part thereof. Further, the outage period of the equipment/material (elapsed between date of notice of operational problem and date of commissioning after rectification of problem) shall be added to such extended guarantee period.

- 27.9 Except as provided in GC Clauses 27 and 33, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Facilities or any part thereof, the Plant, design or engineering or work executed that appear after Completion of the Facilities or any part thereof, except where such defects are the result of fraud, or criminal or willful action of the Contractor.

28. Functional Guarantees

- 28.1 The Contractor guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the Functional Guarantees specified in the Technical Specifications, subject to and upon the conditions therein specified.

- 28.2 If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees specified in the Technical Specifications, are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications and/or additions to the Plant or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Employer upon completion of the necessary changes, modifications and/or additions, and shall request the Employer to repeat the Guarantee Test until the minimum level of the Guarantees has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Employer may consider termination of the Contract, pursuant to GC Sub-Clause 42.2.2.

- 28.3 If, for reasons attributable to the Contractor, the Functional Guarantees specified in the Technical Specifications, are not attained either in whole or in part, but the minimum level of the Functional Guarantees specified in the Technical Specifications is met, the Contractor shall, at the Contractor's option, either:
- (a) make such changes, modifications and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Employer to repeat the Guarantee Test; or
 - (b) pay liquidated damages to the Employer in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the Technical Specifications.
- 28.4 The payment of liquidated damages under GC Sub-Clause 28.3 shall completely satisfy the Contractor's guarantees under GC Sub-Clause 28.3, and the Contractor shall have no further liability whatsoever to the Employer in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid.

29. Patent Indemnity

- 29.1 The Contractor shall, subject to the Employer's compliance with GC Sub-Clause 29.2, indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Employer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: (a) the installation of the Facilities by the Contractor or the use of the Facilities in the country where the Site is located; and (b) the sale of the products produced by the Facilities in any country.

Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Facilities or any part thereof, or any products produced thereby in association or combination with any other equipment, plant or materials not supplied by the Contractor, pursuant to the Contract Agreement.

- 29.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in GC Sub-Clause 29.1, the Employer shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

- 29.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Employer.

30. Limitation of Liability

30.1 Except in cases of criminal negligence or willful misconduct:

- (a) neither Party shall be liable to the other Party, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, which may be suffered by the other Party in connection with the Contract, other than specifically provided as any obligation of the Party in the Contract; and
- (b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

G. Risk Distribution

31. Transfer of Ownership

- 31.1 Ownership of the Plant (including spare parts) to be imported into the country where the Site is located shall be transferred to the Employer upon loading on to the mode of transport to be used to convey the Plant from the country of origin to that country.
- 31.2 Ownership of the Plant (including spare parts) procured in the country where the Site is located shall be transferred to the Employer when the Plant are brought on to the Site.
- 31.3 Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.
- 31.4 Ownership of any Plant in excess of the requirements for the Facilities shall revert to the Contractor upon Operational Acceptance or at such earlier time when the Employer and the Contractor agree that the Plant in question are no longer required for the Facilities provided quantity of any Plant and Equipment specifically stipulated in the Contract shall be the property of the Employer whether or not incorporated in the Facilities.

31.5 Notwithstanding the transfer of ownership of the Plant, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GC Clause 32 (Care of Facilities) hereof until Operational Acceptance of the Facilities or the part thereof in which such Plant are incorporated.

32. Care of Facilities

32.1 The Contractor shall be responsible for the care and custody of the Facilities or any part thereof until the date of Operational Acceptance of the Facilities pursuant to GC Clause 25 or, where the Contract provides for Operational Acceptance of the Facilities in parts, until the date of Operational Acceptance of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Facilities caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to GC Clause 27. Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GC Sub-Clauses 32.2 and 38.1.

33. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification

33.1 Subject to GC Sub-Clause 33.3, the Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the of any person or loss of or damage to any property other than the Facilities whether accepted or not, arising in connection with the supply and installation of the Facilities and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Employer, its contractors, employees, officers or agents.

33.2 If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under GC Sub-Clause 33.1, the Employer shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

33.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from any liability for loss of or damage to property of the Employer, other than the Facilities not yet taken over, that is caused by fire, explosion or

any other perils, in excess of the amount recoverable from insurances procured under GC Clause 34.

- 33.4 The Party entitled to the benefit of an indemnity under this GC Clause 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the Party fails to take such measures, the other Party's liabilities shall be correspondingly reduced.

34. Insurance

- 34.1 To the extent specified in the Appendix to the Contract Agreement titled Insurance Requirements, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix.

The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval.

(a) Cargo Insurance During Transport

Covering loss or damage occurring while in transit from the Contractor's or Subcontractor's works or stores until arrival at the Site, to the Plant (including spare parts there for) and to the Contractor's Equipment.

(b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to Operational Acceptance of the Facilities, with extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defect Liability Period while the Contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period.

(c) Third Party Liability Insurance

Covering bodily injury or death suffered by third Parties including the Employer's Personnel, and loss of or damage to property occurring in connection with the supply and installation of the Facilities.

(d) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Subcontractors, whether or not owned by them, in connection with the execution of the Contract.

(e) Workers' Compensation

In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

(f) Employer's Liability

In accordance with the statutory requirements applicable.

(g) Other Insurances

Such other insurances as may be specifically agreed upon by the parties hereto as listed in the appendix to the contract agreement titled Insurance requirements.

- 34.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 34.1, except for the Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 34.1 except for the Cargo Insurance During Transport, Workers' Compensation and Employer's Liability Insurances. All insurer's rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.
- 34.3 The Contractor shall, in accordance with the provisions of the Appendix to the Contract Agreement titled Insurance Requirements, deliver to the Employer certificates of insurance or copies of the insurance policies as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.
- 34.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.
- 34.5 The Employer shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in the Appendix to the Contract Agreement titled Insurance Requirements, in the sums and with the deductibles and other conditions specified in the said Appendix. The Contractor and the Contractor's Subcontractors shall be named as co-insured under all such policies. All insurers' rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Employer shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than twenty-one (21) days' notice shall be given to the Contractor by all insurers prior to any cancellation or material modification of the policies. If so requested by the Contractor, the Employer shall provide copies of the policies taken out by the Employer under this GC Sub-Clause 34.5.
- 34.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GC Sub-Clause 34.1, the Employer may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that the Employer shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor. If the Employer fails to take out and/or maintain in effect the insurances referred to in GC 34.5, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Employer under the Contract any premium that the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Employer. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or

responsibility towards the Employer, and the Contractor shall have full recourse against the Employer for any and all liabilities of the Employer herein.

- 34.7 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GC Clause 34, and all monies payable by any insurers shall be paid to the Contractor. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.

35. Unforeseen Conditions

- 35.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions other than climatic conditions, or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced Contractor on the basis of reasonable examination of the data relating to the Facilities including any data as to boring tests, provided by the Employer, and on the basis of information that it could have obtained from a visual inspection of the Site if access thereto was available, or other data readily available to it relating to the Facilities, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Plant or Contractor's Equipment, notify the Project Manager in writing of:
- (a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen;
 - (b) the additional work and/or Plant and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions;
 - (c) the extent of the anticipated delay; and
 - (d) the additional cost and expense that the Contractor is likely to incur.

On receiving any notice from the Contractor under this GC Sub-Clause 35.1, the Project Manager shall promptly consult with the Employer and Contractor to decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.

- 35.2 Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GC Sub-Clause 35.1 shall be paid by the Employer to the Contractor as an addition to the Contract Price.

If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GC Sub-Clause 35.1, the Time for Completion shall be extended in accordance with GC Clause 40.

36. Change in Laws and Regulations

If, after the date twenty-eight (28) days prior to the date of Bid submission, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed which shall be deemed to include any change in interpretation or application by the competent authorities, that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract.

Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable.

37. Force Majeure

37.1 “Force Majeure” shall mean any event beyond the reasonable control of the Employer or of the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the Party affected, and shall include, without limitation, the following:

- (a) war, hostilities or warlike operations whether a state of war be declared or not, invasion, act of foreign enemy and civil war;
- (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts;
- (c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority;
- (d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague;
- (e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster; and
- (f) Shortage of labor, materials or utilities where caused by circumstances that are themselves Force Majeure.

37.2 If either Party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the Party became or should have become aware of the occurrence of such event.

- 37.3 The Party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such Party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GC Clause 40.
- 37.4 The Party or Parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either Party's right to terminate the Contract under GC Sub-Clauses 37.6 and 38.5.
- 37.5 No delay or nonperformance by either Party hereto caused by the occurrence of any event of Force Majeure shall:
- (a) constitute a default or breach of the Contract, or
 - (b) Give rise to any claim for damages or additional cost or expense occasioned thereby, subject to GC Sub-Clauses 32.2, 38.3 and 38.4.
- 37.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other, but without prejudice to either Party's right to terminate the Contract under GC Sub-Clause 38.5.
- 37.7 In the event of termination pursuant to GC Sub-Clause 37.6, the rights and obligations of the Employer and the Contractor shall be as specified in GC Sub-Clauses 42.1.2 and 42.1.3.
- 37.8 Notwithstanding GC Sub-Clause 37.5, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein.

38. War Risks

- 38.1 "War Risks" shall mean any event specified in paragraphs (a) and (b) of GC Sub-Clause 37.1 and any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war, occurring or existing near the country.
- 38.2 Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to:
- (a) Destruction of or damage to Facilities, Plant, or any part thereof;
 - (b) destruction of or damage to property of the Employer or any third Party; or
 - (c) injury or loss of life,

if such destruction, damage, injury or loss of life is caused by any War Risks, and the Employer shall indemnify and hold the Contractor harmless from and against any and all

claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.

38.3 If the Facilities or any Plant or Contractor's Equipment or any other property of the Contractor used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any War Risks, the Employer shall pay the Contractor for:

- (a) any part of the facilities or the plant so destroyed or damaged to the extent not already paid for by the Employer;
- (b) Replacing or making good any Contractor's equipment or other property of the Contractor so destroyed or damaged;
- (c) Replacing or making good any such destruction or damage to the facilities or the Plant or any part thereof;

and so far as may be required by the Employer, and as may be necessary for completion of the Facilities.

If the Employer does not require the Contractor to replace or make good any such destruction or damage to the Facilities, the Employer shall either request a change in accordance with GC Clause 39, excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to GC Sub-Clause 42.1.

If the Employer requires the Contractor to replace or make good on any such destruction or damage to the Facilities, the Time for Completion shall be extended in accordance with GC Clause 40.

38.4 Notwithstanding anything contained in the Contract, the employer shall pay the contractor for any increased costs or incidentals to the execution of the Contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any War Risks, at mutually agreed rates provided that the Contractor shall as soon as practicable notify the employer in writing of any such increased cost.

38.5 If during the performance of the Contract any War Risks shall occur that financially or otherwise materially affect the execution of the Contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any War Risks, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other.

38.6 In the event of termination pursuant to GC Sub-Clauses 38.3 or 38.5, the rights and obligations of the Employer and the Contractor shall be specified in GC Sub-Clauses 42.1.2 and 42.1.3.

H. Change in Contract Elements

39. Change in the Facilities

39.1 Introducing a Change

- 39.1.1 Subject to GC Sub-Clauses 39.2.5 and 39.2.7, the Employer shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Facilities hereinafter called "Change", provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract.
- 39.1.2 The Contractor may from time to time during its performance of the Contract propose to the Employer with a copy to the Project Manager, any Change that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Facilities or which is necessitated by reason of any act, omission or breach of the Contract by the Employer or its contractors of any tier. The Employer may at its discretion approve or reject any Change proposed by the Contractor, provided that the Employer shall approve any Change necessitated by reason of any act, omission or breach of the Contract by the Employer or its contractors of any tier or proposed by the Contractor to ensure the safety of the Facilities.
- 39.1.3 Notwithstanding GC Sub-Clauses 39.1.1 and 39.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.
- 39.1.4 The procedure on how to proceed with and execute Changes is specified in GC Sub-Clauses 39.2 and 39.3, and further details and forms are provided in the Employer's Requirements (Forms and Procedures).
- 39.1.5 (a) The quantities for supply of various items of plant and installation activities indicated in the price schedule are only provisional and are for comparison purpose. The final quantities will be known at the time of execution of works. Thus these are only provisional quantities and will vary during actual execution of works. The Contractor must execute the work based on actual quantities at the same rates and terms and conditions as accepted by the purchaser.
- (b) The Employer reserves the right to increase or decrease up to 15% (Fifteen percent only) of total contract price and consequent change in the quantity of Plant & installation services specified without any change in unit price or other terms & conditions during the execution of the contract. However, the quantities of the individual items and services of the works covered under the contract may vary upto any extent and payment will be allowed as per actual quantities supplied and as per actual work done as per approved profile of transmission lines and as per approved layout of substations within the awarded contract Price. However in case total payment against the contract exceeds contract Price the proposal for revision of contract Price will be submitted by the contractor to Project Manager of MPPTCL

and the order revision will be communicated by order placing authority of the Employer.

- (c) The contractor will be required to submit proposal for revision of contract value based on final requirement of towers and classification of foundations based on actual site conditions immediately after classification of all foundations for approval of the Employer. The proposal will be submitted to the Project Manager appointed by the employer.
- (d) The employer will examine the proposal submitted by the contractor and convey decision for revision of order provided the revised commitment is within 15% of the contract value. In case if the commitment exceeds 15% of the contract value, proposal submitted by the contractor will be examined by the Employer and decision will be conveyed to the contractor at the earliest after obtaining competent approval. However, the work shall not be held up by the contractor for want of revision of order value.

39.2 Changes Originating from the Employer

39.2.1 If the Employer proposes a Change pursuant to GC Sub-Clause

39.1.1, it shall send to the Contractor a "Request for Change Proposal," requiring the Contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a "Change Proposal," which shall include the following:

- (a) Brief description of the Change;
- (b) effect on the Time for Completion;
- (c) estimated cost of the Change;
- (d) effect on Functional Guarantees (if any);
- (e) effect on the Facilities; and
- (f) effect on any other provisions of the Contract.

39.2.2 Prior to preparing and submitting the "Change Proposal," the Contractor shall submit to the Project Manager an "Estimate for Change Proposal," which shall be an estimate of the cost of preparing and submitting the Change Proposal.

Upon receipt of the Contractor's Estimate for Change Proposal, the Employer shall do one of the following:

- (a) Accept the contractor's estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal;
- (b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review its estimate; or
- (c) advise the Contractor that the Employer does not intend to proceed with the Change.

39.2.3 Upon receipt of the Employer's instruction to proceed under GC Sub-Clause 39.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GC Sub-Clause 39.2.1.

39.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the Parties thereto shall agree on specific rates for the valuation of the Change.

39.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Contractor under this GC Clause 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement by more than fifteen percent (15%), the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Employer accepts the Contractor's objection, the Employer shall withdraw the proposed Change and shall notify the Contractor in writing thereof.

The Contractor's failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.

39.2.6 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a Change order

If the Employer is unable to reach a decision within fourteen (14) days, it shall notify the Contractor with details of when the Contractor can expect a decision.

If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with GC Sub-Clause 39.2.2.

39.2.7 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Employer may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order."

Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such Order. The Parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.

If the Parties cannot reach agreement within sixty (60) days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Dispute Board in accordance with the provisions of GC Sub-Clause 45.3.

39.3 Changes Originating from Contractor

If the Contractor proposes a Change pursuant to GC Sub-Clause 39.1.2, the Contractor shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GC Sub-Clause 39.2.1.

Upon receipt of the Application for Change Proposal, the Parties shall follow the procedures outlined in GC Sub-Clauses 39.2.6 and 39.2.7. However, should the Employer choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.

40. Extension of Time for Completion

40.1 The Time(s) for Completion specified in the Appendix-4 of the contract agreement shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the contract by reason of any of the following:

- (a) any Change in the Facilities as provided in GC Clause 39;
- (b) any occurrence of Force Majeure as provided in GC Clause 37, unforeseen conditions as provided in GC Clause 35, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GC Sub-Clause 32.2;
- (c) any suspension order given by the Employer under GC Clause 41 hereof or reduction in the rate of progress pursuant to GC Sub-Clause 41.2;
- (d) any changes in laws and regulations as provided in GC Clause 36;
- (e) any default or breach of the Contract by the Employer, or any activity, act or omission of the Employer, or the Project Manager, or any other contractors employed by the Employer;
- (f) any delay on the part of a Subcontractor, provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under this sub-clause;
- (g) delays attributable to the Employer or caused by customs; or
- (h) Delay in providing legal and physical possession of the Site and access there to, and for providing possession of and access to all other areas reasonably required for the proper execution of the contract, including all requisite rights of way in accordance with GCC Clause 10.2 or any other matter specifically mentioned in the Contract;

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

In this respect the Parties hereby expressly agree that it shall be fair and reasonable to extend the Time for Completion irrespective of any delaying factors attributable to the Contractor which operate or operated concurrently with any of the factors mentioned in (a) to (h) of this GC 40.1.

40.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the

claim, the Employer and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to a Dispute Board, pursuant to GC Sub-Clause 45.3.

The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

In all cases where the Contractor has given a notice of a claim for an extension of time under this GC Sub-Clause 40.2, the Contractor shall consult with the Project Manager in order to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Contractor shall there after comply with all reasonable instructions which the Project Manager shall give in order to minimize such delay. If compliance with such instructions shall cause the Contractor to incur extra costs and the Contractor is entitled to an extension of time under GC Sub-Clause 40.1, the amount of such extra costs shall be added to the Contract Price.

41. Suspension

41.1 The employer may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefor. The Contractor shall thereupon suspend performance of such obligation, except those obligations necessary for the care or preservation of the Facilities, until ordered in writing to resume such performance by the Project Manager.

If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Employer shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GC Clause 39, excluding the performance of the suspended obligations from the Contract.

If the Employer fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with GC Clause 39 or, where it affects the whole of the Facilities, as termination of the Contract under GC Sub-Clause 42.1.

41.2 If

(a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix to the Contract Agreement titled Terms and Procedures of Payment, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take

steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice, or

- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas in accordance with GC Sub-Clause 10.2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities, then the Contractor may by notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

41.3 If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GC Clause 41, then the Time for Completion shall be extended in accordance with GC Sub-Clause 40.1, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.

41.4 During the period of suspension, the Contractor shall not remove from the Site any Plant, any part of the Facilities or any Contractor's Equipment, without the prior written consent of the Employer.

42. Termination

42.1 Termination for Employer's Convenience

42.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GC Sub-Clause 42.1.

42.1.2 Upon receipt of the notice of termination under GC Sub-Clause 42.1.1, the Contractor shall either immediately or upon the date specified in the notice of termination:

- (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition;
- (b) Terminate all subcontracts, except those to be assigned to the employer pursuant to paragraph (d) (ii) below;
- (c) remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition; and
- (d) subject to the payment specified in GC Sub-Clause 42.1.3,
 - (i) Deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination;
 - (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination,

and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and

- (iii) deliver to the Employer all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the facilities.

42.1.3 In the event of termination of the Contract under GC Sub-Clause 42.1.1, the Employer shall pay to the Contractor the following amounts:

- (a) the Contract Price, properly attributable to the parts of the Facilities executed by the Contractor as of the date of termination;
- (b) the costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel;
- (c) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges;
- (d) costs incurred by the Contractor in protecting the Facilities and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GC Sub-Clause 42.1.2; and
- (e) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third Parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.

42.2 Termination for Contractor's Default

42.2.1 The Employer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefore to the Contractor, referring to this GC Sub-Clause 42.2:

- (a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up, other than a voluntary liquidation for the purposes of amalgamation or reconstruction, a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt;
- (b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GC Clause 43; or
- (c) if the Contractor, in the judgment of the Employer has engaged in corrupt, collusive, coercive, or fraudulent practices, as defined in GC Clause 6, in competing for or in executing the Contract.

42.2.2 If the Contractor:

- (a) has abandoned or repudiated the Contract;

- (b) has without valid reason failed to commence work on the Facilities promptly or has suspended, other than pursuant to GC Sub-Clause 41.2, the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the Employer to proceed;
- (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause; or
- (d) refuses or is unable to provide sufficient materials, services or labor to execute and complete the Facilities in the manner specified in the program furnished under GC Sub-Clause 18.2 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Completion of the Facilities by the time for Completion as extended;
- (e) If the Contractor is unable to achieve a minimum 50% cumulative progress of any activity of installation work at the end of any quarter compared to the agreed quantum of work as per 'BAR CHARTS' furnished as per clause GC 18.2 or any modified version thereof, agreed to by the Employer.

then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GC Sub-Clause 42.2.

42.2.3 Upon receipt of the notice of termination under GC Sub-Clauses 42.2.1 or 42.2.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination:

- (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition;
- (b) Terminate all subcontracts, except those to be assigned to the employer pursuant to paragraph (d) below;
- (c) Deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination;
- (d) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and
- (e) Deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.

42.2.4 The Employer may enter upon the Site, expel the Contractor, and complete the Facilities itself or by employing any third Party. The Employer may, to the exclusion of any right

of the Contractor over the same, take over and use with the payment of a fair rental rate to the Contractor, with all the maintenance costs to the account of the Employer and with an indemnification by the Employer for all liability including damage or injury to persons arising out of the Employer's use of such equipment, any Contractor's Equipment owned by the Contractor and on the Site in connection with the Facilities for such reasonable period as the Employer considers expedient for the supply and installation of the Facilities.

Upon completion of the Facilities or at such earlier date as the Employer thinks appropriate, the Employer shall give notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.

42.2.5 Subject to GC Sub-Clause 42.2.6, the Contractor shall be entitled to be paid the Contract Price attributable to the Facilities executed as of the date of termination, the value of any unused or partially used Plant on the Site, and the costs, if any, incurred in protecting the Facilities and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GC Sub-Clause 42.2.3. Any sums due the Employer from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.

42.2.6 If the Employer completes the Facilities, the cost of completing the Facilities by the Employer shall be determined.

If the sum that the Contractor is entitled to be paid, pursuant to GC Sub-Clause 42.2.5, plus the reasonable costs incurred by the Employer in completing the Facilities, exceeds the Contract Price, the Contractor shall be liable for such excess.

If such excess is greater than the sums due the Contractor under GC Sub-Clause 42.2.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due the Contractor under GC Sub-Clause 42.2.5, the Employer shall pay the balance to the Contractor.

The Employer and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

42.3 Termination by the Contractor

42.3.1 If:

- (a) the Employer has failed to sign the Contract Agreement within one-hundred and eighty (180) days after receipt of the Letter of Acceptance by the Contractor, has failed to fulfill any conditions listed in Article 3 (Effective Date) of the Contract Agreement, if applicable, within the stated period, has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix to the Contract Agreement titled Terms and Procedures of Payment, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies

the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice; or

- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities, then the Contractor may give a notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Employer referring to this GC Sub-Clause 42.3.1, forthwith terminate the Contract.

42.3.2 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this GC Sub-Clause 42.3.2, if the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt.

42.3.3 If the Contract is terminated under GC Sub-Clauses 42.3.1 or 42.3.2, then the Contractor shall immediately:

- (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition;
- (b) Terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii);
- (c) Remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractors' personnel from the Site; and
- (d) subject to the payment specified in GC Sub-Clause 42.3.4:
 - (i) Deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination;
 - (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and

(iii) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.

42.3.4 If the Contract is terminated under GC Sub-Clauses 42.3.1 or 42.3.2, the Employer shall pay to the Contractor all payments specified in GC Sub-Clause 42.1.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.

42.3.5 Termination by the Contractor pursuant to this GC Sub-Clause 42.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by GC Sub-Clause 42.3.

42.4 In this GC Clause 42, the expression "Facilities executed" shall include all work executed, Installation Services provided, and all Plant acquired, or subject to a legally binding obligation to purchase, by the Contractor and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.

42.5 In this GC Clause 42, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to the Appendix to the Contract Agreement titled Terms and Procedures of Payment.

43. Assignment

43.1 Neither the Employer nor the Contractor shall, without the express prior written consent of the other Party, which consent shall not be unreasonably withheld, assign to any third Party the Contract or any part thereof, or any right, benefit, obligation or interest therein or there under, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

I. Disputes and Arbitration

44 Settlement of Disputes

44.1 If any dispute of any kind whatsoever shall arise between MPPTCL and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Facilities, whether during the progress of the Facilities or after their completion and whether before or after the termination, abandonment or breach of the Contract, the parties shall seek to resolve any such dispute or difference, to the extent possible, amicably by mutual consultation.

44.2 If the parties fail to resolve such a dispute or difference by mutual consultation at the execution site level, then the dispute shall be referred by the Contractor to the Engineer, who, within a period of thirty (30) days after being requested by Contractor to do so, shall give written notice of his decision.

44.3 The decision/instruction of the Engineer shall be deemed to have been accepted by the Contractor unless notified by the Contractor of his intention to refer the matter for Arbitration within thirty (30) days of such decision/instruction.

- 44.4 In the event the Engineer fails to notify his decision as aforesaid within thirty (30) days, the Contractor, if he intends to go for Arbitration, shall notify his intention to the Engineer within 30 days of expiry of the first mentioned period of thirty days failing which it shall be deemed that there are no dispute or difference between MPPTCL and the Contractor.
- 44.5 In case of dispute or difference between MPPTCL and the Contractor, if MPPTCL intends to go for Arbitration, he shall notify such intention to the Contractor.

45 Arbitration

- 45.1 All disputes or differences in respect of which the decision, if any, of the Engineer and/or the Head of the Implementing Authority has not become final or binding as aforesaid shall be settled by arbitration in the manner provided herein below:
- 45.2 The arbitration shall be conducted by three arbitrators, one each to be nominated by the Contractor and MPPTCL and the third to be appointed by both the arbitrators in accordance with the Indian Arbitration Act. If either of the parties fails to appoint its arbitrator within sixty (60) days after receipt of a notice from the other party invoking the Arbitration clause, the arbitrator appointed by the party invoking the arbitration clause shall become the sole arbitrator to conduct the arbitration.
- 45.3 The language of the arbitration proceedings and that of the documents and communications between the parties shall be English. The arbitration shall be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 or any statutory modification thereof. The venue of arbitration shall be Jabalpur.
- 45.4 The decision of the majority of the arbitrators shall be final and binding upon the parties. In the event of any of the aforesaid arbitrators dying, neglecting, resigning or being unable to act for any reason, it will be lawful for the party concerned to nominate another arbitrator in place of the outgoing arbitrator.
- 45.5 During settlement of disputes and arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the Contract.

Section VI. Employer's Requirements

Notes on Employer's Requirements

This Section contains the Scope, the Specifications, the Drawings and Supplementary Information that describe the Facilities to be used during submission of bid and during the implementation of the Contract.

Table of Contents

- 1.01 INTRODUCTION:**
- 1.02 SPECIAL REQUIREMENTS**
- 1.03 SAFETY PLAN:**
- 1.04 CONDITIONS FOR NON-RESPONSIVENESS OF BIDS:**
 - 1.04.01 BID SECURITY:**
 - 1.04.02 LETTER OF BID**
 - 1.04.03 LATE BIDS:**
 - 1.04.04 VALIDITY OF BIDS:**
 - 1.04.05 VALIDITY OF BID SECURITY:**
 - 1.04.06 QUALIFICATION CRITERIA:**
 - 1.04.07 CONDITIONAL BIDS:**
 - 1.04.08 BIDS FOR INCOMPLETE SCOPE OF WORKS:**
 - 1.04.09 TIME SCHEDULE:**
 - 1.04.10 TERMS OF PAYMENT:**
 - 1.04.11 PROOF FOR SIGNATORY:**
 - 1.04.12 AGREEMENT FOR JOINT VENTURE, CONSORTIUM OR ASSOCIATION (JVA):**
 - 1.04.13 FRAUD AND CORRUPT PRACTICE:**
 - 1.04.14 DEFECT LIABILITY:**
 - 1.04.15 LIQUIDATED DAMAGES:**
 - 1.04.16 PERFORMANCE SECURITY:**
 - 1.04.17 FURNISHING OF SUPPORTING DOCUMENTS:**
 - 1.04.18 COMMERCIAL QUESTIONNAIRE :**
- 1.05 COMPLIANCE WITH REGULATIONS:**
- 1.06 WAY LEAVE:**
- 1.07 USE OF PRIVATE ROADS/APPROACH ROAD TO SITE:**
- 1.08 MATERIALS TO BE ARRANGED BY THE CONTRACTOR FOR INSTALLATION WORKS:**
- 1.09 IDLE / MOBILISATION/ DEMOBILISATION CHARGES:**
- 1.10 TOOLS AND PLANTS TO BE ARRANGED BY THE CONTRACTOR:**
- 1.11 STUB SETTING TEMPLATES**

Scope of Supply of Plant and Installation Services by the Contractor

1.01 INTRODUCTION:

- 1.01.01** In order to ensure reliable transmission of expanded volume of electricity & to avoid overloading, strengthening & modernization of transmission system the scope covered under the present Bid Document envisages Construction of 220kV and 132kV substations, transmission lines and associated feeder bays on turnkey basis. The clause are applicable subject to the scope of work defined in Section-II, Volume-I (Part-2) of bid document.
- 1.01.02** The scope of work involves supply of all Transmission Line material and Sub-station Equipments including Reactor, Power Transformers, Station Transformers, Fabricated, Galvanized Substation Structures and other materials, with related civil works, erection work and testing/commissioning. The bidder shall furnish full particulars as called for in addition to filling and completing the schedules annexed to this specification.
- 1.01.03** The procurement activities for Power Transformers in respect of the aforesaid works shall also be carried out by the Bidder. The scope of work involves supply, erection, testing & installation of fabricated, galvanized Substation structures, stringing & earthing material and supply, testing and commissioning of all outdoor/ indoor plants. The scope of specification also includes all Civil work associated with construction of all substation, Augmentation/feeder bay works. Employer expects that participating bidder will take all necessary precautions to supply best quality equipment and materials, which may provide trouble free performance and also it is expected that the modern practices for erection and commissioning shall be adopted to ensure timely and trouble free commissioning of installation and also to ensure aesthetic overall view of finished substation installation.
- 1.01.04** As such, the scope of work involves fabrication, galvanizing and delivery of 220kV & 132kV Double Circuit/ Multi circuit towers, their body extensions, river/ line crossing structures(Gantries), Hangers, U bolts, D Shackles, Bolts and Nuts, Spring washers, pack washers, step bolts, tower accessories (earthing rod with clamps, Danger Boards, Number plates, Phase plates and Anti-climbing Devices (including fixing arrangements and barbed wire) for ground wire), Ground wire/OPGW, Disc insulators, hardware and accessories for conductor and ground wire and complete erection of above transmission lines including, Detailed survey/check survey, casting of foundations, tower erection, stringing etc. and testing & commissioning of the transmission lines. Cement and reinforcement steel for foundation of towers, extensions, river/ line crossing structures and any such materials required for erection work shall also be provided by the successful Bidder.
- 1.01.05** The successful bidder shall collect structural drawings and Bill of Materials of all required 220kV & 132kV Double Circuit/ Multi circuit towers, their body extensions, line/ river crossing structures and stub setting templates from the Employer. The bidder shall prepare Workshop drawings for fabrication of towers/extensions promptly so as to commence supplies as per time schedule stipulated in **Appendix 4 of Contract Agreement**. Before taking up the mass fabrication, the bidder will fabricate each type of tower and its extensions (proto assembly) and offer the same for inspection. Employer shall inspect Proto assembly of each type of tower and extension.

- 1.01.06** The unit rates quoted shall include minor details which are obviously and fairly intended, and which may not have been included in these documents but are essential for the satisfactory completion of work. The unit rate quoted shall be inclusive of deployment of all plant, equipment, men, material, skilled & unskilled labours etc. essential for satisfactory completion of work.
- 1.01.07** The prices for the plants to be supplied shall include all works relating to manufacturing and delivery ex-contractors stores, unloading and stacking in specified area. The quoted prices shall also include the cost of necessary quantity of raw material, freight upto site store and other indirect charges incurred in connection with supply of finished material. The Bidder shall quote prices for transportation including unloading and stacking at stores separately in the relevant schedule. Unloading at specified area stores/works site is the responsibility of the bidder.
- 1.01.08** The Bidder shall submit his offer taking into consideration that the layout drawings of substations and design details of towers/extensions and foundation designs shall be provided by Employer and design rights will be strictly reserved with Employer.
- 1.01.09** Procurement of raw materials for the plants to be supplied shall be included in the Bidder's scope of supply.
- 1.01.10** The quantities for supply of plants and installation services as indicated in the Price Schedules are only provisional. The final quantities will be known after completion of detailed survey and tower spotting. Thus these are only provisional quantities and will vary during actual execution of work. The Contractor must execute the work based on Soil condition encountered during actual execution of work and as per final quantities of various plants to be supplied and associated installation services at the same rates and terms and conditions as accepted by the Employer. The scope of work also covers supply and installation of other item, not specifically mentioned in this specification and/or Bill of material but is required for the successful completion and commissioning of the transmission lines.
- 1.01.11** In case the estimated quantity of various works covered is in excess of actual requirement as per completion of works, the Employer may consider to award additional work within the approved amount of contract or procure extra quantity of equipment and material as per our requirement, within the total contract price for which separate clearance will be issued indicating the time for completion/supply and the bidder will have to execute such work or supply such equipment and material to the Employer at the same rates, terms and conditions, to the destination intimated by the Employer. The payment of such works will be made as per terms of the contract and payment for supplies will be made on the basis of Material Receipt Certificates to be issued by Store Incharge of Employer.
- 1.01.12** Bidders may please note that if required, the ERS will be supplied and erected by MPPTCL for carrying out the stringing work . the successful bidder will extend all cooperation and labourers etc available at site for erection/dismantling of ERS.
- 1.01.13** As per conditionality of the Bid Document, arrangement of Electricity and water supply for execution of work is in the scope of contractor. It is expected that for this purpose; for construction of new substations, the contractor shall provide a bore well within the substation premises at suitable location approved by the project manager. This shall meet the requirement of water supply not only for construction purpose; but also for operation of substation at a later date. The bore well shall be equipped with suitable capacity of submersible pump alongwith its control panel and GI pipe line of suitable size & length; which could be further utilized for connecting to water supply network of the substation. The capacity of submersible pump should be such that it should be able to fill- up the overhead water storage tank of substation having 5KL capacity within duration of one hour. The water supply arrangement as

developed by the contractor shall have to be handed over in good running condition to MPPTCL on completion of the work. It may be noted that MPPTCL shall make no separate payment for this purpose.

1.02 SPECIAL REQUIREMENTS

1.02.01 MPPTCL expects that participating bidder will take all necessary precautions to supply best quality plant, which may provide trouble free performance and also it is expected that the modern practices for erection and commissioning shall be adopted to ensure timely and trouble free commissioning of installation and also to ensure aesthetic overall view of finished transmission line installation.

Some of the conditions which will have to be essentially accepted and followed by the Bidders for the purpose of participation against the Bid and also for undertaking construction activities are enumerated below for specific confirmation by the Bidders.

1.02.02 For each type of plant, there are a number of manufacturing agencies available in the country and a number of new agencies are also coming-up in various fields. However, for ensuring reliability of operation of installation, the supply of Equipments/materials shall be made from the suppliers to be approved by MPPTCL. After the award of contract, the successful Bidder will make a request in writing to MPPTCL for approval of such suppliers duly supported with necessary documents.

1.02.03 Although, we will make final selection of vendor/manufacturer in association with the Bidder after award of contract, it may be mentioned that while doing so, we will take into account our own experience with various vendors/ manufacturer in regard to quality of their material because in certain cases; we had poor past experience with some of the vendors and therefore, we would prefer to take our experience also into cognizance while making a final selection.

1.02.04 It may please be noted that the requirement in regard to manufacturing experience of material as mentioned in clause 2.7 of Section-III of Volume-I (Part-2) of bid document, will have to be complied with and therefore, no effort may please be made to include plant manufactured/supplied by any new agency on the ground that they need to be encouraged on one or the other ground. In the nutshell, we would like to accept plant only from experienced agencies.

1.02.05 Bidders may please note that in respect of certain technical requirements and in certain areas, not only our system parameters are different but also our technical specification requirements are stringent. In this connection, it may be noted that the details being furnished have been finalized after careful consideration and therefore, no request may please be made for any deviation from our technical parameters and technical specification which are enclosed with the Bid document.

1.02.06 For the purpose of participation against the Bid, it is desired that the Bidder may make necessary correspondence with the vendors/ manufacturers concerned for various plant based on technical specification, preferred makes and other conditions stipulated in the Bid document. It may be noted that the Bidder is expected not to advise any other agency to make direct or indirect approaches to us for the purpose of grant of permission for acceptance/inclusion of plant manufactured/organized by them.

1.02.07 It has been noticed that some of the information furnished in the covering letter, schedule of commercial deviation and commercial questionnaire do not match with each other. In order to avoid any discrepancy, it may be noted that for the purpose of price evaluation, the details brought out by the bidder in "Schedule of Commercial Questionnaire" will be treated as

final and evaluation will be done based on the information given in this schedule. In case of any discrepancy in regard to information given in any other table, responsibility will rest on the bidder. While this condition shall be applicable for the purpose of price evaluation, at the time of acceptance of offer, the Employer will have the right to take such of the values/confirmations which are advantageous to the Employer.

1.03 SAFETY PLAN:

1.03.01 The Bidder shall appoint an "Accident prevention Officer" after award of contract and shall provide details of the proposed personnel with experience in the relevant field as prescribed in clause 2.5 'Personnel', Section-III "Evaluation & Qualification Criteria". The details of the proposed personnel with experience record shall have to be submitted by the bidder in the prescribed Schedule-XII in Section-IV "Bidding Forms" of Volume-I Part 2 of the bidding document.

1.03.02 During the supervision of construction work Employer shall confirm that an Accident Prevention Officer, proposed by the bidder is duly appointed at the Project site & that the construction work is carried out according to the Safety Plan as well as the safety measures prescribed in the programme. If Employer observes any short comings regarding the safety measures in general, the bidder shall make appropriate improvements.

1.04 CONDITIONS FOR NON-RESPONSIVENESS OF BIDS:

Clause-33 of Section-I, Volume-I Part-1 "Instructions to Bidders" clarifies the condition regarding "Responsiveness of Bids". The bidders are requested to carefully go through all sections of the bidding documents to ensure that all required conditions as stipulated in various sections are strictly complied with so that the bids may not fall under the category of "Non-responsive Bids". For instance some of the deviations, which will make a bid non-responsive, resulting into rejection of Bid forthwith, are indicated below:

1.04.01 BID SECURITY:

The amount of Bid Security has been stipulated in Indian Rupees. It is obligatory on the part of the bidders to furnish Bid Security as per proforma furnished in Section IV, Volume-I (Part-2) wherever specified and in one of the forms as per Clause 21.2 of Instructions to Bidders, Section-I, read with Bid Data Sheet, Section-II of Volume-I (Part-2). Any deviation on this account will not be accepted. Also failure to furnish bid security, bid security received late i.e. after opening of bids and bid security received for inadequate amount will make the bid non-responsive.

1.04.02 LETTER OF BID

Letter of Technical Bid and letter of price Bid as specified in Section-IV, Volume- I (Part-2) has to be submitted complete in all respects with authorized signature to make the bid responsive.

1.04.03 LATE BIDS:

As specified under Clause-25 Section-I, Volume- I (Part-1) such of the bids which are not submitted within specified date and time will not be considered for bid opening.

1.04.04 VALIDITY OF BIDS:

As specified under Clause-20.1, Section-I, Volume- I (Part-1), all bids are required to be valid for a period of 180 days from the date of opening of bids. In case validity period is found to be short at the time of opening of bid, all such bids will be rejected and treated as non-responsive.

1.04.05 VALIDITY OF BID SECURITY:

As specified under Clause-21 Section-I, Volume-I (Part-1) Instructions to Bidders, the bid security to be furnished will have to be valid for an additional period of 30 days over & above of the validity of Bid. To clarify, while validity of bid should be 180 days, it has to be ensured that the bid security is valid for 210 days from the date of bid opening. Such of the bids wherein validity of bid security is not found to be 210 days may be rejected and returned.

1.04.06 QUALIFICATION CRITERIA:

Requirements for the Qualification Criteria for each Package has clearly been spelt out in Section-III, Volume-I (Part-2). It is obligatory on the part of the bidders to comply with the entire criterion and furnish certified copies of documentary proof in support of their experience. Bids not furnishing sufficient details with supporting documents in this regard may be treated as non-responsive.

1.04.07 CONDITIONAL BIDS:

Such of the bids which are of conditional nature in regard to any of the commercial or technical conditions specified in the bid document will be rejected. Employer's discretion in this regard would be final.

1.04.08 BIDS FOR INCOMPLETE SCOPE OF WORKS:

Bidders participating for a Bid will have to offer for complete scope of the works of the bid. It has been specified in clause 1.2.2 of section-III, Volume-I (Part-2) that the bid received for a part of total scope of work covered under the Bid shall be treated as non-responsive.

1.04.09 TIME SCHEDULE:

Time schedule has clearly been spelt out under Section-VII, Volume-I (Part-2) and it is clarified in clause 1.2.3 of section-III, Volume-I (Part-2) that bids offering late contract performance schedule will not be accepted and shall be rejected.

1.04.10 TERMS OF PAYMENT:

Terms and Procedures for Payment have been specified in Appendix-I of Section-VII, Volume-I (Part-2) 'Contract Forms'. It has been stipulated in clause 1.2.4 of section-III, Volume-I (Part-2) that deviation from terms of payment shall not be permitted and such bids will be treated as non - responsive.

1.04.11 PROOF FOR SIGNATORY:

As provided for in the bid document, necessary power of attorney for signature has to be furnished by the bidder. If the Bidder is from a country where this practice is not used then a similar legal instrument of authorization as applicable under the home country laws of Bidder must be provided. In the absence of the same, the bid will be treated as non-responsive.

1.04.12 AGREEMENT FOR JOINT VENTURE, CONSORTIUM OR ASSOCIATION (JVA):

As clarified in the bid document, the following two documents are required to be furnished:

- i. An agreement between the parties to a proposed Joint Venture Association is required (ITB 4 Section-I, Instruction to Bidders of Volume-I (Part-1)).
- ii. A power of attorney or similar legal instrument of authorization is required (ITB 4 Section-I, Instruction to Bidders of Volume- I (Part-1)).

In the absence of the above, the bid will be treated as non-responsive.

1.04.13 FRAUD AND CORRUPT PRACTICE:

Special attention of the bidder is invited to the stipulation regarding "Fraud and Corruption" contained in clause 3 of Instruction to Bidders Section-I of Volume- I

(Part-1). Any violation as mentioned therein will be treated seriously and the bid will be considered as non-responsive.

1.04.14 DEFECT LIABILITY:

As specified in GCC clause 27 Section-V, Volume-I (Part-1) I, defect liability period shall be 60 months from the date of commissioning of the works, will have to be confirmed by the bidders. In the absence of confirmation or any deviation in period of warranty, the bid shall be treated as non-responsive.

1.04.15 LIQUIDATED DAMAGES:

As mentioned in GCC clause 26.2 of Section-V, Volume-I (Part-1), in the event of delay in Completion, liquidated damages shall be applicable. In case this is not confirmed or the bidder stipulates any modification, the bid will be treated as non-responsive.

1.04.16 PERFORMANCE SECURITY:

It may be noted by the bidders that no relaxation in regard to performance security of 10% of contract price will be granted and therefore this requirement as per clause 13.3.1 of Section V, Volume-I(Part-1), must be confirmed. In the event of non-confirmation or any modification, the bid shall be treated as non-responsive.

1.04.17 FURNISHING OF SUPPORTING DOCUMENTS:

As specified in the bid document, the bidders will have to submit all data as required towards drawings, technical details, type test reports for each plant, etc. as specified in Volume-I and Volume-II of bid document, required for proper evaluation of bids. In case of non-submission of these, the bid may be treated as non-responsive.

1.04.18 COMMERCIAL QUESTIONNAIRE :

It is obligatory on the part of bidders to furnish commercial questionnaire enclosed in Section-IV, Volume-I (Part-2) of bid document duly filled in complete in all respects. It has to be noted that the confirmations given in commercial questionnaire will form the basis for bid evaluation. In case commercial questionnaire duly filled in complete in all respects is not furnished, the bid may be treated as non-responsive.

1.05 COMPLIANCE WITH REGULATIONS:

1.05.01 Unless otherwise specified, all works shall be carried out in accordance with the Indian Electricity Act, 1910, Indian Electricity Rules 1956 with any amendments or revisions thereof which may be issued during the currency of the contract and the requirement of any other Regulations and Acts as applicable in India (including Defense, Air-port Authority, Railways and local statutory bodies) which the Purchaser may be subjected to.

1.05.02 All railway tracks, power/communication line, or other important road crossings etc. or routing the line through air field region shall conform to the relevant rules and procedure laid down by railway, communication, aviation or other concerned authorities.

1.05.03 'A' CLASS ELECTRICAL CONTRACTOR'S LICENSE: - The Contractor will have to submit a certified copy of "A" class electrical contractor's license issued by Madhya Pradesh Anugyapan Mandal, Bhopal along with his offer and License should be valid as on date of opening of tender or tenderer shall submit undertaking to deposit 'A' Class Electrical contractor's License within 30 days after issue of LOI which should be valid at the time of placement of order. The annual validation of the license shall be obtained by the contractor at his own cost and should be submitted to the Purchaser during the currency of the contract. The revalidation of the license is

the responsibility of the contractor. Before taking up the work permission to execute the work of voltage class above 33kV from Chief Electrical Inspector, M.P. Govt., will have to be obtained and submitted to the Order Placing Authority.

- 1.05.04** If the Contractor propose to use contract labour for carrying out various erection activities, necessary permission as per Contract Labour (Regulation & Abolition) Act 1970, Article 12 D (1) may please be obtained from Labour, Commissioner, and submitted to the Order Placing Authority.
- 1.05.05** Payment to daily wages workers shall be made by the contractor in accordance with minimum wages prescribed by the State Govt. and ensure EPF deduction according to the EPF Act, 1952 with latest amendment in presence of MPPTCL Company's representative not below the rank of an Assistant Engineer. Every employee shall have to be enrolled for the membership of Employees Provident Fund from the date of his joining i.e. deductions towards E.P.F. are to be effected from the 1st day of employment. The contractor shall have to maintain paid muster roll and obtain a certificate from the MPPTCL Company's representative regarding payment of minimum wages, EPF deductions and payment made in his presence. The paid muster roll shall be produced for inspection of Govt. Inspector or MPPTCL Company's Officer as and when called for.
- 1.05.06** In case the contractor fails to make payment of wages or remittance of EPF contribution in accordance with provision of Law, principal employer shall be liable to make payment of wages full or unpaid balance due, as case may be for contract labour employed by contractor to EPF Commissioner Authorities and recover amount so paid from contractor their by deduction from any amount payable to contractor, under any contract or as a debit payable by contractor.
- 1.05.07** It may explicitly be noted by the contractor that any cost incurred by the Employer due to default in compliance of Minimum Wage, EPF Act provisions or any other Act related to Wages, same shall be recovered from contractor.

1.06 WAY LEAVE:

- 1.06.01** The purchaser will arrange for necessary way leave and clearance of trees. The Purchaser will pay the way leave compensation. The purchaser will also arrange for the following: -
- (i) Railway clearance
 - (ii) PTCC clearance
 - (iii) Forest clearance
 - (iv) Any other necessary clearance if required/requested.

The Contractor shall inform the purchaser about the places where there is a way leave problem, sufficiently in advance (preferably 30 days) so that required way leave can be arranged in time.

Further Contractor shall inform the employer at least 15 days in advance, the sections of the line where he has planned to carry out the foundation/ tower erection/stringing work so that MPPTCL may take advance suitable actions to avoid possibility of any ROW problem.

Please note that while carrying out stringing work, if obstruction is faced due to branches of trees, the same will be cleared by the contractor. Further, the contractor will make all- out efforts to carry out stringing work across Electrified Railway Track within minimum possible duration.

1.07 USE OF PRIVATE ROADS/APPROACH ROAD TO SITE:

1.07.01 The purchaser will help in getting necessary permission for use of private/forest/canal, roads for transport of materials and construction personnel, wherever possible under the rules. Any charges/toll tax etc. levied by the concerned authorities for use of such roads etc. shall be borne by the Contractor.

1.07.02 During the erection work, if approach roads are required to be constructed for reaching the construction sites for transportation of men/materials, the cost of construction of such approach roads and any other expenses incurred in obtaining clearance/permission shall be borne by the Contractor.

1.08 MATERIALS TO BE ARRANGED BY THE CONTRACTOR FOR INSTALLATION WORKS:

1.08.01 The supply of cement for foundation work would be arranged by the Contractor of the quality as per IS - 269:1989 (Ordinary Portland Cement 33 Grade) or IS – 8112: 1987 (Ordinary Portland Cement 43 Grade) or IS – 12269: 1987 (Ordinary Portland Cement 53 Grade) or IS: 1489 (Portland-Pozzolana Cement (PPC)). The cost of cement shall be deemed to be included in the quoted unit rates of concreting.

1.08.02 The cement used shall be procured from reputed manufacturer like JP Cement, L&T, Birla Cement, ACC, Ambuja etc. The Contractor shall submit the manufacturer's certificate, for each consignment of cement procured, to the Purchaser. The cement shall be arranged in conventional Jute/HD bags each weighing 50 Kgs net with necessary IS certification mark on it. In case of any dispute regarding quality of cement, sample for testing may be taken jointly by contractor's representative and Engineer in- charge of work or any authorized representative of the Company. The sample taken shall be tested for standard test as per IS code in Govt. Engineering/Polytechnic College and testing charge shall be borne by the contractor. In case the material is found defective i.e. not as per relevant ISS, the same shall be replaced by the contractor at his cost. The Contractor shall also have no claim towards suspension of work due to time taken in conducting tests in the laboratory. Changing of brand or type of cement within the same structure shall not be permitted without the prior approval of the Purchaser.

1.08.03 The Quantity of cement to be used per unit quantity of consumption for different mix (nominal mix) of concrete should be as follows:

| S. No. | Description | Unit | Quantity of minimum Cement to be used per Unit quantity of work (in kgs) |
|--------|--|--------|--|
| 1 | 1:1.5:3 nominal mix concrete | Cu. m. | 400 |
| 2 | 1:2:4 nominal mix concrete | Cu. m. | 330 |
| 3 | 1:3:6 nominal mix concrete | Cu. m. | 220 |
| 4 | Random Rubble Masonry with 1:6 cement mortar | Cu. m | 83 |

1.08.04 The Contractor shall arrange metal, sand, stone and water required for foundation/revetment work. The transport, octroi, levy or duty on these materials shall be borne by the Contractor himself and the purchaser will not accept any liability on this account.

1.08.05 The Contractor will also arrange steel rods and binding wires etc. for foundation, reinforcement and the cost incurred will be borne by him. Materials for proper

earthing of towers i.e. earthing rod, connecting clamps and connecting wires etc. would also be arranged by the Contractor as already specified.

1.09 IDLE / MOBILISATION/ DEMOBILISATION CHARGES:

Idle/ Mobilisation/ Demobilisation charges etc. shall not be payable, to the Contractor by Purchaser for stoppage of work for any reason whatsoever. This may please be noted.

1.10 TOOLS AND PLANTS TO BE ARRANGED BY THE CONTRACTOR:

1.10.1 The Contractor shall be required to provide at his own expenses, all necessary tools and plants required for carrying out various activities for complete erection of the facilities i.e. construction of sub-stations, feeder bays and transmission lines. The Contractor will have to arrange at his cost all tools and equipments such as surveying instrument, earth tester, excavation equipment, form boxes for stub setting of towers, prop setting arrangement if required, winches, ropes and all tools for stringing conductor etc. The Contractor will furnish in the relevant schedule, the list of all tools and plants, which are available with him. Similarly, Contractor will arrange at his cost all machinery, light and heavy vehicles such as jeeps, tractors, compressors for rock drilling cranes for conductor drum handling, truck etc.

1.10.2 It is to be noted by the bidders, that arranging shutdowns on existing 33/11 KV transmission line is very difficult which shall be required for shifting / Crossing work. The shifting / crossing works can be expedited by avoiding / minimizing such shutdowns on existing 33/11 KV lines by using Scaffolding arrangements and HT/LT cable pieces of suitable length with crimping of suitable clamps for making diversion arrangement of existing lines.

Therefore, bidders are required to arrange suitable Scaffolding arrangement & cable diversion arrangement, to avoid or reduce the shutdown period by diverting existing line through cable. After, stringing of EHV line on new structure, at crossing, the existing system shall be normalized through over head conductor.

1.10.3 Bidders may please note that if required, the ERS will be supplied and erected by MPPTCL for carrying out the stringing work. The successful bidder will extend all cooperation and labourers etc available at site for erection/dismantling of ERS.

1.11 STUB SETTING TEMPLATES:

Besides the towers/extensions as required the Contractor will supply at his own cost, sufficient quantity of adjustable stub-setting templates for each type of tower for carrying out the foundation work of transmission lines.