

	KARNATAKA POWER CORPORATION LIMITED YELAHANKA COMBINED CYCLE POWER PLANT (1X370MW) ZERO LIQUID DISCHARGE PLANT	SECTION: A2
		VOLUME-I PART-I-GCC
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ANNEXURE-3

CONSORTIUM AGREEMENT

CONSORTIUM AGREEMENT BETWEEN FOR ZERO LIQUID DISCHARGE PLANT OF YCCPP (1X370MW) AS PER BID NOTIFICATION NO KPCL/2018-19/PS /WORK_INDENT8374 Dtd: 27/02/2019

(To be executed on a non-judicial paper of Rs. 200/-)

Ref.No.....

This agreement is made this Day of between, a body corporate organised and existing under the laws of ----- and having its Registered Office at (herein after referred to as “Lead Bidder” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns), having its Registered Office at of the first part.

AND

..... a body corporate organised and existing under the laws ----- and having its registered office at ----- (hereinafter referred to as “Consortium Bidder”) which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) having its Registered Office at of the second part.

AND

WHEREAS Karnataka Power Corporation Ltd., a Company organised and existing under the laws of India and having its Registered Office at Bengaluru (hereinafter referred to as the “Company”) has invited bids Zero Liquid Discharge Plant of YCCPP (1X370MW) indicated in the bid document (herein after referred to as “PROJECT”);

AND WHEREAS ABC and EFG, (hereinafter individually referred to as “Party and collectively jointly as “Parties”) desire to have jointly agreed to form a consortium enter into a Consortium Agreement (herein after referred to as “Agreement”) to bid for the PROJECT in response to the NIT and if the bid is accepted by KPCL to execute the PROJECT on terms & conditions jointly agreed with KPCL; and

WHEREAS it is deemed necessary and expedient to record the terms of the said agreement in writing. NOW THEREFORE THE PARTIES IN CONSIDERATION OF THE PREMISES AND MUTUAL COVENANTS HEREBY AGREE AS FOLLOWS:

1. RELATIONSHIPS OF THE PARTIES

- 1.1 The Parties hereby form a consortium (the “Consortium”) for the sole and limited purposes of (i) preparing and submitting the bid of the Consortium in response to the NIT (the “Bid”) (ii) negotiating and signing the Contract to be entered into between the Consortium and the Company in the event of acceptance of Bid (the “Contract”) and (iii) implementing the work and obligations to be performed and goods to be supplied pursuant to the Contract, subject to and on the terms and conditions of the Agreement.

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- 1.2 Nothing contained in this Agreement is intended nor shall it be construed as creating a partnership, a Joint Venture or a legal entity of any kind.
- 1.3 Any property that a Party may provide for use in connection with the performance of its scope of work shall remain the property of the Party and shall not be the property of the Consortium and the Consortium as such shall not have any property assets or employees.
- 1.4 Unless specifically provided otherwise herein, no Party (or its representative) shall be deemed to be a representative, agent, or employee or any other Party.
- 1.5 No Party hereto shall have the authority or right nor shall any Party hold itself out as having the authority or right to assume, create or undertake any obligation of any kind whatsoever, expressed or implied, on behalf of or in the name of the Consortium or of that other Party, as the case may be save and except as provided in this Agreement or otherwise mutually agreed in writing or in the Contract.
- 1.6 Unless otherwise mutually agreed in writing or save and except as may be set forth in this Agreement or the Contract, no Party shall have the right to (i) borrow money on behalf of or in the name or the Consortium or of any other Party hereto (ii) pledge the credit of the Consortium or of any other Party hereto without the express prior written consent of the Consortium or of such other Party hereto or (iii) incur any liabilities on behalf or in the name of the Consortium or any other Party hereto.

2. PROJECT SCOPE OF WORK

- 2.1 The "PROJECT" scope of work and terms & conditions will be as per NIT Notification No. **KPCL/2018-19/PS/WORK_INDENT8374 Dtd:27/02/2019** and deviations / clarifications incorporated in the Parties Bid and accepted by KPCL.
- 2.2 The Bid of the Parties who bid for the Project pursuant hereto shall be on the and following basis:
 - (a)shall be the Consortium Leader (the Consortium Leader"). The division of Work shall be allocated and divided between the Parties shall generally be as listed in accordance with Annexure hereto appended herewith.
[Note: Annexure shall be provided by the Bidder]
 - (b) The Bid will be predicated on the premise that in the event the Bid is accepted by the KPCL, each Party shall perform its work strictly in accordance with the Contract and commits itself fully to comply with the terms and conditions of the Contract. KPCL shall award the Contract to Consortium of and
 - (c) As between the Parties each Party will be responsible and solely liable for performance of their scope of work and as between the Parties and the Company. The leader shall be liable to the company for the performance of the work under the contract including the portion of the work of other members of consortium.

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- (d) The Parties recognize that all of the supplies and services intended to be within the scope of work of each Party shall be deemed to include those supplies and services not specified which reasonably may be inferred to be within the scope of work of such Party and to be furnished by the Party to whose scope of work such supplies or services are reasonably applicable, at no cost to the other Parties. In the event that there is no agreement, the Consortium Leader may assign such omitted supplies or services to one or some or all of the Parties, which shall promptly carry out such work.
- (e) Subject to the provisions of the Contract, each Party shall be responsible for obtaining and maintaining all permits, licenses and other authorisations required for the performance of its scope of work except those which are required by the Contract to the Company. The Parties shall co-operate with each other in obtaining any of the foregoing permits, licenses, and authorisations in order to minimise the costs thereof.
- (f) Inquiries for a procurement of equipment, material, or services by one Party from another Party as subcontractor shall be channelled through the Project Manager of such member.

Each Party shall use its best efforts to complete its scope of work and to cause it to be completed in a manner which minimises costs to the other Parties by full co-operation and co-ordination, directly and through the Leader, during all stages of the Project to its completion as described in the Contract and according to the Schedule.

- 2.3 The Parties shall fully co-operate with each other to full fill their respective obligations with respect to the said PROJECT during the term of this Agreement.
- 2.4 This Agreement shall in no way be considered by the Parties to constitute an entity having independent legal personality whatsoever. The Parties except as provided herein, shall act as independent Contractors and their mutual relations shall in no way be construed to be that of principal and agent. Nothing shall in this Agreement entitle any of the Parties to pledge the credit of or incur any liabilities or obligations binding upon the other Party, except in so far as may have been expressly agreed to in writing.

3. BID SUBMISSION AND MANAGEMENT

- 3.1. The Consortium Leader shall prepare the bid to be submitted to the Owner being formed on or before the due date and time, with diligent support from All the Parties shall base their prices on terms & conditions as per the **NIT Notification** No. **KPCL/2018-19/PS /WORK_INDENT8374 Dtd: 27/02/2019**
- 3.2. Bid bond, if any required to be furnished by the bidders pursuant to the NIT shall be furnished by the Consortium Leader provided however the costs of the Bid bond and all the costs incurred in attempting to obtain the Contract, including costs incurred during negotiations and till the signing of the Contract shall be borne by the Parties in the manner and proportion as set out in ANNEXURE hereto.(bidder to provide)

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- 3.3 The Bid shall be in the name of the Consortium on behalf of the Parties and shall be jointly signed by them on behalf of the Consortium. Each Party's commitment to and acceptance of the Bid shall be deemed upon the signing of the Bid by it.
- 3.4 Should the Consortium being formed be invited to negotiate the Contract with the owner, such negotiations will be conducted jointly by..... and in consultation with each other negotiating team comprising of one duly authorised representative each of the Parties with the Consortium Leader's representative a chairman of such negotiating team (the "Negotiating Team"). Decisions and commitments made by the Negotiating Team shall be binding on the Parties.
- 3.5 In the event the bid is successful and the Contract is awarded to the Consortium:
The consortium leader (lead bidder) shall enter into an agreement with the corporation on behalf of the consortium and agreement shall be signed by all the members of the consortium.
- The Consortium Leader shall appoint the General Project manager, who shall be the interface of the Consortium with the Company.
 - All Parties will interface with each other for day to day project management. Consortium Leader will keep the KPCL fully informed on a continuous basis with the progress of the work.
 - All Parties shall participate in periodic project review meetings with the Owner.
 - Consortium Leader is authorised to incur liabilities and receive instructions for and on behalf of any and all the parties and the entire execution of contract including payment shall be done exclusively with Consortium Leader.
 - Consortium Leader shall correspond directly with Owner with regard to all matters in connection with the execution of the PROJECT and the Contract.
 - Consortium Leader will be responsible for the Project and Contract management during entire duration of Contract and for any co-ordination with local governmental / statutory authorities relating to the as related to the execution of the Contract excepting such obligations which are to be carried out each Party separately.
 - All parties shall provide, without recourse to the other, all financing, personnel and resources of any kind whatsoever which are required for the, proper execution and completion of contract scope of work under the Contract.
 - Subject to any relevant provisions in the Contract and subject to the requirements of the bid specification, each party shall be entitled to subcontract any part of its scope of work subject to the requirements of the bid specification after obtaining consent of the owner. No Party shall however, by reason of such subcontract, be relieved from its obligations and responsibilities under this agreement or the Contract and each party shall be individually responsible for any acts and omissions (whether negligent or not) of its subcontractors and their agents, and employees as fully as if they were the acts or omissions of the Party's own employees or agents.
 - Each Party shall adhere to the time schedule agreed to by the Parties in the Contract for the completion of the scope of work and shall, throughout the term of this Agreement, co-operate with the Consortium Leader to avoid any delays in completion of the PROJECT.

 KARNATAKA POWER CORPORATION LTD. OFFICE OF CHIEF ENGINEER (THERMAL DIVISION)	KARNATAKA POWER CORPORATION LIMITED YELAHANKA COMBINED CYCLE POWER PLANT (1X370MW) ZERO LIQUID DISCHARGE PLANT	SECTION: A2
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4. RESPONSIBILITIES AND LIABILITIES

- (a) The Parties shall be liable and responsible to the Company for the performance of the portion of their Work. No Party shall vary, or seek to vary the same or caused in any way or manner the Contract, without prior written consent of the other Parties and the Owner. However the lead bidder shall be responsible for the overall execution of work.
 - (b) No Party shall initiate or make any changes and additions in its scope of work under the Contract without firstly advising the Consortium leader in writing and obtaining through him the following:
 - (i) Appropriate adjustment and allocation of cost responsibility considering the extent to which the Company has assumed cost responsibility for such changes and additions, and
 - (ii) Written consent of all the other parties, it being understood that such consent will not be unreasonably withheld, and
 - (iii) Written consent of the Company where required by the contract.
 - (c) The Parties agree that notwithstanding any terms and conditions which may be contained in the contract relating to their liabilities to the Owner in relation to the PROJECT, as between the Parties they shall each bear the responsibilities and liabilities imposed on them in terms of this Agreement.
 - (d) The parties shall be responsible for executing the scope of work in accordance with the Contract, In executing the scope, each party shall ensure that all the Plant, Equipment used by it and the design thereof, is fit for the purpose for which it is required and the work undertaken by that Party is executed in good workman like manner.
5. Notwithstanding any Disputes and Arbitration on any disputes or differences shall arises among the Parties arising out of or relating to this Agreement including interpretation of any provision hereof, all the parties shall continue performance of their respective obligations under the Contract and shall avoid any action which might hinder the proper performance of the Parties' obligations under the Contract. All parties shall sincerely endeavour to resolve the dispute amicably by discussions. If however, the dispute cannot be resolved within 30 days of receipt of notice given by any party to the other party, such dispute shall be finally settled at the request of any Party by arbitration under the Rules of provisions of the Indian Arbitration and Conciliation Act, 1996 by three arbitrators (appointed in accordance with the provisions of the said Act). Award made in such arbitration, the Arbitrators decision will be binding on both the parties.
The venue of Arbitration shall be Bengaluru, Karnataka.

6. LANGUAGE

The English language shall be the official language to be used under this Agreement and shall be used by the Parties in all communications, notices, statements and any technical or commercial documentation to be prepared and presented under this Agreement.

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7. AMENDMENTS

This Agreement shall not be amended or modified in anyway, other than by an agreement in writing, executed by the duly authorised representatives of the Parties. In any case, liabilities of the Parties under the Contract remain unchanged.

8. GOVERNING LAW AND JURISDICTION

The Agreement shall in all respects, be construed and interpreted in accordance with the laws of India. Only the Court of competent jurisdiction in India shall have jurisdiction over any cause of action arising under this Agreement.

9. EXCHANGE OF INFORMATION

All parties shall exchange with the other parties, information which may be reasonably required to effect the smooth execution of this Agreement. Such information may include, but not be limited to, an advance plan relating to the programme of the PROJECT, progress of the PROJECT and other data and information relevant for the scope of work of the other Party.

10. OTHER TERMS AND CONDITIONS.

The terms and conditions applicable to each Party for bidding and execution of the PROJECT (in the event of an award), are as under:

- The liquidated damages for delay if levied under the Contract shall be paid up by the Consortium Leader who shall be entitled to recover the same from the party responsible for delay resulting in such liquidated damages.
- All the Parties shall be responsible for attending to the equipment supplied under the Contract for their portion of work, in case any damage / deficiency occur during the Guarantee period. However, the Parties may, with mutual consent, agree to share the work with a view to reduce the overall cost of repair / replacement of the damaged / deficient part.
- Consortium leader (Lead bidder) shall be liable to the other parties for any direct, indirect, special, incidental or consequential loss or damage.
- No Party shall have the right to assign, or, in any way transfer any of its rights or obligations under this Agreement, without the written consent of the other Parties and Owner.

11. VALIDITY OF THIS AGREEMENT

This Agreement shall remain valid till the expiry of the Guarantee / Warranty Period of the identified PROJECT (in case of award to the Parties) or till the earliest occurrence of any one of the following events whichever is earlier:

- Date of award of the PROJECT to some other party.
- Date when KPCL decides not to progress any further with the PROJECT.
- Date when both the Parties confirm that the Bid proposal has been finally rejected by KPCL /

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Owner.

- (d) If any Party becomes bankrupt or insolvent, or makes an assignment for the general benefit of its creditors, or is unable to pay its debts as they become due or has a trustee, liquidator, receiver or a receiver appointed to its or any part thereof, or commits an act of bankruptcy.
- (e) If the Parties fail to submit their proposal by the final date of bid submission, for any reasons whatsoever.

12. COMMUNICATION:

All correspondences, notices and communications required or permitted to be given under this Agreement or the Contract to any Party shall be sent to Consortium Leader at the following address:

IN WITNESS WHEREOF and..... have caused this Agreement to be duly executed in on the date first mentioned, as evidenced by the signature of their authorised representatives.

Agreed and accepted

For and on behalf of

Name (s)
(Lead bidder)

Agreed and accepted

For and on behalf of

Name (s)
(Consortium bidder)