

NTPC Limited

(A Government of India Enterprise)



BIDDING DOCUMENTS

FOR

EPC PACKAGE FOR

WASTE TO ENERGY PROJECT (2x350 TPD)

AT

KAWAS GAS POWER STATION

SECTION - I, II, III, IV & V

BIDDING DOCUMENT NO. : CS-2600-001-9

NTPC Limited

(A Government of India Enterprise)



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BIDDING DOCUMENT NO. : CS-2600-001-9

(This document is meant for the exclusive purpose of bidding against this Bid Document No. / Specification and shall not be transferred, reproduced or otherwise used for purposes other than that for which it is specifically issued).

BIDDING DOCUMENTS
FOR
EPC PACKAGE FOR
WASTE TO ENERGY PROJECT (2x350 TPD)
AT KAWAS GAS POWER STATION

BID DOCUMENT NO. : CS-2600-001-9

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Acronyms

BDS	Bid Data Sheet
CIF	Cost, Insurance and Freight
CIP	Carriage and Insurance paid to (place)
CPM	Critical Path Method
EDI	Electronic Data Interchange
EXW	Ex factory, ex works or ex warehouse
FCA	Free Carrier
FOB	Free on Board
FOR	Free on Rail / Road
FP	Forms & Procedures
GCC	General Conditions of Contract
ICC	International Chamber of Commerce
IFB	Invitation for Bids
ITB	Instructions to Bidders
SCC	Special Conditions of Contract
TS	Technical Specifications and Drawings
UNCITRAL	United Nations Commission on International Trade Law
INCOTERMS	International Rules for interpreting Trade Terms.

Note : The terms EXW, CIF, etc. shall be governed by the rules prescribed in the current edition of INCOTERMS, published by the international chambers of commerce, 38, Cours Albert 1er. 75008, Paris, France.

SECTION - I

INVITATION FOR BIDS (IFB)

**NTPC LIMITED
(A GOVERNMENT OF INDIA ENTERPRISE)**

CORPORATE CONTRACTS, NOIDA

**INVITATION FOR BIDS (IFB)
FOR
EPC PACKAGE
FOR
WASTE TO ENERGY PROJECT (2x350 TPD)
AT
KAWAS GAS POWER STATION
LOCATED AT
SURAT, INDIA**

(Domestic Competitive Bidding)

IFB No. : 40088007

Date: 12.07.2019

Bidding Document No.: CS-2600-001-9

1.0 NTPC invites online Bids on '**Two Stage**' bidding basis [Stage-I (Techno-Commercial) Bid & Stage-II (Price) Bid] from eligible Bidders for aforesaid Package, as per the Brief Scope of Work mentioned hereinafter.

2.0 BRIEF SCOPE OF WORK

This is concerned with Refused Derived Fuel (RDF) incineration cum electric power generating unit having a rated RDF disposal capacity of 2x350 TPD.

It shall include but not limited to:

RDF Handling	Refuse receiving, Refuse bunker, Crusher, Refuse handling (cranes, hopper, and chutes), Recycled oil system, Leachate handling and treatment
Combustion System	Incineration units, Refractory, insulation, ports and doors, Hydraulic system, Primary and secondary air, air heater, ducting, Secondary Fuel firing system
Boiler	Boiler, Boiler structure, walkway and access, Soot blowers
Air pollution control	De-NOx system, Lime system, Activated carbon system, Flue gas treatment system (cooling, ducting, etc.), Bag house, ID fan
Ash system	Bottom ash treatment system (extractor, conveying, etc.), Bottom ash crane, Fly ash conveying system, silos, Fly ash treatment system
Water and steam	Make up water system, Chemical dosing and conditioning, Feed water system, Steam distribution and condensate system, Equipment cooling water system, Auxiliary pumps, Piping, valves and associated equipment, Insulation
Power generation	Turbo generator, Condenser
Electrical	High voltage electrical system, transformer, Low voltage electrical distribution system, Emergency power supply
Control and monitoring	Control and monitoring system, Continuous emission monitoring system (CEMS), Closed circuit television (CCTV)
Civil part	Civil and architectural works, Chimney, Lift, Rooms, Air conditioning and ventilation (HVAC), Lighting and electric receptacles, Fire alarm and firefighting system, Telephone and communication equipment, Plant model and visitor facilities, Miscellaneous works at plant area and outbuilding.
Other systems and facilities	Wastewater treatment system, Compressed air system (service and instrument air), Odour prevention, Truck washing facilities, Maintenance hoists and cranes, Spare parts, Documentation, drawings, and manuals, Workshops, Laboratory

The complete scope of the proposal for the Design, Engineering, Manufacture, Supply, Construction, Erection, Testing, Commissioning works including Operation & maintenance of the plant for **an initial period of 2 years for the EPC Package for Waste to Energy Project (2 x 350 TPD)**, shall be on the basis of single point responsibility, completely covering the following activities and services in respect of all the equipment & works specified and covered under the specifications:

- a) Basic Engineering of the plant including preparation of Plant Definition Manuals;
- b) Detailed design of all the equipment and equipment system(s) including civil, structure steel works included in bidder's scope.
- c) Providing engineering drawings, equipment sizing & performance data, instruction manuals, as built drawings and other information;
- d) Compliance with statutory requirements and obtaining clearances from statutory authorities, wherever required;
- e) Complete manufacturing including shop testing/type testing;
- f) Complete Civil, Structural and Architectural works, including survey, providing construction material and equipment, construction water supply, construction / permanent roads, drainage arrangements, fencing / boundary wall around the land boundary.
- g) Packing and transportation from the manufacturer's works to the site.
- h) Receipt, storage, preservation, handling and conservation of equipment at the site;
- i) Fabrication, pre-assembly, if any, erection, testing, commissioning and completion of facilities including putting into satisfactory operation all the equipment including successful completion of initial operation;
- j) Performance and guarantee tests after successful completion of initial operation;
- k) Furnishing of spares on FOR site basis.
- l) Insurance and other requirements for the complete EPC package in accordance with the provisions of general conditions of contract of the bidding document.

The Contractor shall be responsible for providing all material, equipment and service, which are required to fulfill the intent of ensuring operability, maintainability, reliability and complete safety of the complete work covered under this specification, irrespective of whether it has been specifically listed herein or not.

- 3.0 NTPC intends to finance subject Package through Domestic Commercial Borrowings / Own sources.
- 4.0 Detailed Specification, Scope of Work and Terms & Conditions are given in the Bidding Documents, which are available for examination and Sale at the address given below at 11.0 and as per the following schedule:

Issuance of IFB	12.07.2019
Document Sale Dates	From 18.07.2019 to 26.07.2019 upto 1730 Hrs. (IST)
Last Date for receipt of queries for clarification from prospective Bidders	02.08.2019
Date, Time and venue for Pre-Bid conference*	02.08.2019, 1030 Hrs (IST) at NTPC-EOC, Noida

Bid Receipt Date & Time for Stage-I (Techno-commercial) Bid	Upto 16.08.2019 by 1445 Hrs. (IST)
Bid Opening Date & Time for Stage-I (Techno-commercial) Bid	16.08.2019 at 1500 Hrs. (IST)
Bid Submission & Opening Date & Time for Stage-II (Price) bid	Shall be intimated separately by NTPC
Cost of Bidding Document in INR	INR 22,500/- (Rupees Twenty Two Thousand Five Hundred only)

** No Queries from Bidders, whatsoever, shall be entertained by the Employer beyond the date of Pre-Bid Conference as specified above.*

- 5.0 All bids must be accompanied by Bid Security for an amount of **INR 2,00,00,000/- (Indian Rupees Two Crore only)** in the form as stipulated in the Bidding documents.

ANY BID NOT ACCOMPANIED BY AN ACCEPTABLE BID SECURITY IN SEPARATE SEALED ENVELOPE SHALL BE REJECTED BY THE EMPLOYER AS NON-RESPONSIVE AND SHALL NOT BE OPENED.

6.0 QUALIFYING REQUIREMENTS FOR BIDDERS.

1.0.0 Technical Criteria

The Bidder should meet the qualifying requirements stipulated in any one of the qualifying routes i.e. Route-1 (clause 1.1.0) or Route-2 (clause 1.2.0) or Route-3 (clause 1.3.0) including requirements stipulated in sub clauses of respective routes. In addition, the Bidder should also meet the requirements stipulated under clause 2.0.0 together with the requirements stipulated under section ITB.

1.1.0 Route1: Qualified Waste to Energy Plant Equipment Manufacturer (QWEPM)

- 1.1.1. The Bidder should have designed, engineered, supplied, erected / supervised erection, commissioned / supervised commissioning of at least two (02) numbers of waste to energy plants employing Grate Combustion System and **Flue Gas Treatment System**, having rated **waste** incineration capacity of at least 300 metric tonnes per day **per stream** or higher, at different locations anywhere in the world. All two (2) reference waste to energy plants should have been in successful operation for a period of not less than two (2) years prior to the date of techno commercial bid opening.

AND

- 1.1.2. The Bidder should have designed, engineered, manufactured/ got manufactured atleast Grate Combustion System or **Waste Heat Recovery Steam Generator (WHRSG)** or both in all two (2) reference waste to energy plants stipulated in clause 1.1.1 above. The bidder shall offer only the type of Grate Combustion System or Waste Heat Recovery Steam Generator (WHRSG) or both for which it is qualified.

1.2.0 Route 2: Indian EPC/R&M Company

- 1.2.1. Bidder should be an Indian Company registered in India as per Companies Act of India and should have executed at least one Engineering, Procurement, Construction (EPC) Contract OR Renovation & Modernisation (R&M) Contract of value not less than ₹ 100 Crores consisting of at least Steam Generator and Steam Turbine Generator Set in a thermal power plant which is in successful operation for a period of not less than one (1) year prior to the date of techno-commercial bid opening.
- 1.2.2. Such bidder should associate/ collaborate with a Qualified Waste to Energy Plant Equipment Manufacturer (QWEPM) meeting the requirements as specified in clause 1.1.0 above at least for

design, engineering, erection / erection supervision and commissioning / commissioning supervision of complete waste to energy plant being offered to NTPC by bidder.

- 1.2.3. Additionally, supplied Grate Combustion System or Waste Heat Recovery Steam Generator (WHRSG) or both (as applicable) shall be designed, engineered and manufactured/ got manufactured by its associate/ collaborator and that shall be of the type for which its associate/collaborator is qualified. In case, associate/ collaborator has designed, engineered, manufactured/ got manufactured both Grate Combustion System and Waste Heat Recovery Steam Generator (WHRSG) in reference waste to energy plants, both shall necessarily be designed, engineered, manufactured/ got manufactured for waste to energy plant being offered to NTPC by bidder.
- 1.2.4. In such case, the Bidder shall furnish Deed of Joint Undertaking (DJU) executed by it and its associate/ collaborator in which the executants of DJU shall be jointly and severally liable to the Employer for successful performance of contract as per format enclosed in the bidding documents. The DJU shall be submitted along with techno-commercial bid, failing which the Bidder shall be disqualified and its bids shall be rejected. In case of award, associate/ collaborator of Bidder will be required to furnish an on demand bank guarantee for an amount of 5% of the total contract price of this Package in addition to the contract performance security to be furnished by the Bidder.

1.3.0 Route 3: Indian Subsidiary Company/JV Company of a Qualified Waste to Energy Plant Equipment Manufacturer (QWEPM)

- 1.3.1. The Bidder shall be an Indian Subsidiary Company/JV Company of a Qualified Waste to Energy Plant Equipment Manufacturer (QWEPM) meeting the requirements as specified in clause 1.1.0 above, registered in India under the Companies act of India for purpose of design, engineering and manufacturing/get manufacturing of at least Grate System or Waste Heat Recovery Steam Generator (WHRSG) or both for waste to energy plants as well as design, engineering, supply, erection/ erection supervision, commissioning/ commissioning supervision of waste to energy plants as on the date of techno-commercial bid opening. If the Subsidiary Company/JV Company is incorporated as a public limited company then it should have obtained certificate for commencement of Business in India as on the date of techno-commercial bid opening.
- 1.3.2. The Qualified Waste to Energy Plant Equipment Manufacturer (QWEPM) shall maintain a minimum equity participation of 51% in the Subsidiary Company / 26% in JV Company for a lock-in period of 5 years from the date of incorporation of Subsidiary Company/JV Company or up to the end of the defect liability period of the contract whichever is later.
- 1.3.3. In case of JV Company, one of the promotor should be an Indian Company meeting the requirement as specified in clause 1.2.1 above who shall maintain the minimum equity participation of 51% in the JV Company for a lock in period of 5 years from the date of incorporation of JV Company or up to the end of defect liability period of the contract whichever is later.
- 1.3.4. Such Subsidiary Company/JV Company shall associate/ collaborate with its Qualified Waste to Energy Plant Equipment Manufacturer (QWEPM) promotor for design, engineering, erection/erection supervision, and commissioning /commissioning supervision of complete waste to energy plant being offered to NTPC by bidder.
- 1.3.5. Additionally, bidder shall have collaboration or valid licensing agreement for design, engineering, manufacturing of Grate System or Waste Heat Recovery Steam Generator (WHRSG) or both, being offered to NTPC by the bidder, of type for which its associate/collaborator is qualified.
- 1.3.6. The Bidder shall furnish a Deed of Joint Undertaking (DJU) executed by it and its Qualified Waste to Energy Plant Equipment Manufacturer (QWEPM) and other promotor having 25% or higher equity participation, in which all the executants of DJU shall be jointly and severally liable to the Employer for successful performance of contract as per the format enclosed in the bidding documents. The DJU shall be submitted along with techno-commercial bid, failing which the bidder shall be disqualified and his bid shall be rejected. In case of award, each promoter having 25 % or higher equity participation in the Subsidiary Company /JV Company will be required to furnish an on demand bank guarantee for an amount of 5 % of the total contract price of the EPC package in addition to the contract performance security to be furnished by the Bidder.

NOTES FOR CLAUSE 1.0.0:-

(1) Definitions

- (i) Wherever the term '**Waste**' is appearing above, "**Waste**" shall be deemed to include Municipal Solid Waste (MSW)/ **Refused Derived Fuel (RDF)**.
- (ii) **Refused Derived Fuel** shall mean fuel derived from combustible waste fraction of solid waste like plastic, wood, pulp or organic waste in the form of fluff
- (iii) Wherever the term "**Flue Gas Treatment System**", is appearing above, the same shall be deemed to include complete flue gas treatment system with De-NOx system, Lime system, activated carbon system, bag house, flue gas cooling, ducting etc.
- (iv) Wherever the term "**per stream**", is appearing above, the same shall mean a single block of **Waste Heat Recovery Steam Generator**.
- (v) Wherever the term "**Waste Heat Recovery Steam Generator**" is appearing above, the same shall be deemed to include furnace and pressure parts as minimum.

(2) Equity Lock in period

Wherever equity lock in period requirement or subsidiary status requirement is indicated, the Bidder would be required to furnish along with his bid, a Letter of Undertaking from the promoter(s), supported by Board Resolution as per the format enclosed in the bid documents, for maintaining the required minimum equity for the specified lock in period.

2.0.0 Financial Criteria

2.1.0 Financial Criteria of Bidder

- 2.1.1 The average annual turnover of the Bidder, in the preceding three (3) financial years as on the date of Techno-Commercial bid opening, should not be less than **INR 910 Million (Indian Rupees Nine hundred Ten Million only)** or in equivalent foreign currency.

In case a Bidder does not satisfy the average annual turnover criteria, stipulated above on its own, its Holding Company would be required to meet the stipulated turnover requirements as above, provided that the Net Worth of such Holding Company as on the last day of the preceding financial year is at least equal to or more than the paid-up share capital of the Holding Company. In such an event, the Bidder would be required to furnish along with its Techno-Commercial bid, a Letter of Undertaking from the Holding Company, supported by the Holding Company's Board Resolution, as per the format enclosed in the bid documents, pledging unconditional and irrevocable financial support for the execution of the Contract by the Bidder in case of award.

- 2.1.2 Net worth of the bidder should not be less than 100 % (one hundred percent) of its paid up share capital as on the last day of the preceding financial year on the date of Techno-commercial bid opening. In case the Bidder does not meet the Net worth criteria on its own, it can meet the requirement of Net worth based on the strength of its Subsidiary (ies) and/or Holding Company and/or Subsidiaries of its Holding company wherever applicable. In such a case, however the Net worth of the Bidder and its Subsidiary(ies) and/or Holding Company and/or Subsidiary(ies) of the Holding Company, in combined manner should not be less than 100% (hundred percent) of their total paid up share capital. However individually, their Net worth should not be less than 75% (seventy five percent) of their respective paid up share capitals.

Net worth in combined manner shall be calculated as follows:

$$\text{Net worth (combined)} = (X1+X2+X3) / (Y1+Y2+Y3) \times 100$$

Where X1, X2, X3 are individual Net worth which should not be less than 75% of the respective paid up share capitals and Y1,Y2,Y3 are individual paid up share capitals.

- 2.1.3 In case the Bidder is not able to furnish its audited financial statements on standalone entity basis, the unaudited unconsolidated financial statements of the Bidder can be considered acceptable provided the Bidder further furnishes the following documents for substantiation of its qualification:
 - (i) Copies of the unaudited unconsolidated financial statements of the Bidder along with copies of the audited consolidated financial statements of its Holding Company.

- (ii) A Certificate from the CEO/CFO of the Holding Company, as per the format enclosed with the bidding documents, stating that the unaudited unconsolidated financial statements form part of the consolidated financial statements of the Holding Company.

In cases where audited results for the last financial year as on the date of Techno Commercial bid opening are not available, the financial results certified by a practicing Chartered Accountant shall be considered acceptable. In case, Bidder is not able to submit the Certificate from a practicing Chartered Accountant certifying its financial parameters, the audited results of three consecutive financial years preceding the last financial year shall be considered for evaluating the financial parameters. Further, a Certificate would be required from the CEO/CFO as per the format enclosed in the bidding documents stating that the financial results of the Company are under audit as on the date of Techno-commercial bid opening and the Certificate from the practicing Chartered Accountant certifying the financial parameters is not available.

2.2.0 Financial Criteria of Collaborator/Associate (Applicable for clause 1.2.0 and 1.3.0)

- 2.2.1 The average annual turnover of the Collaborator/Associate, in the preceding three (3) financial years as on the date of Techno-Commercial bid opening, should not be less than **INR 910 Million (Indian Rupees Nine hundred Ten Million only)** or in equivalent foreign currency.

In case a Collaborator/Associate does not satisfy the average annual turnover criteria, stipulated above on its own, its Holding Company would be required to meet the stipulated turnover requirements as above, provided that the Net Worth of such Holding Company as on the last day of the preceding financial year is at least equal to or more than the paid-up share capital of the Holding Company. In such an event, the Collaborator/Associate would be required to furnish along with bidder's Techno-Commercial bid, a Letter of Undertaking from the Holding Company, supported by the Holding Company's Board Resolution, as per the format enclosed in the bid documents, pledging unconditional and irrevocable financial support to the Collaborator/Associate to honour the terms and conditions of the Deed of Joint Undertaking in case of award of the Contract to the Bidder with whom Collaborator/Associate is associated.

- 2.2.2 Net worth of the Collaborator/Associate should not be less than 100% (hundred percent) of its paid up share capital as on the last day of the preceding financial year on the date of Techno-commercial bid opening. In case the Collaborator/Associate does not meet the Net worth criteria on its own, it can meet the requirement of Net worth based on the strength of its Subsidiary (ies) and/or Holding Company and/or Subsidiaries of its Holding company wherever applicable. In such a case, however the Net worth of the Collaborator/Associate and its Subsidiary(ies) and/or Holding Company and/or Subsidiary(ies) of the Holding Company, in combined manner should not be less than 100% (hundred percent) of their total paid up share capital. However individually, their Net worth should not be less than 75% (seventy five percent) of their respective paid up share capitals.

Net worth in combined manner shall be calculated as follows:

Net worth (combined) = $(X1+X2+X3) / (Y1+Y2+Y3) \times 100$

Where X1, X2, X3 are individual Net worth which should not be less than 75% of the respective paid up share capitals and Y1,Y2,Y3 are individual paid up share capitals.

- 2.2.3 In case the Collaborator/Associate is not able to furnish its audited financial statements on standalone entity basis, the unaudited unconsolidated financial statements of the Collaborator/Associate can be considered acceptable provided the Collaborator/Associate further furnishes the following documents for substantiation of its qualification:

- (i) Copies of the unaudited unconsolidated financial statements of the Collaborator/Associate along with copies of the audited consolidated financial statements of its Holding Company.
- (ii) A Certificate from the CEO/CFO of the Holding Company, as per the format enclosed with the bidding documents, stating that the unaudited unconsolidated financial statements form part of the consolidated financial statements of the Holding Company.

In cases where audited results for the last financial year as on the date of Techno Commercial bid opening are not available, the financial results certified by a practicing Chartered Accountant shall be considered acceptable. In case, Collaborator/Associate is not able to submit the Certificate from a practicing Chartered Accountant certifying its financial parameters, the audited results of three consecutive financial years preceding the last financial year shall be considered for evaluating the financial parameters. Further, a Certificate would be required from the CEO/CFO as per the format

enclosed in the bidding documents stating that the financial results of the Company are under audit as on the date of Techno-commercial bid opening and the Certificate from the practicing Chartered Accountant certifying the financial parameters is not available.

NOTES FOR CLAUSE 2.0.0

- (i) Net worth means the sum total of the paid up share capital and free reserves. Free reserve means all reserves credited out of the profits and share premium account but does not include reserves credited out of the revaluation of the assets, write back of depreciation provision and amalgamation. Further any debit balance of Profit and Loss account and miscellaneous expenses to the extent not adjusted or written off, if any, shall be reduced from reserves and surplus.
- (ii) Other income shall not be considered for arriving at annual turnover.
- (iii) "Holding Company" and "Subsidiary Company" shall have the meaning ascribed to them as per Companies Act of India.
- (iv) For annual Turnover indicated in foreign currency, the exchange rate as on seven (7) days prior to the date of Techno-Commercial bid opening shall be used.
- (v) In case the bidder participating under Clause 1.2.0 or 1.3.0, do not meet the turnover requirement, then, the Turnover of any of the Promoters individually or all the promoters (in a combined manner) (each having Equity Stake more than 25%) of the Subsidiary Company / JV Company would be considered. Each such promoter of the Subsidiary Company / JV Company shall have to meet the Net Worth criteria individually as per clause 2.1.2 and/or 2.2.2. In such an event the Bidder would be required to furnish along with its techno-commercial bid, a Letter of Undertaking from such promoter(s), supported by Board Resolution as per the format enclosed in the bidding documents, pledging unconditional and irrevocable financial support for execution of the Contract by the Bidder in case of award.

7.0 NTPC reserves the right to reject any or all bids or cancel / withdraw the Invitation for Bids without assigning any reason whatsoever and in such case no bidder / intending bidder shall have any claim arising out of such action.

8.0 A complete set of Bidding Documents may be downloaded by any interested Bidder on payment (non-refundable) of the cost of the documents as mentioned above in the form of a crossed account Payee demand draft in favour of NTPC Ltd., Payable at New Delhi or directly through the payment gateway at our SRM Site (<https://etender.ntpclakshya.co.in>). For logging on to the SRM Site, the bidder would require vendor code and SRM user id and password which can be obtained by submitting a questionnaire available at our SRM site as well as at NTPC tender site (www.ntpctender.com). First time users not allotted any vendor code are required to approach NTPC at least three working days prior to Document Sale Close date along with duly filled in questionnaire for issue of vendor code and SRM user id/password.

Note: No hard copy of Bidding Documents shall be issued.

9.0 Issuance of bid documents to any Bidder shall not construe that such bidder is considered to be qualified. Bids shall be submitted online and opened at the address given below in the presence of Bidder's representatives who choose to attend the bid opening. Bidder shall furnish Bid Security, Deed of Joint Undertaking / Joint Venture / Consortium Agreement / Integrity Pact (if applicable) and Power of Attorney separately offline as detailed in Bidding Documents by the stipulated bid submission closing date and time at the address given below.

10.0 Transfer of Bidding Documents purchased by one intending Bidder to another is not permissible.

EPC package for Waste to Energy Project (2x350 TPD) at Kawas GPS	BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - I (IFB)	Page 7 of 8
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11.0 Address for communication:

Manager (C&M) / AGM (C&M)
NTPC Limited,
Sixth Floor, Engineering Office Complex,
Plot A-8A, Sector-24, NOIDA,
Distt.-Gautam Budh Nagar, Uttar Pradesh,
PIN-201301, India
Fax No: +91-120-2410284/ 2410011
Tele. No. +91-120-4948669/ 4946671
e-mail: vibhavrastogi@ntpc.co.in / ashokkumar06@ntpc.co.in

Websites: <https://etender.ntpclakshya.co.in> OR www.ntpctender.com OR www.ntpc.co.in

12.0 Registered Office

NTPC Limited
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi – 110003

Corporate Identification Number: L40101DL1975GOI007966.
Website: www.ntpc.co.in

SECTION – II

INSTRUCTION TO BIDDERS

Table of Clauses – Instruction to Bidders

Clause. No.	Description
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A. Introduction

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|----|-----------------|
| 1. | General |
| 2. | Source of Funds |
| 3. | Cost of Bidding |

B. The Bidding Documents

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|----|------------------------------------|
| 4. | Content of Bidding Documents |
| 5. | Clarification on Bidding Documents |
| 6. | Amendment to Bidding Documents |

C. Preparation of Bids

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| 7. | Language of Bid |
| 8. | Documents Comprising the Bid |
| 9. | Bid Form (Price Bid) and Price Schedules |
| 10. | Bid Prices |
| 11. | Bid Currencies |
| 12. | Bid Security |
| 13. | Period of Validity of Bids |
| 14. | Format and Signing of Bid |

D. Submission of Bids

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|-----|--------------------------------------|
| 15. | Sealing and Marking of Bids |
| 16. | Deadline for Submission of Bids |
| 17. | Late Bid Security and Integrity Pact |
| 18. | Modification and Withdrawal of Bids |

E. Bid Opening and Evaluation

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| 19. | Opening of Bids |
| 20. | Clarification on Bids |
| 21. | Preliminary Examination of Techno-Commercial Bids |
| 22. | Evaluation of Techno-Commercial Bids |
| 23. | Qualification |
| 24. | Clarification Meeting |
| 25. | Invitation for Price Bids |
| 26. | Preliminary Examination of Price Bid |
| 27. | Evaluation of Price Bid |
| 28. | NOT USED |
| 29. | Contacting the Employer |

F. Award of Contract

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| 30. | Award Criteria |
| 31. | Employer's Right to accept any Bid and to reject any or all Bids |
| 32. | Notification of Award |
| 33. | Signing the Contract Agreement |
| 34. | Performance Security |
| 35. | Ineligibility for participation in re-tender |
| 36. | Integrity Pact |
| 37. | Corrupt or Fraudulent Practices |
| 38. | Fraud Prevention Policy |
| 39. | Policy for withholding and Banning of Business Dealings |
| 40. | Pre-bid conference |
| 41. | Independent External Monitors |

CLAUSE NO.	INSTRUCTIONS TO BIDDERS (ITB)
	INSTRUCTIONS TO BIDDERS A. Introduction 1.0 General 1.1 Mode & Type of Bidding The bidding shall be done online through e-tender portal named in the Bid Data Sheet (BDS) as per the mode (i.e. Domestic Competitive Bidding (DCB)) and type (i.e. Two Stage) stipulated in BDS. Bidders are advised to go through the guidelines provided at e-tender portal for online bidding. 1.2 Bidders Eligible for Bidding Bidding is open to bidders from within the Employer's country only. 2. Source of Funds 2.1 NTPC Ltd. (hereinafter called 'NTPC' or 'Employer') intends to finance the package named in the Bid Data Sheet (BDS) through domestic funding and own resources. 2.1 For the purposes of these bidding documents, the word "facilities" means the plant and equipment to be supplied and installed, together with the services to be carried out by the contractor under the contract. The words "plant and equipment", "installation services" etc., shall be construed in accordance with the respective definitions given to them in the General Conditions of Contract. 3. Cost of Bidding 3.1 The Bidder shall bear all costs associated with the preparation and submission of its bid, and the Employer will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the bidding process. B. The Bidding Documents 4. Content of Bidding Documents 4.1 The facilities required, bidding procedures, contract terms and technical requirements are prescribed in the bidding documents. The bidding documents include the following sections: Section I – Invitation for Bids (IFB) Section II – Instructions to Bidders (ITB) Section III – Bid Data Sheet (BDS) Section IV – General Conditions of Contract (GCC)
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CLAUSE NO.	INSTRUCTIONS TO BIDDERS (ITB)
	Section V – Special Conditions of Contract (SCC) Section VI – Technical Specifications (TS) Section VII – Forms and Procedures (FP) (in Three Parts) Section-VII (Part 1 of 3) 1a. Techno-Commercial Bid (Envelope-I) (Bid Form along with Attachments) Section-VII (Part 2 of 3) 1b. Price Bid (Envelope-II) (Bid Form along with attachments and Price Schedules) Section-VII (Part 3 of 3) 2. Bid Security Form - Bank Guarantee 2a. Bid Security Form - Bank Guarantee in case of Bid from Joint Venture 2b. Bid Security Form - Letter of Credit 3a. Form of Notification by the Employer to the Bidder 3b. Form of Sight Draft 4. Forms of Notification of Award 5. Form of Contract Agreement 6. Performance Security Form 6a. Performance Security Form in case of Contract awarded to Joint Venture 7.(i) Bank Guarantee Form for Advance Payment (For Supply-FOB/Ex-works) 7.(ii) Bank Guarantee for Advance Payment (For Installation/Civil Works) 7.(iii) Bank Guarantee Form for Advance Payment in case of Contract awarded to Joint Venture 8. Form of Completion Certificate
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CLAUSE NO.	INSTRUCTIONS TO BIDDERS (ITB)
	9. Form of Operational Acceptance Certificate 10. Form of Trust Receipt 11. Forms of of Indemnity-cum-Undertaking Agreement (2 Nos.) 12. Form of Authorization Letter 13. Form of Joint Deed of Undertaking 14. Form of Bank Guarantee by Associate/Collaborator 15. Form of Joint Venture/Consortium Agreement 16. Form of Bank Guarantee Verification Check Lists 17. Form of Extension of Bank Guarantee 18. Form of Indemnity-cum-Undertaking Agreement for removal/disposal of scrap/ surplus material
4.2	The Bidder is expected to examine all instructions, forms, terms, conditions, specifications and other information in the bidding documents. Failure to furnish all information required as per 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.
5.	Clarification on Bidding Documents
5.1	A prospective Bidder requiring any clarification to the bidding documents may notify the Employer through e-mail or in writing by post at the Employer's address indicated in the Bid Data Sheet. The Employer will respond to any request for clarification or modification of the bidding documents that it receives not later than the date specified in IFB(Section-I). The Employer will post the Clarifications in C-Folder and Bidders can view these Clarifications once they are posted in C-Folder. Bidders shall be notified through e-mail regarding posting of Clarification in C-Folder. Bidders are also advised to regularly check C-Folder regarding posting of clarification, if any. Further, no queries from Bidders shall be entertained after the date of Pre-Bid Conference as specified in IFB. Accordingly, any query(ies) received from Bidders after the cut-off date shall be returned.
5.2	The Bidder is advised to visit and examine the site where the facilities are 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 supply and installation of the facilities. The costs of visiting the site shall be borne by the bidder fully.
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CLAUSE NO.	INSTRUCTIONS TO BIDDERS (ITB)
5.3	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 inspection, 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.
6.	Amendment to Bidding Documents
6.1	At any time prior to the deadline for submission of bids, the Employer may, for any reason, whether at its own initiative, or in response to a clarification requested by a prospective Bidder, amend the bidding documents.
6.2	The amendments will be posted in C-Folder for viewing by the Bidder. Bidders shall be notified through e-mail regarding posting of amendments in C-Folder. The amendments will be binding on Bidders and it will be assumed that the information contained therein will have been taken into account by the Bidder in its bid. Bidders are also advised to regularly check C-Folder regarding posting of Amendment, if any.
6.3	In order to afford prospective Bidders reasonable time in which to take the amendment into account in preparing their bid, the Employer may, at its discretion, extend the deadline for the submission of bids.
C. Preparation of Bids	
7.	Language of Bid
7.1	The bid prepared by the Bidder and all correspondence and documents related to the bid exchanged between the Bidder and the Employer shall be written in English language, provided that any printed literature furnished by the Bidder may be written in another language, as long as such literature is accompanied by a translation of its pertinent passages in English language in which case, for purposes of interpretation of the bid, the translation shall govern. The English Translation of the documents shall be carried out by professional translators and the translator shall certify that he is proficient in both languages in order to translate the document and that the translation is complete and accurate. Further, translation shall be authenticated by the Indian Consulate located in the Country where the documents have been issued or the Embassy of that Country in India.
8.	Documents Comprising the Bid Two Stage Bidding procedure shall be followed as under Stage-I : Techno-Commercial Bid Stage-II : Price Bid
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CLAUSE NO.	INSTRUCTIONS TO BIDDERS (ITB)
8.1 8.1.1 8.1.2	The Stage-I ("Techno-Commercial Bid") shall be evaluated for completeness and in regard to fulfillment of the qualification requirements and eligibility conditions. The Stage-II ("Price Bid") Bids shall be opened at a later date and time intimated in writing separately by the Employer. Stage-I: Techno-Commercial Bid The Techno-Commercial Bid comprises of following two categories of documents: Documents to be submitted in physical form in separate sealed envelope(s) duly marked in accordance with ITB clause 15: (a) Attachment 1: Bid Security Bid security/ Notarized copy of valid NSIC registration certificate applicable in case of a bidder who is eligible Small Scale Industries Unit (SSI Unit) seeking waiver for submission of Bid Security shall be furnished in accordance with ITB Clause 12.2 in a separate sealed envelope. (b) Attachment 2: Power of Attorney A power of attorney, duly notarized by a Notary Public, indicating that the person signing the bid has the authority to sign the bid and that the bid is binding upon the Bidder during the full period of its validity in accordance with ITB Clause 13 (The Authority of the person issuing the Power of Attorney shall also be submitted). Power of attorney(s), duly notarized by Notary Public, indicating that the person(s) signing the documents on behalf of Associate(s)/ collaborator(s)/ executants(s) of JV Agreement have the authority to sign the same and the said documents are binding upon them during the full period of its validity. (The Authority of the person issuing the Power of Attorney shall also be submitted.) Further, in case of JV bid, a power of attorney in favor of the authorized signatory of the lead partner, signed by legally authorised signatory (ies) of other joint venture partner shall also be submitted. Bidder to note that bid can be submitted / digitally signed by only one person. The Power of Attorney must be in the name of person digitally signing the bids. (c) Deed of Joint Undertaking / Joint Venture / Consortium Agreement / Letter of Support (If applicable) as per relevant attachment. (d) Integrity Pact (If applicable) as per relevant attachment. Documents to be submitted online through e-tender mode:
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CLAUSE NO.	INSTRUCTIONS TO BIDDERS (ITB)
	The Bid Form (Techno-Commercial Bid) as per Section-VII, Part 1 of 3, duly completed together with the relevant attachments shall be uploaded in the private area earmarked (Tender Document) in the C-folder. (a) Attachment 3 : Bidder's Qualifications In the absence of pre-qualification, documentary evidence establishing that the Bidder is qualified to perform the contract, if its bid is accepted, shall be furnished in Attachment-3 to bid. The documentary evidence of the Bidder's qualifications to perform the contract, if its bid is accepted, shall establish to the Employer's satisfaction that the Bidder has the financial, technical, production, procurement, installation and other capacities and capabilities necessary to perform the contract and meets the experience and other criteria outlined in the Bid Data Sheet The Bidder shall provide satisfactory evidence that he and/or, where applicable, his collaborator/associate: (i) is a manufacturer, who regularly manufactures equipment of the type specified and/or undertakes the type of work specified and has adequate technical knowledge and relevant experience for the works covered in the bidding documents. (ii) does not anticipate a change in ownership during the proposed period of execution of work (if such a change is anticipated, the scope and effect thereof shall be defined). (iii) has adequate financial stability and status to meet the financial obligations pursuant to the works covered in the bidding documents. (iv) has adequate design, plant and manufacturing and/or fabrication capability and capacity available to perform the work properly and expeditiously within the time period specified. The evidence shall specifically cover, with written details, the installed manufacturing and/or fabrication capacities and present commitments (excluding those anticipated under this Bidding Documents). If the present commitments are such that the installed capacity results in an inadequacy of manufacturing and/or fabrication capacities to meet the requirements appropriate to the works cover in his bid, then the details of alternative arrangements to be organised by the Bidder and/or his collaborator/associate for this purpose and which shall meet the Employer's approval, shall also be furnished. (v) has an established project management organisation covering the areas related to engineering of equipment/systems, interface engineering, procurement of equipments and the necessary field services required for successful construction, testing and
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CLAUSE NO.	INSTRUCTIONS TO BIDDERS (ITB)
	commissioning of all the power plant equipments and systems covered in the scope of work for this package and as required by the Bidding Documents. (vi) has established quality assurance systems and organisation designed to achieve high levels of equipment/system reliability, both during his manufacturing and/or fabrication and field installation activities. (vii) a company formed by the merger of two or more companies or divisions of such companies engaged in supply and installation of equipment/system/ services covered under the scope of work in the bidding documents can also participate provided the constituent companies or divisions before merger individually or jointly meet the stipulated qualification requirements fully. In addition to the requirements stipulated above, the Bidder should also meet the qualifying requirements stipulated in Item No. 3.0 of Bid Data Sheets. Bidder shall submit a 'Declaration' in the format enclosed as 'Appendix-A' to Attachment-3A-1 stating that the Bidder has carried out a comprehensive assessment of the 'Capacity and Capability' of their Associate/ Collaborator and their Associate/Collaborator have sufficient Capacity & Capability to execute the Work as per Provisions of the Bidding Documents. Notwithstanding anything stated above, the Employer reserves the right to undertake a physical assessment of the capacity and capabilities including financial capacity and capability of the Bidder / his Collaborator(s) / Associate(s) / Subsidiary(ies) / Group Company(ies) to perform the Contract, should the circumstances warrant such assessment in the overall interest of the Employer. The physical assessment shall include but not be limited to the assessment of the office / facilities / banker's / reference works by the Employer. A negative determination of such assessment of capacity and capabilities may result in the rejection of the Bid. The above right to undertake the physical assessment shall be applicable for the qualifying requirements stipulated in both Section-ITB and in Section-BDS. Bids submitted by a Joint Venture of two or more firms as partners, if so permitted in the Bid Data Sheet, shall comply with the following requirements: i) The bid shall include all the information required for Attachment 3 as described above for each Joint Venture partner.
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	ii) The bid shall be signed so as to be legally binding on all partners. iii) One of the partners shall be designated as leader, this authorisation shall be evidenced by submitting with the bid a power of attorney in favor of the leader signed by legally authorised signatory (ies) of other joint venture partner. iv) The leader shall be authorised to receive instructions for and on behalf of any and all partners of the Joint Venture and the entire execution of the contract, including payment, shall be done exclusively with the leader. v) All partners of the Joint Venture shall be liable jointly and severally for the execution of the Contract in accordance with the contract terms. vi) A copy of the agreement entered into by the joint venture partners as per the format provided in the Bidding Documents shall be submitted with the bid. In order for joint venture to qualify, each of its partners must meet the minimum criteria listed for an individual Bidder for the component of the contract they are designated to perform. Failure to comply with this requirement will result in rejection of the Joint Venture's Bid. A firm can be a partner in only one joint venture; bids submitted by joint ventures including the same firm as partner will be rejected. In case Bidder is permitted in the Bid Data Sheet to offer to supply and/or install plant and equipment under the contract that the Bidder did not manufacture or otherwise produce and/or install, the Bidder shall (i) have the financial and other capabilities necessary to perform the contract; (ii) have been duly authorised by the manufacturer or producer of the related plant and equipment or component to supply and/or install that item in the Employer's country; (iii) be responsible for ensuring that the manufacturer or producer of the related item meets the minimum criteria listed for that item. (b) Attachment 4 : Special Tools and Tackles The bidder shall provide the details regarding Special Maintenance Tools and Tackles. The cost of these Tools and Tackles shall be included in the Bid Price. (c) Attachment 5 : Subcontractors Proposed by the Bidder The Bidder shall include in its bid details of all major items of supply or services that it proposes to purchase or sublet and shall give details of the name and nationality of the proposed Subcontractor, including vendor, for each of those items. Bidders are free to list more than one Subcontractor/Vendor against each item of the facilities. Quoted rates and	
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	prices will be deemed to apply to whichever Subcontractor/Vendor is appointed, and no adjustment of the rates and prices will be permitted. The Bidder shall be responsible for ensuring that any plant, equipment or services to be provided by the Sub-Contractor/Vendor comply with the requirements of ITB sub-clause 8.1.2 (a). The Employer reserves the right to delete any proposed Subcontractor/Vendor from the list prior to award of contract. After discussion between the Employer and the Contractor, Appendix 5 to Contract Agreement shall be completed, listing the approved Subcontractor(s) / Vendor(s) for each item. (d) Attachment 6: Deviations Deviations (Technical as well as Commercial), if any, from the terms, conditions and Technical Specifications of Bidding Documents and its amendments / clarification / addenda / corrigenda/errata shall be listed only in Attachment-6 to the Stage-I (Techno-Commercial) bid. Bidders may further note that except for deviations listed in Attachment-6, the bid shall be deemed to comply with all the requirement in the bidding documents and the bidders shall be required to comply with all terms condition and specification such requirements of bidding documents and technical specifications including all Amendments / Addenda / Corrigenda /Errata /Clarifications irrespective of any mention to the contrary, anywhere else in the bid. (e) Attachment 7: Alternative Bids Bidders wishing to offer technical alternatives to the requirements of the bidding documents must first price the Employer's design of the facilities as described in the bidding documents, and shall further provide all information necessary for a complete evaluation of the alternatives by the Employer, including drawings, design calculations, technical specifications, proposed installation methodology, requirement of spares and other relevant details without any price component. However, the prices alongwith their breakups of alternative bids shall be furnished in relevant Attachment of the price bid. (f) Attachment 8: Functional Guarantees The declaration on the guaranteed values of parameters as per Employer's format. (g) Attachment 9: Erection Tools and Plant and Safety Equipments & Safety Personal Protective Equipments List of Erection Tools and Plant and Safety Equipments & Safety Personal Protective Equipments which the bidder proposes to bring to site in case the contract is awarded to him.
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	Attachment 9A : Commissioning/Startup Spares List of Commissioning/Startup Spares duly filled in as per the Employer's format, enclosed with the bidding documents. (h) Attachment 10 : Technical Data Sheets Technical Data Sheets duly filled in as per the Employer's format, enclosed with the bidding documents. (i) Attachment 11 : Quality Assurance Programme Details regarding the overall quality management & procedures which the bidder proposes to follow during various phases of execution of the contract. (j) Attachment 12: Additional Information Additional Information which the bidder wishes to provide in his bid, without any price component. (k) Attachment 13 : Milestone Schedule Details regarding the timing & sequence of all key activities/facilities and giving the necessary for successful completion of the contract, as per Employer's format enclosed. (l) Attachment 14 : EFT Form Electronic Fund Transfer Form duly filled in as per Employer's format. (m) Attachment 15: Integrity Pact Bidder shall unconditionally accept the "Integrity Pact (IP)" (executed on plain paper) as per Employer's format, which has been pre signed by the employer, and submit the same duly signed on all pages in a separately sealed envelope as per ITB clause 15.1 by the bidder's authorised signatory along with the bid. (n) Attachment 16: Check List of Documents to be submitted along with Techno-Commercial Bid. 8.1.3 The Techno-Commercial Bid should not contain any price content entry. In case, the Techno-Commercial Bid is found to contain any price content, such bid shall be liable for rejection. Only Techno-commercial bid shall be uploaded in C-Folder. 8.1.4 Attribute in General Data The Attributes, if mentioned in General Data, requiring any confirmation/information are to ticked/filled up suitably.
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CLAUSE NO.	INSTRUCTIONS TO BIDDERS (ITB)
8.2 8.2.1 8.2.2 8.2.3	Stage-II: Price Bid The Price Bid is to be submitted online through e-tendering mode only and shall comprise of following components: Documents in original to be submitted in physical form in separate sealed envelope(s) duly marked in accordance with ITB clause 15: (a) Attachment 1P: Extension of Bid Security Extended Bid security shall be furnished in accordance with ITB Clause 12 in a sealed envelope separately, super scribed on the top as under and be addressed to the Employer at the address mentioned in BDS: "Original Extended Bid Security for [Name of the Package], Specification No. Due on..... (Date of Bid Opening)..... From..... (Name of the Bidder)." The bidders are requested to send the extended Bid Security well in advance so as to be received by the Employer before the scheduled date of closing of submission of Price bids as described in the time schedule in IFB or as informed subsequently failing which bid is liable for rejection. NTPC shall not be liable for loss/non-receipt/late receipt of extended Bid Security in postal transit. Any Bid without an acceptable extended Bid Security shall be treated as non-responsive by the Employer and shall not be opened pursuant to ITB Sub-Clause 12.4. (b) Attachment 2P: Power of Attorney A power of attorney, duly notarized by a Notary Public, indicating that the person signing and submitting the bid has the authority to sign the Price Bid and that the bid is binding upon the Bidder during the full period of its validity in accordance with ITB Clause 13. (The Authority of the person issuing the Power of Attorney shall also be submitted). The price related documents/information as mentioned below to be submitted online in separate Bid Invitation Number, which shall be communicated after opening of Techno-Commercial Bid. The Bid Form (Price Bid) as per Section-VII, Part 2 of 3, duly completed together with the following attachments and price schedules shall be uploaded in the private area earmarked (Tender Document) in the C-folder: (i) Attachment 3P: Declaration regarding Import content Bidder may note that CIF value of import content in the Ex-works (India) price quoted in Schedule-1 of the bid, if any shall be necessarily declared by the
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	bidders in Attachment-3P to the bid. Bidder may further note that the relevant certificate for claiming the custom duty benefits shall be issued on the aforesaid declaration basis only. In case no such import content is envisaged in the bid or the CIF value of import content to be declared is zero, the bidder shall indicate "NIL" against the CIF value of import content. In cases where Attachment-3P (Declaration regarding Import Content) is not submitted alongwith bid or no value is indicated by the Bidder against the CIF value of import content in Attachment-1P or statement / any declaration like 'later', 'to be furnished later', 'NA' etc. are indicated by the bidder, in such cases the CIF value of import content in the bid shall be considered as "NIL" for the purpose of issuance of relevant certificate for claiming the custom duty benefits, if any. No further claim in this regard shall be entertained by the Employer. (ii) Attachment 4P: Custom Duty Benefits for Import for Construction Equipment Declaration regarding the custom duty benefits for Import of Construction Equipment considered in the Bid. (iii) Attachment 5P: Functional Guarantees The declaration on the guaranteed values of parameters as per Employer's format. Guaranteed value must be filled up in Attribute Field in Main Screen of Bid Invitation (iv) Attachment 6P: Price Adjustment Data Details regarding Price Adjustment as per the Employer's format. (v) Attachment 7P: Alternative bids (if applicable) The prices alongwith their break-ups of alternative bids (if any) shall be furnished in Attachment-7A of the Price Bid (vi) Attachment 8P: Guarantee Declaration for Alternative bids (if applicable) (vii) Attachment 9P: Check list of documents to be submitted in price bid. 8.2.4 Item Data The bidder shall fill up online in "Basic Price Conditions" field, the price data, against items mentioned in the Item Data in Main Screen of Bid Invitation. The other pricing conditions if provided in items may also be filled up at bidder's option. The total bid price can be viewed through output preview tab. 8.2.5 Conditions in General Data
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	Bidder at its option may give discount (on the prices filled up in Item Data) in “Header Discount” field provided in Conditions tab in General Data. Total bid price after header discount shall be reflected in output preview in Main Screen of Bid Invitation.			
8.2.6	Attribute in General Data The Attributes, if mentioned in General Data, requiring any confirmation/information are to be ticked/filled up suitably.			
8.3	The Stage-II (Price) Bid submitted by the Bidder should be without any deviations and strictly in conformity with the provisions of all bidding documents and amendments/addenda/corrigenda/errata/clarifications issued by Employer to the Bidding Documents prior to Stage-II bidding. A conditional Price Bid shall run the risk of rejection.			
8.4	Price Bid should not contain any matter in respect of Technical and / or Commercial aspects other than the details specifically sought in the Price Bid. If the Technical/commercial matters indicated in Price Bid are found to be in contradiction with the details furnished in Techno-Commercial Bid, the details furnished in Techno-Commercial Bid shall prevail.			
9.0	Bid Form (Price Bid) and Price Schedules			
9.1	The Bidder shall complete the Bid Form (Stage-II (Price) Bid) and the appropriate Price Schedules furnished in the bidding documents as indicated therein, following the requirements of ITB Clauses 10 and 11 and attach them along with all annexure in respective C folder at NTPC e-tender site.			
10.	Bid Prices			
10.1	Unless otherwise specified in the Technical Specifications, 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, commissioning, Completion of the facilities and conductance of Guarantee tests for 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, conducting Guarantee tests 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 and Technical Specifications. The Bid Price shall also be inclusive of any Royalties or Seigniorage Fee or Cess or other charges payable on the quarried or mined metal, minerals, or minor minerals, as the case may be, at the rate(s) prevailing as on seven (7) days prior to the date of Price bid opening.			
<table><tr><td>EPC package for Waste to Energy Project (2x350 TPD) at Kawas GPS</td><td>BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - II (ITB)</td><td>PAGE 13 OF 39</td></tr></table>		EPC package for Waste to Energy Project (2x350 TPD) at Kawas GPS	BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - II (ITB)	PAGE 13 OF 39
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10.2 10.3	Bidders are required to quote the price in Price Bid for the commercial, contractual and technical obligations outlined in the bidding documents. Bidders shall give a breakdown of the prices in the manner and detail called for in the Price Schedules of Price Bid. The Bidders shall present their prices in the following manner: Separate numbered Schedules shall be used for each of the following elements and all the price schedules shall be uploaded in Main Screen of Bid Invitation. The total amount of each of the Schedule 1 to Schedule 3 shall be filled up in Basic Price Conditions field of the items for respective schedule specified in Item data of Main Screen of Bid Invitation. The total bid price(s) (i.e, summation of Schedule 1 to Schedule 3) is automatically computed which can be viewed by the Bidder through Output Preview tab in Main Screen of Bid Invitation. Bidder to note that discount, if any, is to be specified in Conditions field of General Data/Item Data in Main Screen of Bid Invitation. The discount specified elsewhere shall not be given effect to. <table border="0"> <tr> <td>Schedule No. 1</td><td>Plant and Equipment including Type Tests charges and Mandatory Spares</td></tr> <tr> <td>Schedule No. 2</td><td>Local Transportation including Inland transit insurance and other local costs incidental to delivery of Plant & Equipment and Mandatory Spares.</td></tr> <tr> <td>Schedule No. 3</td><td>Installation Services including Erection Works, Insurance covers other than inland transit insurance and other services as specified in the Bidding Documents</td></tr> <tr> <td>Schedule No. 4</td><td>Grand Summary (Schedules Nos. 1 to 3) (As per item data of SRM screen)</td></tr> <tr> <td>Schedule No. 5</td><td>Recommended Spare Parts</td></tr> <tr> <td>Schedule No. 6</td><td>Goods and Services Tax (GST) applicable on Schedules - 1, 2 & 3, not included in bid price.</td></tr> <tr> <td>Schedule No. 7</td><td>Break-up of Type Tests charges quoted in Schedule-1</td></tr> <tr> <td>Schedule No. 8</td><td>Schedule of Take out Rates – If applicable</td></tr> <tr> <td>Schedule No. 9</td><td>Schedule of Unit Rates - If applicable</td></tr> <tr> <td>Schedule No. 10</td><td>Schedule of Alternative – If applicable</td></tr> </table> Bidders shall note that the plant and equipment included in Schedule No.1 above shall exclude all materials used in civil, building and other construction works, if any. All such materials shall be included and priced under Schedule No. 3 (Installation Services).	Schedule No. 1	Plant and Equipment including Type Tests charges and Mandatory Spares	Schedule No. 2	Local Transportation including Inland transit insurance and other local costs incidental to delivery of Plant & Equipment and Mandatory Spares.	Schedule No. 3	Installation Services including Erection Works, Insurance covers other than inland transit insurance and other services as specified in the Bidding Documents	Schedule No. 4	Grand Summary (Schedules Nos. 1 to 3) (As per item data of SRM screen)	Schedule No. 5	Recommended Spare Parts	Schedule No. 6	Goods and Services Tax (GST) applicable on Schedules - 1, 2 & 3, not included in bid price.	Schedule No. 7	Break-up of Type Tests charges quoted in Schedule-1	Schedule No. 8	Schedule of Take out Rates – If applicable	Schedule No. 9	Schedule of Unit Rates - If applicable	Schedule No. 10	Schedule of Alternative – If applicable
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10.4	In the Schedules, Bidders shall give the required details and a breakdown of their prices as follows: (a) Plant and Equipment (including Type Test Charges) and Mandatory Spares to be supplied from within the Employer's country (Schedule No. 1) shall be quoted on EXW (Ex-Factory, Ex-Works, Ex- Warehouse or Off-the-Shelf, as applicable) basis and shall be inclusive of all costs as well as taxes, duties and levies paid or payable on components and raw materials incorporated or to be incorporated in the facilities. (b) Local Transportation, Inland Transit Insurance, and other local costs incidental to delivery of the Plant and Equipment including Mandatory Spares shall be quoted in Schedule-2. (c) Installation Services including Erection and Civil & Allied Works (as applicable) shall be quoted separately (Schedule No. 3) and shall include rates or prices for all labour, contractor's equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, charges for insurance covers other than inland transit Insurance including operations and maintenance services, the provision of operations and maintenance manuals, training of employer's personnel, etc., and other services, as identified in the Bidding Documents, as necessary for the proper execution of the Installation Services. (i) Bidders are advised to price their bids in such a manner that Installation Price Component of the bid price (excluding Civil/Structural works price) should not be less than....#...%and should not be more than...##... %of the Ex-works Price of Main Equipment. In case the Installation Price is below the minimum percentage specified above, the amount by which it is lower shall be retained proportionately from the Ex-Works component of Contract price while releasing payments due on receipt of equipment, and no interest shall be payable on the retained amount. The aforesaid retained amount shall be paid on pro-rata basis upon completion of installation of the respective equipment and its certification by the Project Manager. In case the Installation Price is above the maximum percentage specified above, the amount by which it is higher shall be retained while releasing progressive payments due on installation of equipment, and no interest shall be payable on the retained amount. The aforesaid retained amount shall be paid along with payment due on completion of Trial Operation / Completion of Facilities. (ii) Bidders are advised to price their bids in such a manner that the Civil Works Price Component of the bid price (including Site Fabricated Structural works price) should not be less than#.....% and should not be more than##.....% of the total of Ex-works Price of Main Equipment.	
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CLAUSE NO.	INSTRUCTIONS TO BIDDERS (ITB)
	In case the Civil Works Price (including Site Fabricated Structural works price) is below the minimum percentage specified above, the amount by which it is lower shall be retained proportionately from Ex-Works component of Contract price while releasing payments due on dispatch of equipment, and no interest shall be payable on the retained amount. The aforesaid retained amount shall be paid on pro-rata basis upon completion of Civil Works including Structural works (if any) corresponding to the respective equipment and its certification by the Project Manager. In case the Civil Works Price (including Site Fabricated Structural Works Price) is above the maximum percentage specified above, the amount by which it is higher shall be retained while releasing progressive payments due on completion of civil works (including Site Fabricated Structural works), and no interest shall be payable on the retained amount. The aforesaid retained amount shall be paid along with payment due on completion of Trial Operation / Completion of Facilities. (iii) Further, Bidders are also advised to price their bids in such a manner that O&M Component of the bid price should not be less than#.....% of the total of Ex-works Price of Main Equipment. In case O&M charges is below the minimum percentage specified above, the amount by which it is lower shall be retained proportionately from the Ex-works component of Contract Price while releasing payments due on receipt of equipment, and no interest shall be payable on the retained amount. The aforesaid retained amount shall be paid on pro-rata basis upon completion of O&M period and its certification by the Project Manager. (d) Recommended Spare parts shall be quoted separately in Schedule 5 on EXW basis in accordance with subparagraph (a) above. Local Transportation Charges including Inland Transit Insurance etc., for recommended spares shall also be quoted in Schedule-5 and shall not be included in Schedule No. 2 by the bidder. (e) The prices quoted in Schedule Nos. 1, 2 & 3 shall be inclusive of all Taxes, Duties, Levies & charges, except Goods and Services Tax (GST), payable in the Employer's country as of seven (7) days prior to the deadline for submission of price bids. Further, all Taxes, Duties, Levies & Charges on the Materials incorporated in Erection and Civil & Allied Works (as applicable) shall also be included in the prices quoted in Schedule No. 3 & no Separate payment on this account, whatsoever, shall be made by Employer. Goods and Services Tax (GST) applicable on goods and services specified in Schedule Nos. 1, 2 & 3 shall not be included in respective schedules, but shall be quoted separately in Schedule No. 6. The Goods & Services Tax (GST) quoted by the bidder in Schedule No. 6 shall be as applicable in the Employer's country as on seven (7) days prior to the deadline for
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CLAUSE NO.	INSTRUCTIONS TO BIDDERS (ITB)
10.5 10.6 10.6.1 10.6.2 10.6.3 10.7	submission of Price Bids. Due Input Tax credits under GST as per the relevant Govt. Policy, wherever applicable, shall be taken into account by the Bidder while quoting his price. The terms EXW, etc., shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce, 38, Cours Albert 1er, 75008, Paris, France. Benefits / Exemptions / Concessional Custom Duty for Power Projects Bidder may ascertain the availability of Custom Duty benefits available under Chapter 98.01 of the Customs Tariff Act for import of goods which are required for incorporation in the facilities under the Contract. The Employer shall issue the required Certificate, as per relevant policies of the Govt. of India, to facilitate the bidders to avail any such benefit under the Contract. For issuance of such Certificate by the Employer, the bidders shall be required to indicate the import content included in their bid price, in relevant attachment of Price Bid. The relevant Certificate will be issued on this basis only. In addition, Bidder may also like to ascertain the availability of Custom Duty Benefits available for import of construction Equipment, if any, as per the extant Customs Acts & Notification of Govt. of India. Where the Bidder has quoted taking into account the Custom Duty benefits available for import of Construction Equipment, he must give all information required for issue of relevant Certificate by Employer in Attachment-4P. The relevant Certificate will be issued on this basis only and no subsequent change will be permitted. However, if the above certificates are required to be issued by any department / ministry of Government of India or State Government where the Project is located other than Employer, the bidder shall itself be responsible for obtaining such certificate from the concerned department/ministry. In such a case, the Employer may issue a letter of recommendation. Further, the bidders shall themselves be solely responsible for availing the above benefits, which they have considered in their bid. In case of failure of the bidders to receive the benefits partly or fully from the Govt. of India and/or in case of any delay in receipt of such benefits and/or withdrawal of such benefits by the Govt. of India, the Employer shall neither be liable nor responsible in any manner whatsoever. Price Basis Prices quoted by the Bidder shall be subject to adjustment during performance of the Contract to reflect changes in the cost of labour, material, etc. in accordance with the procedures specified in Appendix-2 to the Form of Contract Agreement. A bid submitted with a fixed price quotation will not be rejected, but the price adjustment will be treated as zero. The price adjustment provision will not be taken into consideration in bid evaluation. Bidders must indicate the name, source and origin of labour and material indices along with their base values and corresponding coefficients in Attachment 12 to bid.
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CLAUSE NO.	INSTRUCTIONS TO BIDDERS (ITB)
11.	Bid Currencies
11.1	Bidders shall quote all prices in Indian Rupees only.
12.	Bid Security
12.1	The bidder shall furnish, as a part of its bid, a bid security in the amount and currency as stipulated in the Bid Data Sheet.
12.2	The Bid Security shall, at the Bidder's option, be in the form of a Crossed Demand Draft/Pay Order/Banker's Cheque or a Bank Guarantee from any of the banks specified in the in Annexure-I to Bid Data Sheet. The format of Bank Guarantee towards Bid security shall be in accordance with the form of bid security included in the bidding documents. The Bid Security shall remain valid for a period of forty-five (45) days beyond the original Bid validity period or beyond any extension of bid validity subsequently requested under ITB Sub-Clause 13.2. The Bidders at their option may also submit the Bid Security amount through E-Payment by Credit Card/Debit card/Net Banking on the NTPC e-tender portal. Upon successful e-payment on the portal, an e-receipt shall be generated by the system, a copy of which is to be submitted by the bidder along with the bid as a proof of e-payment of Bid Security.
12.2.1	Bid Security shall not be waived off in any case except for NSIC/SSI units in respect of Tenders for which NSIC/SSI Units are registered.
12.2.2	All eligible Small Scale Industries Units (SSI Units) shall be exempted from furnishing Bid Security against the subject package. Eligible SSI units shall mean those SSI units which are registered under Single Point Registration Scheme with the National Small Industries Corporation (NSIC) or those SSI units who have filed Memorandum with District Industries Centre. However, such bidders shall be required to submit offline a notarized copy of valid NSIC Registration Certificate or notarized copy of valid Acknowledgement of memorandum filed with district industries centre (alongwith copy of Form of Application) in a separate Sealed envelope
12.3	Whenever Bids under Joint Venture route are permitted as per Qualifying Requirement in the Bidding Documents, the Bid Security of the Joint Venture must be on behalf of all the partners of the Joint Venture.
12.4	The Bid Security in Original [in case of Stage-I (Techno-Commercial) Bid] and extension of Bid Security [in case of Stage-II (Price) Bid] shall be submitted in a separate sealed envelope. Any bid not accompanied by an acceptable Bid Security in a separate sealed envelope shall be rejected by the Employer as being non-responsive and shall not be opened. Further, Stage-II (Price) Bid not accompanied by requisite bid security extension in a separate sealed envelope shall be rejected by the Employer as being non-responsive and shall not be opened
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CLAUSE NO.	INSTRUCTIONS TO BIDDERS (ITB)
12.4.1	Confirmation of BG through Structured Financial Messaging System (SFMS)/SWIFT While issuing the physical BG, the Bidder's Bank shall also send electronic message to Employer's Beneficiary Bank whose details are provided in BDS through secure SFMS (in case of BGs issued from within India) or SWIFT (in case of BGs issued from outside India).
12.5	The Bid Security of the Bidders whose Techno-Commercial Bid has not been found acceptable, shall be returned along with letter communicating rejection of Techno-Commercial Bid. The Bid Security of the Bidders who are unsuccessful after opening of Price Bids shall be returned immediately after placement of award on the successful bidder. The Bid Security of the bidder, who has been invited to submit Stage-II (Price) Bid but opted not to submit the Price Bid, shall be returned within two (2) weeks after opening of Stage-II (Price) Bid by the Employer.
12.6	The Bid Security of successful Bidder to whom the Contract is awarded will be returned when the said Bidder has signed the Contract Agreement pursuant to ITB Clause 33 and has furnished the required Contract Performance Security pursuant to ITB Clause 34.
12.7	The Bid Security shall be forfeited in any of the following circumstances by the Employer/Owner without any notice or proof of damage to the Owner, etc: (a) if the Bidder withdraws or varies its bid during the period of bid validity specified by the bidder in the Bid Form. (b) If the Bidder does not accept the correction of its Bid Price pursuant to ITB Sub-Clause 26.2; (c) If the Bidder refuses to withdraw, without any cost to the Employer, any deviation, variation, additional condition or any other mention anywhere in the bid, contrary to the provisions of bidding documents. (d) in the case of a successful Bidder, if the Bidder fails within the time limit (i) to sign the Contract Agreement, in accordance with ITB Clause 33, and/or (ii) to furnish the required Contract Performance Security, in accordance with ITB Clause 34. (e) if the bidder/ his representatives commit any fraud while competing for this contract pursuant to Fraud Prevention Policy of NTPC.
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CLAUSE NO.	INSTRUCTIONS TO BIDDERS (ITB)
13. 13.1 13.1.1 13.2 14. 14.1 15.0	(f) In case the Bidder / Contractor is disqualified from the bidding process in terms of Section 3 & 4 of Integrity Pact. Period of Validity of Bid Stage-I (Techno-Commercial) Bid initially shall remain valid and open for acceptance for one hundred eighty (180) days from the date of opening of Stage-I (Techno-Commercial) Bid. Stage-II (Price) Bid including Stage-I (Techno- Commercial) Bid to the extent not contrary to the bidding documents read in conjunction with the amendments/errata/clarification issued shall remain valid and open for acceptance for one hundred eighty (180) days from the date of opening of Stage-II (Price) Bid. The bid valid for shorter period shall be rejected by the Employer as being non-responsive. The bidder is required to keep the prices of recommended spares covered under Price Schedule No. 5 valid for a period of six (6) months after Notification of Award for main equipment and mandatory spares. Extension of Bid Validity Period In exceptional circumstances, the Employer may solicit the Bidder's consent to an extension of the bid validity period. The request and responses thereto shall be made in writing by post or by telefax followed by post confirmation. If a Bidder accepts to extend the period of bid validity, the validity of bid security shall also be suitably extended. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request will not be required nor permitted to modify its bid. Format and Signing of Bid The bid including all documents attached in C Folder shall be digitally signed (using the class-III digital signature) by a duly authorised representative of the Bidder to bind him to the contract. The authorization shall be indicated by written power of attorney as per ITB Clause 8.1.2 (b) and shall be submitted in Hard copy prior to date & time for opening of deadline for submission of bid. D. Submission of Bids Sealing and Marking of Bids Bid shall be submitted through e-tender mode in the manner specified elsewhere in bidding document. No Manual/ Hard Copy of the Bid shall be acceptable. Bidder will attach in C-folder the completed Bid Form (Techno-Commercial), Attachments alongwith all Annexure. Bidder to ensure that all uploaded documents in C-Folder must be digitally certified. Bidder to further ensure that documents up-loaded in C-Folder is being downloaded properly. Employer shall not be responsible for corrupted files, if any, uploaded in C-Folder.
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CLAUSE NO.	INSTRUCTIONS TO BIDDERS (ITB)
15.1	Bidder should note that no zip file is to be uploaded online. Further file related to particular Attachment/Schedule including their annexures/appendices, if any, shall be given name of that Attachment/Schedule only. Documents to be submitted in physical form (as brought out at ITB clause 8.1.1 & 8.2.1) shall be sealed and marked in the following manner: (a) Stage-I (Techno-Commercial) Bid: (i) The bid security furnished in accordance with ITB Clause 12 shall be sealed in a separate envelope duly marking the envelope as "ATTACHMENT-1: BID SECURITY". (ii) The power of attorney furnished in accordance with ITB Clause 8.1.1(b) shall be sealed in a separate envelope duly marking the envelope as "ATTACHMENT-2: POWER OF ATTORNEY". (iii) The 'Integrity Pact' as per ATTACHMENT-15 duly signed by the signatory authorized to sign the bid, shall be sealed in a separate envelope entitled "ATTACHMENT-21: INTEGRITY PACT". (iv) The deed of joint undertaking (if applicable) as per relevant attachment shall be sealed in a separate envelope duly marking the envelope as "DEED OF JOINT UNDERTAKING". (b) Stage-II (Price) Bid: (i) The extension of bid security furnished in accordance with ITB Clause 12 shall be sealed in a separate envelope duly marking the envelope as "ATTACHMENT-1P: EXTENSION OF BID SECURITY". (ii) The power of attorney furnished in accordance with ITB Clause 8.2.1(b) shall be sealed in a separate envelope duly marking the envelope as "ATTACHMENT-2P: POWER OF ATTORNEY". The envelopes shall then be sealed in an outer envelope.
15.1.2	The inner and outer envelopes shall: (a) be addressed to the Employer at the address given in the Bid Data Sheet, and (b) bear the Package name indicated in the Bid Data Sheet, the Invitation for Bids number indicated in the Bid Data Sheet, and the statement "DO NOT OPEN BEFORE [date]," to be completed with the time and date specified in the Bid Data Sheet, pursuant to ITB clause titled 'Deadline for Submission of Bids'.
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CLAUSE NO.	INSTRUCTIONS TO BIDDERS (ITB)
15.1.3	The inner envelopes shall also indicate the name and address of the Bidder. If the outer envelope is not sealed and marked in the manner specified above, the Employer will assume no responsibility for its misplacement.
15.2	The bidder will submit his bid online in Process/Display Bid Screen at NTPC e-tender site in the following manner after carefully examining the document/conditions etc: (a) Techno-Commercial Bid Submission: (i) Bidders are required to certify their compliance to the Critical provisions by accepting the following attribute in Main screen of Bid invitation: “DO YOU ACCEPT ALL IMPORTANT CONDITIONS (NO DEV CL)?” (ii) Bidders are required to certify their compliance on "Qualifying Requirements" of NTPC (ITB clause 23.0) by accepting the following attribute in the Main screen of Bid invitation at NTPC e-tender site: “DO YOU CERTIFY FULL COMPLIANCE ON QUALIFYING REQUIREMENTS?” (iii) Bidders are required to certify their compliance to the “Fraud Prevention Policy” of NTPC (ITB clause 38.0) by accepting the following attribute in General Data of Process/Display Bid screen at NTPC e-tender site: “ACCEPTANCE OF FRAUD PREVENTION POLICY OF NTPC” (iv) Compliance to the “Policy for Withholding and Banning of Business Dealings” (ITB clause 39.0) has to be confirmed by accepting the following attribute in General Data of process/ Display Bid screen at NTPC e-tender site: “DO YOU ACCEPT WITHHOLDING & BANNING OF BUSINESS DEALING POLICY?” NOTE: Bids cannot be submitted without acceptance of all above attributes. (b) Price Bid Submission: (i) Bidders are required to certify their full compliance to all the provisions of Bidding Documents and its subsequent Amendment(s) / Clarification(s) / Addenda / Errata, if any, issued by NTPC (ITB clause 25.4) by accepting the following attribute in Main screen of Bid invitation for Stage-II bid: “DO YOU CERTIFY FULL COMPLIANCE TO ALL PROVISIONS OF BID DOC?” (ii) Total of Schedule-6 must be filled up in Attribute Field of General Data of Display Bid Screen at NTPC e-tender site.
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CLAUSE NO.	INSTRUCTIONS TO BIDDERS (ITB)
	(iii) The total amount (and discount, if any) of each of the Schedule-1 to Schedule-3 are to be filled in Item data at the relevant fields in pricing conditions. (c) Bids can be submitted by clicking on the "Submit" Tab and attaching relevant Digital Certificates. The status of the Bid can be checked at "Process Bids" screen at NTPC-e-tender site any time after submission of the bid.
16.	Deadline for Submission of Bids
16.1	Bids must be submitted online no later than the time and date stated in the Bid Data Sheet. Original Bid Security, Integrity Pact, Deed of Joint Undertaking / Joint Venture / Consortium agreement (if applicable) and Power of Attorney shall be submitted in physical form before stipulated bid submission time at the address specified in BDS. Employer shall not be liable for loss/non-receipt/late receipt of above documents in postal transit.
16.2	Employer may, at its discretion, extend this deadline for submission of bids by amending the bidding documents in accordance with ITB Sub-Clause 6.3, in which case all rights and obligations of Employer and Bidders will thereafter be subject to the deadline as extended.
16.3	The bid invitation number and the time and date for online submission of Stage-II (Price) Bid shall be intimated separately. Extended Bid Security and Power of Attorney shall be submitted in physical form before the deadline for submission of Price Bid at the address specified in BDS. Employer shall not be liable for loss/non-receipt/late receipt of above documents in postal transit.
16.4	Date & Time for submission of Stage-II (Price) Bid shall be intimated separately.
17.	Late Bid Security and Integrity Pact Any Bid Security (or extension thereof) and/or Integrity Pact received by the Employer after the bid submission deadline prescribed by the Employer, pursuant to ITB Clause 16, will be rejected and returned unopened to the Bidder.
18.	Modification and Withdrawal of Bids
18.1	The Bidder may modify or withdraw its bid after submission, provided that written notice of the modification or withdrawal is received prior to the deadline prescribed for bid submission. Employer shall return the bid through e-tendering mode for modification or withdrawal as requested.
18.2	A Bidder wishing to withdraw its bid shall notify Employer in writing prior to the deadline prescribed for bid submission. A withdrawal notice may also be sent by post or by telefax followed by post confirmation postmarked not later than the deadline for submission of bids.
18.3	The notice of withdrawal shall:
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CLAUSE NO.	INSTRUCTIONS TO BIDDERS (ITB)
18.4	(a) be addressed to EMPLOYER at the address named in Bid Data Sheet, and (b) bear the Package name, the IFB number, and the words "BID WITHDRAWAL NOTICE". Bid withdrawal notices received after the bid submission deadline will be ignored, and the submitted bid will be deemed to be a validly submitted bid. No bid may be withdrawn in the interval between the bid submission deadline and the expiration of the bid validity period specified in ITB Clause 13. Withdrawal of a bid during this interval may result in the Bidder's forfeiture of its bid security, pursuant to ITB Sub-Clause 12.7. E. Bid Opening and Evaluation 19. Opening of Bids 19.1 <u>Stage-I (Techno-Commercial) Bid Opening</u> 19.1.1 The Employer will first open Stage-I (Techno-Commercial) Bid in the presence of bidders' representatives who choose to attend the opening at the time, on the date and at the place specified in the Bid Data Sheet. In the event of the specified date for the opening of bids being declared a holiday for EMPLOYER, the bids will be opened at the appointed time on the next working day. All important information and other such details as EMPLOYER, at its discretion, may consider appropriate, will be announced at the opening. 19.1.2 In case requisite Bid Security / Notarized copy of valid NSIC registration certificate applicable in case of a bidder who is eligible Small Scale Industries Unit (SSI Unit) seeking waiver for submission of Bid Security pursuant to ITB Clause 12 and/or Deed of Joint Undertaking / Joint Venture / Consortium agreement and / or Integrity Pact (IP) as per provision of Integrity Pact specified in BDS are not submitted before the stipulated bid submission closing date and time then Bid shall be rejected by the Employer as being non-responsive and shall not be opened. 19.1.3 Stage-I (Techno-Commercial) Bids which are generally responsive to the operating and performance requirements as laid out in Technical Specifications of bidding documents will then be considered for evaluation. 19.2 <u>Stage-II (Price) Bid Opening</u> 19.2.1 After evaluation of Stage-I (Techno-Commercial) Bid, Employer may invite individual bidders for clarifications. Subsequently Employer may issue amendments/ clarifications, if considered necessary and Invite for Stage-II (Price) bid from the bidders who have been considered qualified and whose bid has been considered Techno-Commercially responsive.
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CLAUSE NO.	INSTRUCTIONS TO BIDDERS (ITB)
19.2.2	The Employer will open Stage-II (Price) Bids in the presence of bidders' representatives who choose to attend the opening at the time, on the date and at the place specified by the Employer. In the event of the specified date for the opening of bids being declared a holiday for the Employer, the bids will be opened at the appointed time on the next working day. All important information and other such details as the Employer, at its discretion, may consider appropriate, will be announced at the opening.
19.2.3	In case requisite bid security extension pursuant to ITB Clause 12, is not submitted before the stipulated Price Bid submission closing date and time then Bid shall be rejected by the Employer as being non-responsive and shall not be opened.
19.2.4	The participating bidders will be able to view the bid prices of all the bidders after online opening of Price Bids by Employer (through Condition Wise Pricing Link at Main Page of SRM).
20.	Clarification on Bids
20.1	During the bid evaluation, the Employer may, at its discretion, ask the Bidder for a clarification of its bid including documentary evidence pertaining to only the reference works/installations declared in the bid for the purpose of meeting Qualifying Requirement specified in Bid Data Sheet. The request for clarification and the response shall be in writing and no change in the price or substance of the bid including substitution of reference works/installations in the bid by new/additional work/installation for conforming to Qualifying Requirement shall be sought, offered or permitted.
21.	PRELIMINARY EXAMINATION OF TECHNO-COMMERCIAL BIDS
21.1	Employer will examine the bids to determine whether they are complete, whether required securities have been furnished, whether the documents have been properly signed and whether the bids are generally in order.
21.1.1	The Employer may waive any minor informality, nonconformity or irregularity in a bid that does not constitute a material deviation, whether or not identified by the Bidder in Attachment 6 to Stage-I bid and that does not prejudice or affect the relative ranking of any Bidder, as a result of the Stage-I Techno-Commercial bid evaluation and Stage-II Price bid evaluation, pursuant to ITB Clauses 22, 23 and 24.
21.2	Prior to the detailed evaluation, Employer will initially determine whether each Techno-Commercial bid is of acceptable quality, is generally complete and is substantially responsive to the bidding documents. For purposes of this determination, a substantially responsive bid is one that conforms to all the terms, conditions and specifications of the bidding documents without material deviations, objections, conditionalities or reservations. A material deviation, objection, conditionality or reservation is one (i) that affects in any substantial way the scope, quality or performance of the contract; (ii) that limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the successful Bidder's obligations under the contract; or (iii) whose
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21.3	rectification would unfairly affect the competitive position of other Bidders who are presenting substantially responsive bids. Critical Provisions No deviation, whatsoever, is permitted by the Employer to the provisions relating to the following clauses (important provisions) of Bidding Documents. (a) Governing Laws (Clause 5 of GCC, Section IV). (b) Settlement of Disputes (Clause 6 of GCC, Section IV). (c) Terms of Payment (Clause 12 of GCC, Section IV). (d) Performance Security (Clause 13.3 of GCC, Section IV). (e) Security for Deed(s) of Joint Undertaking (Cl. 13.4 of GCC, Section-IV). (f) Taxes and Duties (Clause 14 of GCC Section IV). (g) Completion Time Guarantee (Clause 26 of GCC, Section IV). (h) Defect Liability (Clause 27 of GCC, Section IV). (i) Functional Guarantee (Clause 28 of GCC, Section IV). (j) Patent Indemnity (Clause 29 of GCC, Section IV) (k) Limitation of Liability (Clause 30 of GCC, Section IV) (l) Price Basis (Clause 10.7 of ITB Section-II and Appendix-2 to Form of Contract Agreement, Section-VII)
21.4	The Bidders are advised that while making their Bid proposals and quoting prices, these conditions may appropriately be taken into consideration. Bidders shall certify their compliance on "CRITICAL PROVISION" to the provisions of the above clauses by accepting the following attribute in Main Screen of Bid Invitation: "DO YOU ACCEPT ALL IMPORTANT CONDITIONS (NO DEV CL)?" Acceptance of above attribute shall be considered as Bidder's confirmation that any deviation to the above Critical Provisions found anywhere in their Bid Proposal, implicit or explicit, shall stand unconditionally withdrawn.
21.4	EMPLOYER's determination of a bid's responsiveness is to be based on the contents of the bid itself without recourse to extrinsic evidence. If a bid is not substantially responsive, it will be rejected by EMPLOYER, and may not subsequently be made responsive by the Bidder by correction of the nonconformity.
22.0	EVALUATION OF STAGE-I (TECHNO-COMMERCIAL) BIDS
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	For the purpose of this clause, New Agency shall be defined as 'An Agency which is yet to successfully complete Trial Operation in any of the similar Packages awarded to it as on the date of Techno-commercial bid opening. In case Techno-Commercial Bids for one or more tenders of a New Agency are under evaluation for similar packages pertaining to different projects, their Price Bids shall be considered for opening in the following manner: (a) <u>If New Agency has not been awarded any similar Package from NTPC in the past as on the date of Techno-commercial bid opening</u> In such a case initially Price Bids of New Agency shall be opened for two tenders. If the New Agency is not determined as the lowest evaluated bidder in any of the aforesaid two tenders, further Price Bids shall be considered for opening limited to a maximum of two tenders concurrently. If the New Agency is determined as lowest evaluated bidder in any one of the above tenders, in such a case Price Bids in remaining tenders shall be opened one at a time till the New Agency is determined as lowest evaluated bidder in another tender. Once the New Agency is determined as lowest evaluated bidder in two tenders then their Price Bids in other remaining tenders shall not be considered for opening. (b) <u>If New Agency has already been awarded one similar Package from NTPC in the past as on the date of Techno-commercial bid opening</u> If such New Agency has not completed 70% of value of supplies in the aforesaid Package as on the date of Techno-commercial bid opening, in such a case Price Bids shall be opened one at a time till the New Agency is determined as the lowest evaluated bidder in one more tender. Once the New Agency is determined as lowest evaluated bidder in one more tender their Price Bids in other remaining tenders shall not be considered for opening. However, if they have completed 70% of value of supplies in the aforesaid Package as on the date of Techno-commercial bid opening, in such a case their Price Bids shall be opened in accordance with the procedure prescribed at Para (a) above. (c) <u>If New Agency has already been awarded two similar Packages from NTPC in the past as on the date of Techno-commercial bid opening</u> If such New Agency has not completed 70% of value of supplies in both the aforesaid Packages as on the date of Techno-commercial bid opening, in such a case their Price Bids shall not be considered for opening in any further tender. If New Agency has completed 70% of value of supplies in one of the aforesaid Package as on the date of Techno-commercial bid opening, in such a case Price Bids shall be opened one at a time till the New Agency is determined as
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	lowest evaluated bidder in one more tender. Once the New Agency is determined as lowest evaluated bidder in one more tender their Price Bids in remaining tenders shall not be considered for opening. However, if New Agency has completed 70% of value of supplies in both the aforesaid Packages as on the date of Techno-commercial bid opening, in such a case their Price Bids shall be opened in accordance with the procedure prescribed at Para (a) above. (d) <u>If New Agency has been awarded three similar Packages from NTPC in the past as on the date of Techno-commercial bid opening</u> If such New Agency has completed 70% of value of supplies in at least any two of the aforesaid Packages as on the date of Techno-commercial bid opening, in such a case Price bids shall be opened one at a time till they are determined as lowest evaluated bidder in one more tender. Once the New Agency is determined as lowest evaluated bidder in one more tender their Price Bids in remaining tenders shall not be considered for opening. (e) <u>If New Agency has been awarded four similar Packages from NTPC in the past as on the date of Techno-commercial bid opening</u> In such a case, Price Bids of New Agency shall not be considered for opening in any similar tender till such time they successfully complete Trial Operation in any of the aforesaid awarded Packages, subsequent to which they shall cease to be termed as New Agency. (f) The percentage of completion for the above purpose shall be determined by NTPC based on the payment released to the Contractor and NTPC's decision in this regard shall be final and binding.
23.0	QUALIFICATION
23.1	Bidders shall certify their compliance on "Qualifying Requirements" of Employer by accepting the following attribute in Main Screen of Bid Invitation: "DO YOU CERTIFY FULL COMPLIANCE ON QUALIFYING REQUIREMENTS?" Acceptance of above attribute shall be considered as bidder's confirmation to the following conditions: (a) The number of reference Plants/Orders quoted by Bidder in Attachment-3 of the bid, for establishing compliance to the specified Qualifying Requirement (QR), are in accordance with the provision specified in Bid Data Sheet. (b) The reference Plants/Orders/ declared, shall only be considered for evaluation/establishing compliance to Qualifying Requirement (QR). Any reference Orders declared more than as specified in Bid Data Sheet shall not
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23.2 23.3 23.4 24.0 24.1 24.2 25.0 25.1	be considered for evaluation/establishing compliance to Qualifying requirements. (c) No change or substitution in respect of reference Plants/Orders for meeting the specified Qualifying Requirement (QR) shall be offered by the bidder. EMPLOYER, by the examination of Techno-Commercial Bid, will determine to its satisfaction whether the participating bidders are qualified to satisfactorily perform the contract in terms of the qualifying requirements stipulated in the Bid Data Sheet. The determination will take into account the bidder's financial, technical and production capabilities and past performance, in particular its contracts, works in hand, future commitments and current litigation. It will be based upon an examination of documentary evidence of bidder's qualification submitted by the bidder in relevant attachment to the Bid Form of Techno-Commercial Bid as well as such other information as EMPLOYER deems necessary and appropriate. Notwithstanding anything stated anywhere else in the bidding documents, EMPLOYER reserves the right to seek in writing information relating to qualifying requirements in addition to details contained in the bid. The bidder shall furnish required information promptly to EMPLOYER. EMPLOYER will shortlist the Bidders meeting the stipulated Qualifying Requirements. An affirmative determination will be a prerequisite for the Employer to invite the Bidder to a clarification meeting in accordance with ITB Clause 24. A negative determination will result in rejection of the Bidder's bid. The capabilities of the vendors and subcontractors, proposed in relevant attachment, will also be evaluated for acceptability. Their participation should be confirmed with a letter of intent between the parties, if required. Should a vendor or sub-contractor be determined to be unacceptable, the bid will not be rejected, but the Bidder will be required to substitute an acceptable vendor or sub-contractor without any change in the bid price quoted in Price Proposal, prior to award. CLARIFICATION MEETING The Employer may conduct clarification meetings with each or any Bidder to clarify any aspects of its Stage-I (Techno-Commercial) bid that require explanation at this stage of the evaluation. During these meetings, the Employer may bring to the attention of the Bidder any matters, technical or otherwise, where for whatever reason, it requires amendments or changes to be made to the Stage-I (Techno-Commercial) bid. All such amendments or changes required by the Employer will be formally notified to all the Bidder Qualified in Stage-I (Techno-Commercial) Evaluation as part of the invitation to submit the Stage-II (Price) bid. The Employer will advise the Bidder of any exceptions or deviations in the Stage-I (Techno-Commercial) bid, that are unacceptable and that are to be withdrawn in the Stage-II (Price) bid. INVITATION FOR STAGE-II (PRICE) BIDS At the end of the Stage-I (Techno-Commercial) evaluation and after holding clarification meetings,
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	(a) the Employer may issue an amendment to the bidding documents as considered necessary by the Employer based on the Stage-I (Techno-Commercial) evaluation and clarification meetings thereof and/or (b) the Employer will either (i) invite a Bidder to submit Stage-II (Price) bid based on the updated Technical Specifications and Drawings or (i) notify a Bidder that its bid has been rejected on the grounds of being substantially non responsive, or that the Bidder does not meet the minimum qualification requirements set forth in the bidding documents and return his bid security.
25.2	The bidder shall be notified a new Bid Invitation Number in which online Price Bid is to be submitted along with the Date & Time for submission of bid.
25.3	The amendment to the bidding documents pursuant to ITB Sub-Clause 25.1 (a) will be posted in C-Folder of Bid Invitation for Stage-II (Price) bid for viewing by the bidder and they shall be notified regarding posting of amendments. The bidders shall be required to comply with the requirements of the amended bidding documents and no deviations/variations/ exceptions to the amended bidding documents shall be permitted in the Stage-II (Price) bids.
25.4	Bidders shall certify their full compliance to all the provisions of Bidding Documents and its subsequent Amendment(s) / Clarification(s) / Addenda / Errata, if any, issued by the Employer by accepting the following attribute in Main Screen of Bid Invitation for Stage-II (Price) bids: “DO YOU CERTIFY FULL COMPLIANCE TO ALL PROVISIONS OF BID DOC?” Acceptance of above attribute shall be considered as bidder's confirmation to the following: (a) The provisions of Bidding Documents read in Conjunction with Amendment(s)/ Clarification(s)/ Addenda/ Errata & Minutes of Clarifications Meeting (if any) subsequent to Stage-I (Techno-Commercial) Bidding are acceptable and no deviation has been taken in this regard. (b) Any deviation to Bidding Documents and its subsequent Amendment(s)/ Clarifications(s)/ Addenda/ Errata/ Minutes of Clarification Meeting (if any) as mentioned at (a) above found anywhere in Price Bid Proposal, implicit or explicit, shall stand unconditionally withdrawn, without any cost implication whatsoever to Employer, failing which the bid security shall be forfeited.
26.0	PRELIMINARY EXAMINATION OF STAGE-II (PRICE) BID
26.1	The Employer will examine the Price bids to determine whether they are complete, whether any computational errors have been made, and whether the bids are generally in order. The Employer may, at its discretion, ask the Bidder for a
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26.2	clarification of its bid. The request for clarification and the response shall be in writing, and no change in the price or substance of the bid shall be sought, offered or permitted. Arithmetical Errors will be rectified on the following basis: If there is a discrepancy between the unit price and the total price, which is obtained by multiplying the unit price and quantity, or between subtotals and the total price, the unit or subtotal price shall prevail, and the total price shall be corrected accordingly. If there is a discrepancy between words and figures, the amount in words will prevail. All errors in totaling and in carrying forward totals shall be corrected. The discount (if any) mentioned in Conditions field of General Data/Item Data in Main Screen of Bid Invitation shall be applied on such corrected price. The bid sum so altered shall, for the purpose of bid, be substituted for the sum originally bid and considered for evaluation and comparison of the bids and also for acceptance of the bid, instead of the original sum quoted by the Bidder. If the Bidder does not accept the correction of errors, its bid will be rejected and the Bid Security may be forfeited in accordance with ITB Sub Clause 12.7 (b).
27.0	EVALUATION OF STAGE-II (PRICE) BID
27.1	The comparison shall be of the EXW Price of Plant and Equipment including Type Test Charges and Mandatory Spares offered from within the Employer's country, such price to include all costs as well as duties and taxes paid or payable on components and raw materials incorporated or to be incorporated in the Plant and Equipment including Mandatory Spares, plus the cost of Local Transportation, Insurance Covers, all Installation Services required under the Contract, plus the Goods and Services Tax (GST) specified by the Bidder in its Bid (applicable on goods and services quoted in Schedules -1, 2 & 3). The Employer's comparison will also include the costs resulting from application of the evaluation procedures described in ITB Sub Clauses 27.3 to 27.5. However, the Price of recommended spare parts quoted in Price Schedule No. 5 shall not be considered for evaluation of Bids.
27.2	The Employer's evaluation of a bid will take into account, in addition to the bid prices indicated in Price Schedules Nos. 1 through 3 and Price Schedule No. 6, and the corrections pursuant to ITB sub-clause titled 'Arithmetical Correction', the following costs and factors that will be added to each Bidder's bid price in the evaluation using pricing information available to the Employer, in the manner and to the extent indicated in ITB Sub Clause 27.3 and in the Technical Specifications: (a) the functional guarantees of the facilities offered (b) the extra cost of work, services, facilities etc., required to be provided by the Employer or third parties.
27.3	Pursuant to ITB Sub Clause 27.2, the following evaluation methods will be followed:
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	(a) Functional Guarantees of the Facilities (i) Bidders shall state the functional guarantees (e.g. performance, efficiency, power consumption) of the proposed facilities in response to the Technical Specifications. In case a minimum (or a maximum, as the case may be) level of functional guarantee is specified in the Technical Specifications for the bids to be considered responsive, bids offering plant and equipment with such functional guarantees less (or more) than the minimum (or maximum) specified may be rejected. (ii) For the purposes of evaluation, the adjustment (if any) specified in the Bid Data Sheets will be added to the bid price for each drop (or excess) in the responsive functional guarantees offered by the Bidder, below (or above) either a norm of 100 or the value committed in the responsive bid with the most performing functional guarantees, as specified in the Bid Data Sheets. The adjustment factors shall be converted to such currencies as specified in Bid Data Sheets. (b) Work, Services, Facilities etc., to be provided by the Employer Where bids include the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions allowed for in the Bidding Documents, the Employer shall assess the costs of such additional work, services and/or facilities during the duration of the contract. Such costs shall be added to the bid price for evaluation. (c) Specific Additional Criteria The relevant evaluation method, if any, shall be detailed in the Bid Data Sheets. 27.4 Any adjustments in price that result from the above procedures shall be added, for purposes of comparative evaluation only, to arrive at an “Evaluated Bid Price”. Bid prices quoted by Bidders shall remain unaltered. 27.5 An illustrative method of evaluation is illustrated below: Illustrative Method of Evaluation Any Bidder (INR) ----- 1. Quoted Bid Price (after considering arithmetical corrections) (i) Ex-works price including type test charges for equipment and mandatory spares N1	
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	(ii) Price for inland transportation including inland transit insurance for equipment and mandatory spares N2 (iii) Price for Installation Services N3 (iv) Total Price N (N1+N2+N3) 2. Taxes & Duties (not included in 1 above) (i) GST P 3 Adjustments for Functional Guarantees (If applicable) X 4 Evaluated Bid Price FEP (N+P+X) Note: (i) Aforesaid method of evaluation shall be equally applicable for all bidders. (ii) CIF value of Import content in Ex-works price, quoted in Schedule-1 by Bidder, shall in no case be more than 30% of the total Supply value quoted by Bidder in Price Schedule-1. In case, a Bidder quotes CIF value of Import of content more than 30% of the total Supply value, its Bid shall be rejected. 27.6 The evaluation shall be based on the evaluated cost of fulfilling the contract in compliance with all commercial, contractual and technical obligations under this Bidding Document. 28. NOT USED 29. Contacting the Employer 29.1 Subject to ITB Clause 20, no Bidder shall contact the Employer on any matter relating to its bid, from the time of the opening of bids to the time the contract is awarded. 29.2 Any effort by a Bidder to influence Employer in EMPLOYER's bid evaluation, bid comparison or contract award decisions may result in rejection of the Bidder's bid. F. Award of Contract 30. Award Criteria 30.1 Subject to ITB Clause 31 (Employer's Right to Accept any Bid and to Reject any or all bids), the Employer will award the contract to the successful Bidder whose bid has been determined to be substantially responsive and to be the lowest evaluated
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	bid, further provided that the Bidder is determined to be qualified to perform the contract satisfactorily.
30.2	The Bidder will be required to comply with all requirements of the Bidding Documents without any extra cost to the Employer, failing which his bid security will be forfeited.
30.3	The Employer reserves the right to vary the quantity of any of the Spares and/or delete any item of Spares altogether at the time of Award of Contract.
30.4	The mode of contracting with the successful bidder will be as per stipulation outlined in GCC Clause 3.6 and briefly indicated below: (i) First Contract: For Ex-works (India) supply of plant and equipment including Type Test charges and mandatory spares. (ii) Second Contract: For providing all services i.e. inland transportation for delivery at site, inland transit insurance, unloading, storage, handling at site, installation (including civil, structural steel work & allied work, if applicable) insurance covers other than inland transit insurance, testing, commissioning and conducting Guarantee tests in respect of all the equipments supplied under the 'First Contract' and all other services including AMC as specified in the Contract Documents. Both the above Contracts will contain a cross-fall breach clause specifying that breach of one Contract will constitute breach of the other Contracts which will confer a right on the Employer to terminate the other Contracts also at the risk and the cost of the Contractor.
31.	Employer's Right to Accept Any Bid and to Reject Any or All Bids
31.1	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 award of contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Employer's action.
32.	Notification of Award
32.1	Prior to the expiration of the period of bid validity, the Employer will notify the successful Bidder in writing by registered letter or by email that its bid has been accepted. The notification of award will constitute the formation of the contract.
32.2	Upon the successful Bidder's furnishing of the performance securities pursuant to ITB Clause 34, the Employer will promptly notify each unsuccessful Bidder and will discharge its bid security, pursuant to ITB Sub-Clause 12.5.
33.	Signing the Contract Agreement

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33.1	At the same time as the Employer notifies the successful Bidder that its bid has been accepted, the Employer will send to the Bidder the Contract Agreement provided in the bidding documents, incorporating all agreements between the parties.
33.2	Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign and date the Contract Agreement and return it to the Employer.
34.	Performance Security
34.1	Within twenty-eight (28) days after receipt of the Notification of Award, the successful Bidder shall furnish performance securities for ten percent (10%) of Contract Price for all the contracts and in the form provided in the section "Forms and Procedures" of the bidding documents. In case Deed(s) of Joint Undertaking by the Contractor along with his associate(s)/collaborator(s) form part of the Contract, then, unconditional Bank Guarantee(s) from such associate(s)/collaborator(s) for amount(s) specified in Bid Data Sheets shall be furnished within twenty-eight (28) days after Notification of Award. These Bank Guarantees shall be furnished in the form provided in the section "Forms and Procedures" of the bidding documents and shall be valid till such period as specified in the corresponding format for Deed of Joint Undertaking.
34.2	The Bank Guarantees submitted towards Performance Security shall be essentially from any of the Banks listed in Annexure-I to SCC. The Bank guarantee submitted from within India towards Performance Security shall be issued on Non-Judicial Stamp Paper of appropriate value as per Stamp Act prevailing in the State(s) where the BG is submitted or is to be acted upon or the rate prevailing in the State where the BG is executed whichever is higher.
34.3	While issuing the physical BG(s), the Bidder's Bank shall also send electronic message to Employer's Beneficiary Bank, pursuant to ITB sub-clause 12.4.1.
34.4	Failure of the successful Bidder to comply with the requirements of ITB Clause 33 or Clause 34 shall constitute sufficient grounds for the annulment of the award and forfeiture of his bid security.
35.0	Ineligibility for participation in re-tender Notwithstanding the provisions specified in ITB Sub-Clause 12.7 and ITB Sub-Clause 34.4, if a bidder after having been issued the Notification of Award, either does not sign the Contract Agreement pursuant to ITB Clause 33 or does not submit an acceptable Performance Security pursuant to ITB Clause 34, and which result in tender being annulled then such bidder shall be treated ineligible for participation in re-tendering of this particular package.
36.0	Integrity Pact Bidders are required to unconditionally accept the "Integrity Pact (IP)" (executed on plain paper) as per relevant attachment to the Bidding Documents which has been pre-signed by Employer, and submit the same duly signed on all pages by the
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	bidder's authorized signatory alongwith the bid. Where the Joint Venture(s) / Consortium are permitted to participate in the bid pursuant to ITB Clause 8.1.2 (a) and BDS Item 3.0, the signing of Integrity Pact (IP) by all JV Partner(s)/ Consortium members is mandatory. The Integrity Pact (IP) is to be submitted in a separate sealed envelope as per provision of ITB 15.1. Bidder's failure to comply with the aforesaid requirement regarding submission of 'Integrity Pact (IP)' shall lead to outright rejection of the bid and in such case the bids shall not be opened.			
37.0	Corrupt or Fraudulent Practices			
37.1	Employer requires that Bidders, Contractors and Suppliers observe the highest standard of ethics during the procurement and execution of the contracts. In pursuance of this policy, Employer: (a) defines, for the purposes of this provision, the terms set forth below as follows : (i) "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and (ii) "fraudulent practice" means a misrepresentation of facts in orderto influence a procurement process or the execution of a contract to the detriment of the Employer, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition; (b) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question; (c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for or in executing a contract of the Employer.			
37.2	Furthermore, Bidders shall be aware of the provision stated in Sub-Clause 42.2 of the General Conditions of Contract.			
38.0	Fraud Prevention Policy The Bidder along with its associate / collaborators / sub-contractors / sub-vendors / consultants / service providers shall strictly adhere to the Fraud Prevention Policy of EMPLOYER displayed on its tender website http://www.ntpctender.com and shall immediately apprise Employer about any fraud or suspected fraud as soon as it comes to their notice. If in terms of above policy, it is established that the bidder/his representatives have committed any fraud while competing for this contract then the bid security of the bidder shall be forfeited.			
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39.0	Compliance to the “Fraud Prevention Policy” of NTPC has to be confirmed by accepting the following attribute in General Data of Process/Display Bid screen at NTPC e-tender site: “ACCEPTANCE OF FRAUD PREVENTION POLICY OF NTPC” Policy for withholding and Banning of Business Dealings The Employer has in place a Policy for withholding and Banning of Business dealings as enclosed at Special Conditions of Contract (SCC) of the Bidding Documents. Business dealings may be withheld or banned with the Bidder/Contractor on account of any of the grounds and following the procedures as detailed in the said Policy for withholding and Banning of Business Dealings. Compliance to the “Policy for Withholding and Banning of Business Dealings” as indicated in the General Conditions of Contract (Section-IV) has to be confirmed by accepting the following attribute in General Data of process/ Display Bid screen at NTPC e-tender site: “DO YOU ACCEPT WITHHOLDING & BANNING OF BUSINESS DEALING POLICY?” Bidder’s acceptance to the above attribute shall construe that the bidder has read the contents of the Banning Policy of NTPC attached with this Bidding Document and agrees to abide by this policy. Further, in terms of requirement under Banning policy, the bidder, by accepting the above attribute, also declares the following: a) The bidder has not been Banned/Blacklisted as on date of submission of bid by Ministry of Power or Government of India. b) The bidder has not employed any public servant dismissed/removed or person convicted for an offence involving corruption or abetment of such offences. c) The bidder’s Director(s)/Owner(s)/Proprietor/Partner(s) have not been convicted by any court of law for offences involving corrupt and fraudulent practices including moral turpitude in relation to business dealings with Government of India or NTPC or NTPC’s group companies during the last five years. By accepting the above attribute, the bidder also accepts that if at any point subsequent to award of Contract, the declarations given above are found to be incorrect, NTPC Limited shall have the full right to terminate the Contract and take any action as per applicable laws for breach of contract including forfeiture of Bid Security/Performance Bank Guarantee.			
40.0	PRE-BID CONFERENCE The Bidder or his authorised representative is invited to attend pre-bid conference on the date as stipulated in IFB at Employer’s address which will take place at the following address: EOC, NTPC, Sector-24, Noida (U.P).			
<table><tr><td>EPC package for Waste to Energy Project (2x350 TPD) at Kawas GPS</td><td>BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - II (ITB)</td><td>PAGE 38 OF 39</td></tr></table>		EPC package for Waste to Energy Project (2x350 TPD) at Kawas GPS	BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - II (ITB)	PAGE 38 OF 39
EPC package for Waste to Energy Project (2x350 TPD) at Kawas GPS	BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - II (ITB)	PAGE 38 OF 39		

CLAUSE NO.	INSTRUCTIONS TO BIDDERS (ITB)								
41.0	The purpose of the conference will be to clarify any issue regarding the Bidding Documents. Non-attendance at the pre-bid conference will not be a case for disqualification of a bidder. The Bidder is requested to submit queries in writing by email as specified at BDS item 7.0 or by fax to reach the Employer at the address indicated above before the pre-bid conference. Any modifications/clarification to the Bidding Documents which may become necessary as a result of the pre-bid conference shall be made by the Employer exclusively through an amendment/clarification to the bidding documents. Independent External Monitors (IEMs): In respect of this package, the Independent External Monitors (IEMs) would be monitoring the bidding process and execution of contract to oversee implementation and effectiveness of the Integrity Pact Program. The Independent External Monitor(s) (IEMs) have been appointed by NTPC, in terms of Integrity Pact (IP) which forms part of the NTPC Tenders/Contracts and details of the IEMs are available on NTPC tender website: www.ntpctender.com (under the tab "Integrity Pact"). This panel is authorized to examine/consider all references made to it under this tender. The bidder(s), in case of any dispute(s)/complaint(s) pertaining to this package may raise the issue either with the designed 'Nodal Officer' in NTPC or directly with the IEMs. The Independent External Monitors (IEMs) has the right to access without restriction to all Project documentations of the Employer including that provided by the Contractor. The Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his Project Documentations. The same is applicable to Subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder / Contractor / Sub-Contractors / JV Partners / Consortium member with confidentiality. The Nodal officer for necessary coordination in this regard shall be as under: <table border="0"> <tr> <td>(i)</td><td>GM(CS)/AGM(CS) heading : if the issue pertains to Contract Services</td></tr> <tr> <td>(ii)</td><td>Head of Contracts & Materials Department : if the issue pertains to regional office</td></tr> <tr> <td>(iii)</td><td>Head of concerned department : if the issue pertains to other departments</td></tr> <tr> <td>(iv)</td><td>Head of Project to Project/Station : if the issue pertains</td></tr> </table>	(i)	GM(CS)/AGM(CS) heading : if the issue pertains to Contract Services	(ii)	Head of Contracts & Materials Department : if the issue pertains to regional office	(iii)	Head of concerned department : if the issue pertains to other departments	(iv)	Head of Project to Project/Station : if the issue pertains
(i)	GM(CS)/AGM(CS) heading : if the issue pertains to Contract Services								
(ii)	Head of Contracts & Materials Department : if the issue pertains to regional office								
(iii)	Head of concerned department : if the issue pertains to other departments								
(iv)	Head of Project to Project/Station : if the issue pertains								
EPC package for Waste to Energy Project (2x350 TPD) at Kawas GPS	BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - II (ITB) PAGE 39 OF 39								

SECTION - III

BID DATA SHEET (BDS)

BDS Item No.	ITB Clause Ref., if any	DATA
SECTION - III BID DATA SHEET (BDS) NAME OF PACKAGE: EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GAS POWER STATION The following bid specific data for the Plant & Equipment to be procured, shall amend and/or supplement the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in the ITB. Invitation for Bids (IFB) No.: 40088007		
1.0	ITB 1.1	A. INTRODUCTION Instructions Related to E-Tendering: Bidder are required to go through the Guidelines provided at following e-tendering site: <u>https://etender.ntpclakshya.co.in</u> Name of the Package: EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GAS POWER STATION
2.0	ITB 5.1	B. THE BIDDING DOCUMENTS Name and address of Employer: AGM (C&M) / Manager (C&M), NTPC Limited, Sixth Floor, Engineering Office Complex, A-8A, Sector-24, NOIDA, Distt. Gautam Budh Nagar, (UP), INDIA Pin-201301 Telephone No.0091-120-4946671, 4948669 Fax No. 0091-2410284, 2410011 Registered Office Address: “NTPC Bhawan” Core No. 7, Scope Complex, Institutional Area, Lodhi Road, New Delhi – 110003, India.
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS		BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - III (BDS)
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BDS Item No.	ITB Clause Ref., if any	DATA
3.0	ITB 8.1.2 (a)	C. PREPARATION OF BIDS
3.1.0.0		Qualification Requirements
		Technical Criteria
		The Bidder should meet the qualifying requirements stipulated in any one of the qualifying routes i.e. Route-1 (clause 1.1.0) or Route-2 (clause 1.2.0) or Route-3 (clause 1.3.0) including requirements stipulated in sub clauses of respective routes. In addition, the Bidder should also meet the requirements stipulated under clause 2.0.0 together with the requirements stipulated under section ITB.
1.1.0		Route1: Qualified Waste to Energy Plant Equipment Manufacturer (QWEPM)
1.1.1.		The Bidder should have designed, engineered, supplied, erected / supervised erection, commissioned / supervised commissioning of at least two (02) numbers of waste to energy plants employing Grate Combustion System and Flue Gas Treatment System , having rated waste incineration capacity of at least 300 metric tonnes per day per stream or higher, at different locations anywhere in the world. All two (2) reference waste to energy plants should have been in successful operation for a period of not less than two (2) years prior to the date of techno commercial bid opening.
		AND
1.1.2.		The Bidder should have designed, engineered, manufactured/ got manufactured atleast Grate Combustion System or Waste Heat Recovery Steam Generator (WHRSG) or both in all two (2) reference waste to energy plants stipulated in clause 1.1.1 above. The bidder shall offer only the type of Grate Combustion System or Waste Heat Recovery Steam Generator (WHRSG) or both for which it is qualified.
1.2.0		Route 2: Indian EPC/R&M Company
1.2.1.		Bidder should be an Indian Company registered in India as per Companies Act of India and should have executed at least one Engineering, Procurement, Construction (EPC) Contract OR
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS		BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - III (BDS)
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BDS Item No.	ITB Clause Ref., if any	DATA
1.2.2.		Renovation & Modernisation (R&M) Contract of value not less than ₹ 100 Crores consisting of at least Steam Generator and Steam Turbine Generator Set in a thermal power plant which is in successful operation for a period of not less than one (1) year prior to the date of techno-commercial bid opening. Such bidder should associate/ collaborate with a Qualified Waste to Energy Plant Equipment Manufacturer (QWEPM) meeting the requirements as specified in clause 1.1.0 above at least for design, engineering, erection / erection supervision and commissioning / commissioning supervision of complete waste to energy plant being offered to NTPC by bidder.
1.2.3.		Additionally, supplied Grate Combustion System or Waste Heat Recovery Steam Generator (WHRSG) or both (as applicable) shall be designed, engineered and manufactured/ got manufactured by its associate/ collaborator and that shall be of the type for which its associate/collaborator is qualified. In case, associate/ collaborator has designed, engineered, manufactured/ got manufactured both Grate Combustion System and Waste Heat Recovery Steam Generator (WHRSG) in reference waste to energy plants, both shall necessarily be designed, engineered, manufactured/ got manufactured for waste to energy plant being offered to NTPC by bidder.
1.2.4.		In such case, the Bidder shall furnish Deed of Joint Undertaking (DJU) executed by it and its associate/ collaborator in which the executants of DJU shall be jointly and severally liable to the Employer for successful performance of contract as per format enclosed in the bidding documents. The DJU shall be submitted along with techno-commercial bid, failing which the Bidder shall be disqualified and its bids shall be rejected. In case of award, associate/ collaborator of Bidder will be required to furnish an on demand bank guarantee for an amount of 5% of the total contract price of this Package in addition to the contract performance security to be furnished by the Bidder.
1.3.0		Route 3: Indian Subsidiary Company/JV Company of a Qualified Waste to Energy Plant Equipment Manufacturer (QWEPM)
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS		BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - III (BDS) PAGE 3 OF 16

BDS Item No.	ITB Clause Ref., if any	DATA
1.3.1.		The Bidder shall be an Indian Subsidiary Company/JV Company of a Qualified Waste to Energy Plant Equipment Manufacturer (QWEPM) meeting the requirements as specified in clause 1.1.0 above, registered in India under the Companies act of India for purpose of design, engineering and manufacturing/get manufacturing of at least Grate System or Waste Heat Recovery Steam Generator (WHRSG) or both for waste to energy plants as well as design, engineering, supply, erection/ erection supervision, commissioning/ commissioning supervision of waste to energy plants as on the date of techno-commercial bid opening. If the Subsidiary Company/JV Company is incorporated as a public limited company then it should have obtained certificate for commencement of Business in India as on the date of techno-commercial bid opening.
1.3.2.		The Qualified Waste to Energy Plant Equipment Manufacturer (QWEPM) shall maintain a minimum equity participation of 51% in the Subsidiary Company / 26% in JV Company for a lock-in period of 5 years from the date of incorporation of Subsidiary Company/JV Company or up to the end of the defect liability period of the contract whichever is later.
1.3.3.		In case of JV Company, one of the promotor should be an Indian Company meeting the requirement as specified in clause 1.2.1 above who shall maintain the minimum equity participation of 51% in the JV Company for a lock in period of 5 years from the date of incorporation of JV Company or up to the end of defect liability period of the contract whichever is later.
1.3.4.		Such Subsidiary Company/JV Company shall associate/ collaborate with its Qualified Waste to Energy Plant Equipment Manufacturer (QWEPM) promotor for design, engineering, erection/erection supervision, and commissioning /commissioning supervision of complete waste to energy plant being offered to NTPC by bidder.
1.3.5.		Additionally, bidder shall have collaboration or valid licensing agreement for design, engineering, manufacturing of Grate System or Waste Heat Recovery Steam Generator (WHRSG) or both, being offered to NTPC by the bidder, of type for which its associate/collaborator is qualified.
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS		BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - III (BDS) PAGE 4 OF 16

BDS Item No.	ITB Clause Ref., if any	DATA
1.3.6.		The Bidder shall furnish a Deed of Joint Undertaking (DJU) executed by it and its Qualified Waste to Energy Plant Equipment Manufacturer (QWEPM) and other promotor having 25% or higher equity participation, in which all the executants of DJU shall be jointly and severally liable to the Employer for successful performance of contract as per the format enclosed in the bidding documents. The DJU shall be submitted along with techno-commercial bid, failing which the bidder shall be disqualified and his bid shall be rejected. In case of award, each promoter having 25 % or higher equity participation in the Subsidiary Company /JV Company will be required to furnish an on demand bank guarantee for an amount of 5 % of the total contract price of the EPC package in addition to the contract performance security to be furnished by the Bidder. <u>NOTES FOR CLAUSE 3.1.0.0:-</u> (1) Definitions (i) Wherever the term 'Waste' is appearing above, "Waste" shall be deemed to include Municipal Solid Waste (MSW)/ Refused Derived Fuel (RDF). (ii) Refused Derived Fuel shall mean fuel derived from combustible waste fraction of solid waste like plastic, wood, pulp or organic waste in the form of fluff (iii) Wherever the term "Flue Gas Treatment System", is appearing above, the same shall be deemed to include complete flue gas treatment system with De-NOx system, Lime system, activated carbon system, bag house, flue gas cooling, ducting etc. (iv) Wherever the term "per stream", is appearing above, the same shall mean a single block of Waste Heat Recovery Steam Generator. (v) Wherever the term "Waste Heat Recovery Steam Generator" is appearing above, the same shall be deemed to include furnace and pressure parts as minimum. (2) Equity Lock in period Wherever equity lock in period requirement or subsidiary status requirement is indicated, the Bidder would be required to furnish along with his bid, a Letter of Undertaking from the promoter(s), supported by Board Resolution as per the format
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS	BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - III (BDS)	PAGE 5 OF 16

BDS Item No.	ITB Clause Ref., if any	DATA
3.2.0.0 2.1.0 2.1.1 2.1.2		enclosed in the bid documents, for maintaining the required minimum equity for the specified lock in period. Financial Criteria Financial Criteria of Bidder The average annual turnover of the Bidder, in the preceding three (3) financial years as on the date of Techno-Commercial bid opening, should not be less than INR 910 Million (Indian Rupees Nine hundred Ten Million only) or in equivalent foreign currency. In case a Bidder does not satisfy the average annual turnover criteria, stipulated above on its own, its Holding Company would be required to meet the stipulated turnover requirements as above, provided that the Net Worth of such Holding Company as on the last day of the preceding financial year is at least equal to or more than the paid-up share capital of the Holding Company. In such an event, the Bidder would be required to furnish along with its Techno-Commercial bid, a Letter of Undertaking from the Holding Company, supported by the Holding Company's Board Resolution, as per the format enclosed in the bid documents, pledging unconditional and irrevocable financial support for the execution of the Contract by the Bidder in case of award. Net worth of the bidder should not be less than 100 % (one hundred percent) of its paid up share capital as on the last day of the preceding financial year on the date of Techno-commercial bid opening. In case the Bidder does not meet the Net worth criteria on its own, it can meet the requirement of Net worth based on the strength of its Subsidiary (ies) and/or Holding Company and/or Subsidiaries of its Holding company wherever applicable. In such a case, however the Net worth of the Bidder and its Subsidiary(ies) and/or Holding Company and/or Subsidiary(ies) of the Holding Company, in combined manner should not be less than 100% (hundred percent) of their total paid up share capital. However individually, their Net worth should not be less than 75% (seventy five percent) of their respective paid up share capitals. Net worth in combined manner shall be calculated as follows: Net worth (combined) = $(X1+X2+X3) / (Y1+Y2+Y3) \times 100$
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS	BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - III (BDS)	PAGE 6 OF 16

BDS Item No.	ITB Clause Ref., if any	DATA
2.1.3		Where X1, X2, X3 are individual Net worth which should not be less than 75% of the respective paid up share capitals and Y1,Y2,Y3 are individual paid up share capitals. In case the Bidder is not able to furnish its audited financial statements on standalone entity basis, the unaudited unconsolidated financial statements of the Bidder can be considered acceptable provided the Bidder further furnishes the following documents for substantiation of its qualification: (i) Copies of the unaudited unconsolidated financial statements of the Bidder along with copies of the audited consolidated financial statements of its Holding Company. (ii) A Certificate from the CEO/CFO of the Holding Company, as per the format enclosed with the bidding documents, stating that the unaudited unconsolidated financial statements form part of the consolidated financial statements of the Holding Company. In cases where audited results for the last financial year as on the date of Techno Commercial bid opening are not available, the financial results certified by a practicing Chartered Accountant shall be considered acceptable. In case, Bidder is not able to submit the Certificate from a practicing Chartered Accountant certifying its financial parameters, the audited results of three consecutive financial years preceding the last financial year shall be considered for evaluating the financial parameters. Further, a Certificate would be required from the CEO/CFO as per the format enclosed in the bidding documents stating that the financial results of the Company are under audit as on the date of Techno-commercial bid opening and the Certificate from the practicing Chartered Accountant certifying the financial parameters is not available.
2.2.0		Financial Criteria of Collaborator/Associate (Applicable for clause 1.2.0 and 1.3.0)
2.2.1		The average annual turnover of the Collaborator/Associate, in the preceding three (3) financial years as on the date of Techno-Commercial bid opening, should not be less than INR 910 Million (Indian Rupees Nine hundred Ten Million only) or in equivalent foreign currency.
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS		BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - III (BDS)
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BDS Item No.	ITB Clause Ref., if any	DATA
2.2.2		In case a Collaborator/Associate does not satisfy the average annual turnover criteria, stipulated above on its own, its Holding Company would be required to meet the stipulated turnover requirements as above, provided that the Net Worth of such Holding Company as on the last day of the preceding financial year is at least equal to or more than the paid-up share capital of the Holding Company. In such an event, the Collaborator/Associate would be required to furnish along with bidder's Techno-Commercial bid, a Letter of Undertaking from the Holding Company, supported by the Holding Company's Board Resolution, as per the format enclosed in the bid documents, pledging unconditional and irrevocable financial support to the Collaborator/Associate to honour the terms and conditions of the Deed of Joint Undertaking in case of award of the Contract to the Bidder with whom Collaborator/Associate is associated. Net worth of the Collaborator/Associate should not be less than 100% (hundred percent) of its paid up share capital as on the last day of the preceding financial year on the date of Techno-commercial bid opening. In case the Collaborator/Associate does not meet the Net worth criteria on its own, it can meet the requirement of Net worth based on the strength of its Subsidiary (ies) and/or Holding Company and/or Subsidiaries of its Holding company wherever applicable. In such a case, however the Net worth of the Collaborator/Associate and its Subsidiary(ies) and/or Holding Company and/or Subsidiary(ies) of the Holding Company, in combined manner should not be less than 100% (hundred percent) of their total paid up share capital. However individually, their Net worth should not be less than 75% (seventy five percent) of their respective paid up share capitals. Net worth in combined manner shall be calculated as follows: $\text{Net worth (combined)} = (X1+X2+X3) / (Y1+Y2+Y3) \times 100$ Where X1, X2, X3 are individual Net worth which should not be less than 75% of the respective paid up share capitals and Y1,Y2,Y3 are individual paid up share capitals.
2.2.3		In case the Collaborator/Associate is not able to furnish its audited financial statements on standalone entity basis, the unaudited unconsolidated financial statements of the Collaborator/Associate can be considered acceptable provided the Collaborator/Associate further furnishes the following documents for substantiation of its qualification:
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS		BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - III (BDS)
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BDS Item No.	ITB Clause Ref., if any	DATA
(i)		(i) Copies of the unaudited unconsolidated financial statements of the Collaborator/Associate along with copies of the audited consolidated financial statements of its Holding Company. (ii) A Certificate from the CEO/CFO of the Holding Company, as per the format enclosed with the bidding documents, stating that the unaudited unconsolidated financial statements form part of the consolidated financial statements of the Holding Company. In cases where audited results for the last financial year as on the date of Techno Commercial bid opening are not available, the financial results certified by a practicing Chartered Accountant shall be considered acceptable. In case, Collaborator/Associate is not able to submit the Certificate from a practicing Chartered Accountant certifying its financial parameters, the audited results of three consecutive financial years preceding the last financial year shall be considered for evaluating the financial parameters. Further, a Certificate would be required from the CEO/CFO as per the format enclosed in the bidding documents stating that the financial results of the Company are under audit as on the date of Techno-commercial bid opening and the Certificate from the practicing Chartered Accountant certifying the financial parameters is not available. <u>NOTES FOR CLAUSE 3.2.0.0</u> Net worth means the sum total of the paid up share capital and free reserves. Free reserve means all reserves credited out of the profits and share premium account but does not include reserves credited out of the revaluation of the assets, write back of depreciation provision and amalgamation. Further any debit balance of Profit and Loss account and miscellaneous expenses to the extent not adjusted or written off, if any, shall be reduced from reserves and surplus. Other income shall not be considered for arriving at annual turnover. "Holding Company" and "Subsidiary Company" shall have the meaning ascribed to them as per Companies Act of India.
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS		BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - III (BDS) PAGE 9 OF 16

BDS Item No.	ITB Clause Ref., if any	DATA
(iv)		For annual Turnover indicated in foreign currency, the exchange rate as on seven (7) days prior to the date of Techno-Commercial bid opening shall be used.
(v)		In case the bidder participating under Clause 1.2.0 or 1.3.0 , do not meet the turnover requirement, then, the Turnover of any of the Promoters individually or all the promoters (in a combined manner) (each having Equity Stake more than 25%) of the Subsidiary Company / JV Company would be considered. Each such promoter of the Subsidiary Company / JV Company shall have to meet the Net Worth criteria individually as per clause 2.1.2 and/or 2.2.2. In such an event the Bidder would be required to furnish along with its techno-commercial bid, a Letter of Undertaking from such promoter(s), supported by Board Resolution as per the format enclosed in the bidding documents, pledging unconditional and irrevocable financial support for execution of the Contract by the Bidder in case of award.
3.3		Bids not meeting the requirements as stated above shall be rejected.
3.4		Whether JVs are permitted : No Whether Associate/Collaborator permitted : Yes
4.0	New Clause	The reference plants whose details have been declared as per the specified format in the relevant attachment [i.e. Attachment No.-3A] shall only be considered to ascertain the bidder's compliance to the specified Qualifying Requirement (QR). Bidders wishing to provide additional reference plants are required to declare the same in similar format which shall be additionally attached. However, bidders are not permitted to quote more than three (03) sets of the reference works/plants wherever specified in the Qualifying Requirements for this purpose. Bidders are required to furnish the details of past experience based on which selection is to be made as per format enclosed in the bidding documents and enclose relevant documents like copies of authentic work order, completion certificate, agreements etc. supporting the details/data provided in the format. No claims without supporting documents shall be accepted in this regard. However, if any of
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS		BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - III (BDS)
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BDS Item No.	ITB Clause Ref., if any	DATA
5.0	ITB 10.4 (c)	the reference work pertains to the Contract(s)/Works executed by Bidder for NTPC in the past then in respect of such Contract(s)/Works Bidder shall not be required to enclose Client Certificate(s) alongwith its bid. The Employer at its discretion may seek any clarification and/or documentary evidence only for the reference plants as mentioned above. However, no change or substitution of the reference plants as new/additional plant for conforming to the specified Qualifying Requirement shall be sought, offered or permitted. Bidders are advised to price their bids in such a manner that Installation Price Component of the bid price (excluding Civil / Structural works price) should not be less than 15% and should not be more than 20% of the Ex-works Price of Main Equipment. Bidders are advised to price their bids in such a manner that the Civil Works Price Component of the bid price (including Site Fabricated Structural works price) should not be less than 20% and should not be more than 30% of the total of Ex-works Price of Main Equipment. Further, Bidders are also advised to price their bids in such a manner that O&M Component of the bid price should not be less than 5% of the total of Ex-works Price of Main Equipment.
5.1	ITB 10.3	Schedule No. 6: Goods and Services Tax (GST) applicable on Schedules - 1, 2 & 3, not included in bid price. This must be filled up in Attribute Field of General Data of Display Bid Screen at NTPC e-tender Site.
6.0	ITB 12.1	(a) Amount of Bid Security: INR 2,00,00,000/- (Indian Rupees Two Crore only). (b) Period of validity of Bid Security: 45 days beyond expiry of the validity of bid, i.e. 225 days from from the deadline for submission of bid. Bid Security shall be in favour of NTPC Limited.
6.1	ITB 12.4.1, 34.3	While issuing the physical BGs, the Bidder's Bank shall also send electronic message through secure SFMS (in case of BGs issued from within India) or SWIFT (in case of BGs
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS		BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - III (BDS) PAGE 11 OF 16

BDS Item No.	ITB Clause Ref., if any	DATA
		issued from outside India) to Employer's Beneficiary Bank whose details are provided herein below: (i) Bank Name : State Bank of India (ii) Bank Address : 5th Floor, Red fort Capital, Parsvnath towers, Bhai Veer Singh Marg, Gole Market, New Delhi-110001 (iii) IFSC Code : SBIN0017313 (iv) Branch code : 17313 (v) SWIFT Code : SBININBB824 D. SUBMISSION OF BIDS Any clarification sought on the bidding documents, the bidder's bid, any modification or withdrawal of bids shall be addressed to the Employer. However, they are required to be submitted as per address given below: AGM (C&M)/ Manager (C&M) NTPC Limited, 6th Floor, Engg. Office Complex, Plot A-8A, Sector 24, Noida-201 301, Distt. Gautam Budh Nagar, State of U.P. India Email: vibhavrastogi@ntpc.co.in, ashokkumar06@ ntpc.co.in.
7.0	ITB 15.1, 15.2	
7.1	ITB 15.1,12.1	Bids shall be submitted online. Only Bid Security, Notarized Power of Attorney, Integrity Pact and Deed of Joint Undertaking (if applicable) are to be submitted in original (hard copy) at address specified at BDS no. 9.0.
8.0	ITB 16.1	Deadline for Bid Submission- as stated in IFB and subsequent amendment, if any. E. BID OPENING AND EVALUATION
9.0	ITB 19.1	Location of Bid Opening Contracts & Material (C&M) NTPC Ltd., 6th Floor, Engineering Office Complex, A-8A, Sector-24, NOIDA-201 301, State of U.P., India Currency chosen for : Indian Rupees
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BDS Item No.	ITB Clause Ref., if any	DATA																																																		
10.0	ITB 22.1 (e)	purpose of evaluation																																																		
10.1		Time for Completion of Facilities from the date of Notification of Award shall be 30 months. The program for supplying, installing, commissioning, completing the facilities and site delivery of all Mandatory Spares covered in the package shall be in the form of Master Network identifying the Key phases in various areas of total works, like design, procurement, manufacture and field activities including civil construction and erection works. In addition, key milestone dates (10-15 nos.) shall also be identified for the complete facilities under the package. The Master Network shall conform to the following schedule dates for the key milestones: <table><tr><th rowspan="2">S. No.</th><th rowspan="2">Activity/ Description of Milestones</th><th colspan="2">Duration in Months from NOA</th></tr><tr><th>Start</th><th>Finish</th></tr><tr><td>1.</td><td>Soil Investigation</td><td>0</td><td>1</td></tr><tr><td>2.</td><td>Site mobilization and preparatory works</td><td>1</td><td>2</td></tr><tr><td>3.</td><td>Site Leveling</td><td>2</td><td>3</td></tr><tr><td>4.</td><td>Detailed Engineering & Approval</td><td>1</td><td>12</td></tr><tr><td>5.</td><td>Foundation and Civil works</td><td>6</td><td>15</td></tr><tr><td>6.</td><td>Delivery of main equipment (Grate, Reactor, Bag filter, Pressure Parts etc.)</td><td>9</td><td>18</td></tr><tr><td>7.</td><td>Installation of main equipment</td><td>10</td><td>20</td></tr><tr><td>8.</td><td>Other Misc. Civil works</td><td>-</td><td>24</td></tr><tr><td>9.</td><td>Commissioning (cold & hot)</td><td>25</td><td>28</td></tr><tr><td>10.</td><td>Trial Run</td><td>28</td><td>29</td></tr><tr><td>11.</td><td>Completion of facilities</td><td>29</td><td>30</td></tr></table> Note: 1. “Start” in each activity means next day after the lapse of duration given from NOA, however, in case of “Start=0” the start date will be the date of NOA. 2. “Finish” means last day of completion of the period of particular activity.	S. No.	Activity/ Description of Milestones	Duration in Months from NOA		Start	Finish	1.	Soil Investigation	0	1	2.	Site mobilization and preparatory works	1	2	3.	Site Leveling	2	3	4.	Detailed Engineering & Approval	1	12	5.	Foundation and Civil works	6	15	6.	Delivery of main equipment (Grate, Reactor, Bag filter, Pressure Parts etc.)	9	18	7.	Installation of main equipment	10	20	8.	Other Misc. Civil works	-	24	9.	Commissioning (cold & hot)	25	28	10.	Trial Run	28	29	11.	Completion of facilities	29	30
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10.2	The bidder shall also be required to submit a brief integrated PERT Network (L1 Schedule) matching with the above work schedule. The L1 Schedule shall, interalia, include at least following activities for each systems listed above, showing their																																																			

EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS	BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - III (BDS)	PAGE 13 OF 16
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BDS Item No.	ITB Clause Ref., if any	DATA
		inter-relationship and duration so as to meet the above mentioned milestone details. (i) Milestones to be incorporated in L1 Network to be submitted with bid: 1. Ordering on sub vendor (wherever applicable) 2. Start of engineering 3. Completion of engineering 4. Start of manufacturing/fabrication 5. Completion of manufacturing/fabrication 6. Readiness and completion of Type Test 7. Commencement of Supplies 8. Completion of supplies of all items 9. Completion of site delivery of mandatory spares. 10. Commencement of Civil / Structural Works (if applicable) 11. Completion of Civil / Structural Works (if applicable) 12. Start of Erection 13. Completion of Erection 14. Testing and commissioning of the System 15. Completion of the Facilities
10.3		The master network and the key milestone dates will be discussed with the successful bidder and agreed upon before the issue of Notification of Award. Engineering Drawing and Data Submission Schedule shall also be discussed and finalized before the issue of Notification of Award.
10.4		After the Notification of Award, the contractor shall plan the sequence of work of manufacture, supply and erection to meet the above stated dates of successful completion of facilities and shall ensure all work, manufacture, shop testing, inspection and shipment of the equipment in accordance with the required construction/erection sequence.
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS		BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - III (BDS)
		PAGE 14 OF 16

BDS Item No.	ITB Clause Ref., if any	DATA				
11.0	ITB 22.1 (d)	Following adjustment factor for bid evaluation of subject Package shall be used: <table><tr><th>Guarantee</th><th>Amount of Bid evaluation factor (BEF)</th></tr><tr><td>Unit heat rate guaranteed for plant under conditions specified in Clause 3.00.00, Sub-Section-IV, Part-A of Section-VI</td><td>INR 9,17,808/- (Indian Rupees Nine Lakh Seventeen Thousand Eight Hundred Eight only) for every kcal/kwhr differential in heat rate from the base value (minimum heat rate quoted by any of the bidder)</td></tr></table>	Guarantee	Amount of Bid evaluation factor (BEF)	Unit heat rate guaranteed for plant under conditions specified in Clause 3.00.00, Sub-Section-IV, Part-A of Section-VI	INR 9,17,808/- (Indian Rupees Nine Lakh Seventeen Thousand Eight Hundred Eight only) for every kcal/kwhr differential in heat rate from the base value (minimum heat rate quoted by any of the bidder)
Guarantee	Amount of Bid evaluation factor (BEF)					
Unit heat rate guaranteed for plant under conditions specified in Clause 3.00.00, Sub-Section-IV, Part-A of Section-VI	INR 9,17,808/- (Indian Rupees Nine Lakh Seventeen Thousand Eight Hundred Eight only) for every kcal/kwhr differential in heat rate from the base value (minimum heat rate quoted by any of the bidder)					
12.0	ITB Clause 27.2 27.3, 27.5	The word “Functional Guarantee” wherever appearing in bidding documents shall be read in conjunction with Technical Specification, Section-VI of Bidding Documents.				
13.0	ITB clause 8.2.3 Attachment-3P	Value of Import content in Ex-works price, quoted in Schedule-1 by Bidder, shall in no case be more than 30% of the total Supply value quoted by Bidder in Price Schedule-1. In case, a Bidder quotes value of Import of content more than 30% of the total Supply value, its Bid shall be rejected.				
14.0	ITB cl 10.3	Supply of mandatory spares – Not applicable. Bidder has to mandatorily furnish list of necessary spares and consumables required for successful operation & maintenance of entire plant for an initial period of 2 years in Schedule-5, in line with Part-F of Section-VI of bidding documents.				
15.0	ITB cl 15.2	Add the following under 15.2 (b): (iv) Bidders are required to certify their full compliance to provisions of BDS item no. 13.0 by accepting the following attribute in Main screen of Bid invitation for Stage-II bid: “VALUE OF IMPORT CONTENT IN EXW PRICE (QUOTED IN SCH-I) IS NOT MORE THAN 30% OF TOTAL SUPPLY VALUE QUOTED IN SCHEDULE-I.” (v) Bidders are required to indicate Unit Heat rate guaranteed for plant (in kcal/kwhr) in Attribute Field of General Data of Main screen of Bid invitation for Stage-II bid.				
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS		BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - III (BDS) PAGE 15 OF 16				

BDS Item No.	ITB Clause Ref., if any	DATA
		(vi) Bidders are required to certify their full compliance to provisions of BDS item no. 14.0 by accepting the following attribute in Main screen of Bid invitation for Stage-II bid: “LIST OF RECOMMENDED SPARES, WHOSE PRICE IS INCLUDED IN TOTAL BID PRICE, HAS BEEN FURNISHED IN SCHEDULE-5” (vii) Bidders are required to indicate Total of Schedule-5 (which is already included in bid price) in Attribute Field of General Data of Main screen of Bid invitation for Stage-II bid.
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS	BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - III (BDS)	PAGE 16 OF 16

**LIST OF BANKS ACCEPTABLE FOR SUBMISSION
OF BANK GUARANTEE FOR BID SECURITY****SCHEDULED COMMERCIAL BANKS****A STATE BANK OF INDIA****B NATIONALISED BANKS**

1. Allahabad Bank
2. Andhra Bank
3. Bank of India
4. Bank of Maharashtra
5. Canara Bank
6. Central Bank of India
7. Corporation Bank
8. Dena Bank
9. Indian Bank
10. Indian Overseas Bank
11. Oriental Bank of Commerce
12. Punjab National Bank
13. Punjab & Sind Bank
14. Syndicate Bank
15. Union Bank of India
16. United Bank of India
17. UCO Bank
18. Vijaya Bank
19. Bank of Baroda

C SCHEDULED PRIVATE BANKS (INDIAN BANKS)

1. Catholic Syrian Bank
2. City Union Bank
3. Dhanlaxmi Bank Ltd.
4. Federal Bank Ltd
5. Jammu & Kashmir Bank Ltd
6. Karnataka Bank Ltd
7. Karur Vysya Bank Ltd
8. Lakshmi Vilas Bank Ltd
9. Nainital Bank Ltd
10. Kotak Mahindra Bank
11. RBL Bank Limited
12. South Indian Bank Ltd
13. Tamilnad Mercantile Bank Ltd
14. ING Vysya Bank Ltd
15. Axis Bank Ltd.
16. IndusInd Bank Ltd
17. ICICI Bank
18. HDFC Bank Ltd.
19. DCB Bank Ltd
20. Yes Bank Ltd
21. IDFC Bank Limited
22. Bandhan Bank Limited

D SCHEDULED PRIVATE BANKS (FOREIGN BANKS)

1. Abu Dhabi Commercial Bank PJSC
2. Bank of America NA
3. Bank of Bahrain & Kuwait B.S.C.
4. Mashreq Bank p.s.c.
5. Bank of Nova Scotia
6. Crédit Agricole Corporate and Investment Bank
7. BNP Paribas
8. Barclays Bank
9. Citi Bank N.A.
10. Deutsche Bank A.G.
11. The HongKong Shanghai Banking Corporation Ltd
12. Societe Generale
13. Sonali Bank Ltd.
14. Standard Chartered Bank
15. J.P. Morgan Chase Bank, National Association
16. State Bank of Mauritius Ltd.
17. DBS Bank Ltd.
18. Bank of Ceylon
19. PT Bank Maybank Indonesia TBK
20. A B Bank
21. Shinhan Bank.
22. CTBC Bank Co. Ltd.
23. Mizuho Bank Ltd
24. Krung Thai Bank Public Company Ltd.

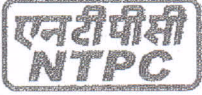
25. The Bank of Tokyo-Mitsubishi UFJ Limited.
26. Austalia & Newzealand Banking Group Limited
27. Sumitomo Mitsui Banking Corporation
28. American Express Banking Corporation
29. Qatar National Bank SAQ
30. Credit Suisse A.G.
31. FirstRand Bank Ltd.
32. Industrial & Commercial Bank of China Ltd.
33. JSC VTB Bank
34. National Australia Bank
35. Cooperatieve Rabobank U.A.
36. Sberbank
37. United Overseas Bank Ltd.
38. Westpac Banking Corporation
39. Woori Bank
40. The Royal Bank of Scotland plc
41. Doha Bank Qsc
42. Industrial Bank of Korea
43. KEB Hana Bank
44. First Abu Dhabi Bank PJSC
45. Emirates NBD Bank (P.J.S.C)

E OTHER PUBLIC SECTOR BANKS

1. IDBI Bank Ltd

*In case, Bank Guarantee is getting issued from State Bank of India, Bidder to take note of NTPC letter ref. NTPC/FC/CS/BG/01 dated 03.09.2014 and SBI letter ref. CAG-I/AMT-1/2014-15/370 dated 04.09.2014 attached herewith.

*Note - Any Addition/ Deletion/ Modification in Bank list shall be as per changes in Second Schedule List by RBI from time to time.



एन टी पी सी लिमिटेड
(भारत सरकार का उद्यम)

NTPC Limited
(A Govt. of India Enterprise)

केन्द्रीय कार्यालय/Corporate Centre

Date : 03rd September 2014

Ref. No.: NTPC/FC/CS/BG/01

Deputy General Manager,

State Bank of India,

CAG Branch,

12 th floor, Jawahar Vyapar Bhavan, 1, Tolstoy Marg,
New Delhi 110 001

Kind Atten: Sh. Sandeep Mishra

Sub: Format of the Bank Guarantee (BG) issued by State Bank of India – reg.

Dear Sir,

NTPC Limited is India's largest Power Company and a 'Maharatna PSU' with a significant presence in the entire value chain of power generation business. The procurement process of NTPC requires its participating Bidders to submit Bank Guarantees (BGs) as Bid security/other securities in a fixed format provided by NTPC.

It has been observed recently that BGs issued by various branches of State Bank of India are inserting the following additional clause.

QUOTE

Notwithstanding anything contrary contained in any law for the time being in force or banking practice, this guarantee shall not be assignable or transferable by the beneficiary. Notice or invocation by any person such as assignee, transferee of agent of beneficiary shall not be entertained by the bank. Any invocation of guarantee can be made only by the beneficiary directly.

UNQUOTE

The inclusion of the aforesaid clause in the BGs restricts the rights of NTPC under the BG and it may not be possible for NTPC to accept the aforesaid clause in the BGs submitted to us by our Bidders. It may also be mentioned that incorporation of the above additional clause in the BG results in the BG being returned by NTPC and consequently rejection of the bids of parties that have submitted such BGs.

In view of the above, it is requested that please take up at appropriate levels so that suitable instructions are issued to all your branches not to incorporate any such additional clause and henceforth BGs may be issued strictly as per NTPC format only.

Kindly acknowledge the receipt of this letter

Yours faithfully,

(K.P.Gupta)

General Manager (Finance)

Copy for Kind information: ED(CC&M) for kind info of u.s.

एन टी पी सी भवन स्कोप कॉम्प्लेक्स, 7, इंस्टीट्यूशनल एरिया, लोधी रोड, नई दिल्ली-110003 टेल/Tel.: 24360100, फैक्स/Fax: 011-24361018
NTPC Bhawan, SCOPE Complex, 7, Institutional Area, Lodhi Road, New Delhi-110003, वेबसाइट/Website: www.ntpc.co.in



भारतीय स्टेट बैंक
State Bank of India

कॉरपोरेट लेखा समूह शाखा, जवाहर व्यापार भवन,
11-12 वां तल, 1, टॉलस्टोय मार्ग, नई दिल्ली-110 001

Corporate Accounts Group Branch, Jawahar Vyapar Bhawan,
11th & 12th Floor, 1, Tolstoy Marg, New Delhi-110 001

Tel. : 23374525, 23374505, 23374541 (AMT-1), 23353022 (DGM & COO), 23701043, 23359506 (A & A), 23352995 (CS), 23352968 (IB)
Fax : 23353101 (Sectt.), 23352793 (CS), 23353029 (IB)

Shri K.P. Gupta,
General Manager (Finance),
NTPC Limited
Scope Complex, 7, Institutional Area,
Lodhi Road,
New Delhi: 110 003.

CAG-I/AMT-1/2014-15/370

04.09.2014

Dear Sir,

Format of the Bank Guarantee (BG) issued by State Bank of India

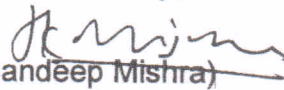
We refer to your letter dated 3rd September 2014 wherein you have requested for excluding bidders/vendors of NTPC from insertion of additional Clause restraining assignment/transferability of BG.

Looking at our relationship with NTPC, as a very special case, we have since obtained waiver from our Authorities for excluding NTPC from insertion of the referred clause for BGs issued in your favour.

We are taking steps to issue suitable instructions to our offices for exclusion of this clause for BGs issued in favour of NTPC. In case any bidder or vendor submits to you a Bank Guarantee issued by any of our Branches containing the additional clause as mentioned above, request you to please bring it to our notice and advise us so that we can take-up with the concerned Branch for excluding it.

This is for your information and necessary action please.

Yours faithfully,


(Sandeep Mishra)

Deputy General Manager &
Relationship Manager, AMT-1

SECTION – IV

GENERAL CONDITIONS OF CONTRACT (GCC)

Table of Clauses – General Conditions of Contract

S. No.	Description
---------------	--------------------

A. Contract and Interpretation

- | | |
|----|------------------------|
| 1. | Definitions |
| 2. | Contract Documents |
| 3. | Interpretation |
| 4. | Notices |
| 5. | Governing Law |
| 6. | Settlement of Disputes |

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|-----|--------------------------------------|
| 7. | Scope of Facilities |
| 8. | Time for Commencement and Completion |
| 9. | Contractor's Responsibilities |
| 10. | Employer's Responsibilities |

C. Payment

- | | |
|-----|------------------|
| 11. | Contract Price |
| 12. | Terms of Payment |
| 13. | Securities |
| 14. | Taxes and Duties |

D. Intellectual Property

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|-----|--------------------------|
| 15. | Copyright |
| 16. | Confidential Information |

E. Work Execution

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|-----|---|
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| 18. | Work Program |
| 19. | Subcontracting |
| 20. | Design and Engineering |
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| 24. | Completion of the Facilities |
| 25. | Commissioning, Guarantee Tests and Operational Acceptance |

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|-----|---------------------------|
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| 27. | Defect Liability |
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- 32. Care of Facilities
- 33. Loss of or Damage to Property; Accident or Injury to Workers;
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- 46. Withholding/Banning
- 47. Contractor's Labour Information Management System (CLIMS)
- 48. No claim for interest or damage
- 49. Integrity Pact
- 50. Independent External Monitor

Clause No.			GENERAL CONDITIONS OF CONTRACT (GCC)
			A. Contract and Interpretation
1.	Definitions	1.1	The following words and expressions shall have the meanings hereby assigned to them: “Contract” means the Contract Agreement entered into between the Employer and the Contractor, together with the Contract Documents referred to therein; they shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly. “Contract Documents” means the documents listed in Article 1.1 (Contract Documents) of the Form of Contract Agreement (including any amendments thereto). “GCC” means the General Conditions of Contract hereof. “SCC” means the Special Conditions of Contract. “Day” means calendar day of the Gregorian Calendar. “Month” means calendar month of the Gregorian Calendar. “Employer” means the person named as such in the SCC and includes the legal successors or permitted assigns of the Employer. “Project Manager” means the person appointed by the Employer in the manner provided in GCC Sub-Clause 17.1 (Project Manager) hereof and named as such in the SCC to perform the duties delegated by the Employer. “Contractor” means the person(s) whose bid to perform the Contract has been accepted by the Employer and is named as such in the Contract Agreement, and includes the legal successors or permitted assigns of the Contractor. “Contractor’s Representative” means any person nominated by the Contractor and approved by the Employer in the manner provided in GCC Sub-Clause 17.2 (Contractor’s Representative and Construction Manager) hereof to perform the duties delegated by the Contractor. “Subcontractor,” including vendors, means any person 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, and includes its legal successors or permitted assigns. “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. “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. “Plant and Equipment” means permanent plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Contract (including the spare

Clause No.	GENERAL CONDITIONS OF CONTRACT (GCC)		
			parts to be supplied by the Contractor under GCC Sub-Clause 7.3 hereof), but does not include Contractor's Equipment. "Installation Services" means all those services ancillary to the supply of the Plant and Equipment for the Facilities, to be provided by the Contractor under the Contract; e.g., 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 required for achieving Completion of Facilities, the provision of operations and maintenance manuals, training of Employer's Personnel etc. "Contractor's Equipment" means all plant, 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 and Equipment, or other things intended to form or forming part of the Facilities. "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. "Effective Date" means the date from which the Time for Completion shall be determined as stated in Article 3 (Effective Date for Determining Time for Completion) of the Form of Contract Agreement. "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 in accordance with the stipulations in the SCC and the relevant provisions of the Contract. "Completion" means that the Facilities (or a specific part thereof where specific parts are specified in the SCC) have been completed operationally and structurally and put in a tight and clean condition, and that all work in respect of Pre-commissioning of the Facilities or such specific part thereof has been completed; and Commissioning has been attained as per Technical Specifications. "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 GCC Clause 24 (Completion) hereof. "Commissioning" means trial/initial operation of the Facilities or any part thereof by the Contractor, which operation is to be carried out by the Contractor as provided in GCC Sub-Clause 25.1 (Commissioning) hereof, for the purpose of carrying out Guarantee Test(s). "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 25.2 (Guarantee Test) hereof. "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
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS		BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - IV (GCC)	PAGE 5 OF 70

Clause No.			GENERAL CONDITIONS OF CONTRACT (GCC)
			fulfilment of the Contract in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of GCC Clause 28 (Functional Guarantees) hereof and shall include deemed acceptance in accordance with GCC Clause 25 (Commissioning and Operational Acceptance) hereof. “Defect Liability Period” means the period of validity of the warranties given by the Contractor commencing at Completion 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. “Goods and Services Tax” or “GST” means taxes or cess levied under the Central Goods and Services Tax Act, Integrated Goods and Services Tax Act, Goods and Services Tax (Compensation to States) Act and various State/Union Territory Goods and Services Tax Laws and applicable cesses, if any under the laws in force (hereinafter referred to as relevant GST Laws)
2.	Contract Documents		
		2.1	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.
		2.2	The Contract will be signed in three originals and the Contractor shall be provided with one signed original and the rest will be retained by the Employer.
		2.3	The Contractor shall provide free of cost to the Employer all the engineering data, drawing and descriptive materials submitted with the bid, in at least six (6) copies to form a part of the Contract immediately after Notification of Award.
		2.4	Subsequent to signing of the Contract, the Contractor at his own cost shall provide the Employer with at least twenty (20) copies of electronic version of the signed Contract Agreement on CD-ROM within thirty (30) days of its signing.
3.	Interpretation		
		3.1	Language
		3.1.1	Unless the Contractor is a national of the Employer's country and the Employer and the Contractor agree to use the local language, all Contract Documents, all correspondence and communications to be given, and all other documentation to be prepared and supplied under the Contract shall be written in English, and the Contract shall be construed and interpreted in accordance with that language.
		3.1.2	If any of the Contract Documents, correspondence or communications are prepared in any language other than the governing language under GCC Sub-Clause 3.1.1 above, the English translation of such documents, correspondence or communications shall prevail in matters of interpretation.

Clause No.			GENERAL CONDITIONS OF CONTRACT (GCC)
		3.1.3	The English Translation of the documents shall be carried out by professional translators and the translator shall certify that he is proficient in both languages in order to translate the document and that the translation is complete and accurate. Further, translation shall be authenticated by the Indian Consulate located in the Country where the documents have been issued or the Embassy of that Country in India.
		3.2	Singular and Plural The singular shall include the plural and the plural the singular, except where the context otherwise requires.
		3.3	Headings The headings and marginal notes in the General Conditions of Contract are included for ease of reference, and shall neither constitute a part of the Contract nor affect its interpretation.
		3.4	Persons Words importing persons or parties shall include firms, corporations and government entities.
		3.5	Incoterms Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms. Incoterms means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1er, 75008 Paris, France.
		3.6	Construction of the Contract
		3.6.1	The Contracts to be entered into between the Employer and the successful bidder shall be as under: - First Contract: For Ex-works (India) supply of Plant and Equipment including Mandatory Spares. - Second Contract: For providing all services i.e. inland transportation for delivery at site, inland transit insurance, unloading, storage, handling at site, installation, insurance covers other than inland transit insurance, testing and commissioning including carrying out guarantee tests in respect of all the Plant and Equipment supplied under the 'First Contract' and all other services specified in the Contract Documents.
		3.6.2	The award of separate Contracts shall not in any way dilute the responsibility of the Contractor for the successful completion of the Facilities as per Contract Documents and a breach in one Contract shall automatically be construed as a breach of the other Contract(s) which will confer a right on the Employer to terminate the other Contract(s) also at the risk and the cost of the Contractor.

Clause No.			GENERAL CONDITIONS OF CONTRACT (GCC)
		3.7	Entire Agreement Subject to GCC 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.
		3.8	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.
		3.9	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 Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and the Employer.
		3.10	Joint Venture or Consortium If the Contractor is a joint venture or consortium of two or more firms, all such firms shall be jointly and severally bound to the Employer for the fulfilment of the provisions of the Contract and shall designate one of such firms to act as a leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Employer.
		3.11	Non-Waiver 3.11.1 Subject to GCC Sub-Clause 3.11.2 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. 3.11.2 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.
		3.12	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.

Clause No.			GENERAL CONDITIONS OF CONTRACT (GCC)
		3.13	Country of Origin “Origin” means the place where the materials, equipment and other supplies for the Facilities are mined, grown, produced or manufactured, and from which the services are provided.
4.	Notices	4.1	Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, airmail post, special courier, cable, telegraph, telex, facsimile or Electronic Data Interchange (EDI) to the address of the relevant party set out in the Contract Coordination Procedure to be finalised pursuant to GCC Sub-Clause 17.2.3.1, with the following provisions. 4.1.1 Any notice sent by cable, telegraph, facsimile or EDI shall be confirmed within two (2) days after despatch by notice sent by airmail post or special courier, except as otherwise specified in the Contract. 4.1.2 Any notice sent by airmail post or special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after despatch. In proving the fact of despatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and conveyed to the postal authorities or courier service for transmission by airmail or special courier. 4.1.3 Any notice delivered personally or sent by telegraph, facsimile shall be deemed to have been delivered on date of its despatch. 4.1.4 Either party may change its postal, cable, telex, facsimile or EDI address or addressee for receipt of such notices by ten (10) days' notice to the other party in writing.
		4.2	Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the Contract.
5.	Governing Laws		
		5.1	The Contract shall be governed by and interpreted in accordance with laws in force in India. The Courts of Delhi shall have exclusive jurisdiction in all matters arising under the Contract.
6.	Settlement of Disputes		
		6.1	Mutual Consultation If any dispute of any kind whatsoever shall arise between the Employer 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 by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, then the dispute may
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		6.2	be settled through Expert Settlement Council / Arbitration / other remedies available under the applicable laws. Resolution of Dispute through Expert Settlement Council If the parties fail to resolve such a dispute or difference by mutual consultation, the dispute if the parties agree, may be referred to Conciliation in cases involving disputed amount up to Rs 250 crores, which is to be arrived at considering the claim and counter claim of the parties to the dispute.. 6.2.1 Invitation for Conciliation: 6.2.1.1 A party shall notify the other party in writing about such a dispute it wishes to refer for Conciliation within a period of 30 days from the date of raising of the dispute in case of failure to resolve the same through mutual consultation. Such Invitation for Conciliation shall contain sufficient information as to the dispute to enable the other party to be fully informed as to the nature of the dispute, amount of the monetary claim, if any, and apparent cause of action. 6.2.1.2 Upon acceptance of the invitation to conciliate, the other party shall submit its counter claim, if any, within a period of 30 days from the date of the invitation to conciliate. If the other party rejects the invitation or disputed amount exceeds Rs 250 crores, there will be no Conciliation proceedings. There shall be no Conciliation where claim amount is only up to Rs 5 lakhs. 6.2.1.3 If the party initiating Conciliation does not receive a reply within thirty days from the date on which it sends the invitation, or within such other period of time as specified in the invitation, it shall treat this as a rejection of the invitation to conciliate from the other party. 6.2.2 Conciliation: 6.2.2.1 Where Invitation for conciliation has been furnished under GCC sub clause 6.2.1, the parties shall attempt to settle such dispute through Expert Settlement Council (ESC) which shall be constituted by CMD, NTPC. 6.2.2.2 ESC will be formed from experts comprising three members from the panel of conciliators maintained by NTPC. However, there will be single member ESC for disputes involving claim and counter claim (if any) up to Rs. 1 crore. CMD will have authority to reconstitute an ESC to fill any vacancy. 6.2.2.3 The eligible persons for consideration for empanelment in the panel of conciliators shall be amongst Retired Civil Servants of Govt. of India not below the rank of Additional Secretary, Retired Judges, Retired Directors/ Chairman of any Maharatna/Navratna company in India other than NTPC Ltd, Retired Independent Directors who have served on the Board of any Maharatna/ Navratna company in India other than NTPC Ltd and Independent experts in their respective fields preferably registered with the Indian Council of Arbitration or Delhi International Arbitration Centre or Federation of Indian Chambers
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Clause No.			GENERAL CONDITIONS OF CONTRACT (GCC)																
			of Commerce and Industry or SCOPE Arbitration Forum. 6.2.3 Proceedings before ESC: 6.2.3.1 The claimant shall submit its statement of claims along with relevant documents to ESC members, and to the party(s) indicated in the appointment letter within 30 days of the issue of the appointment letter. The respondent shall file its reply and counter claim (if any) within 30 days of the receipt of the statement of claims. Parties may file their rejoinder/additional documents, if any in support of their claim/counterclaim within next 15 days. No documents shall be allowed thereafter, except with the permission of ESC. 6.2.3.2 The parties shall file their claim and counterclaim in the following format - Chronology of the dispute - Brief of the contract - Brief history of the dispute - Issues <table border="1"> <thead> <tr> <th>Sl. No.</th><th>Description of Claims/Counter</th><th>Amount (in foreign currency/INR)</th><th>Relevant Contract Clause</th></tr> </thead> <tbody> <tr><td></td><td></td><td></td><td></td></tr> <tr><td></td><td></td><td></td><td></td></tr> <tr><td></td><td></td><td></td><td></td></tr> </tbody> </table> - Details of Claim(s)/Counter Claim(s) - Basis/Ground of claim(s)/counter claim(s) (along with relevant clause of contract) Statement of claims shall be restricted to maximum limit of 20 pages. 6.2.3.3 In case of 3 members ESC, 2 members will constitute a valid quorum and the meeting can take place to proceed in the matter after seeking consent from the member who is not available. However, ESC recommendations will be signed by all the members. 6.2.3.4 The parties shall be represented by their in house employees. No party shall be allowed to bring any advocate or outside consultant/advisor/agent to contest on their behalf. Ex-officers of NTPC who have handled the subject matter in any capacity shall not be allowed to attend and present the case before ESC on behalf of contractor. However, ex-employees of parties may represent their respective organizations. Parties shall not claim any interest on claims/counter-claims from the date of notice invoking Conciliation till execution of settlement agreement, if so arrived. In case, parties are unable to reach a settlement, no interest shall be claimed by either party for the period from the date of notice invoking Conciliation till the date of ESC recommendations and 30 days thereafter in any further proceeding.	Sl. No.	Description of Claims/Counter	Amount (in foreign currency/INR)	Relevant Contract Clause												
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			6.2.3.5 ESC will conclude its proceedings in maximum 10 meetings, and give its recommendations within 90 days of its first meeting. ESC will give its recommendations to both the parties recommending possible terms of settlement. CMD, NTPC may extend the time/number of meetings, in exceptional cases, if ESC requests for the same with sufficient reasons. 6.2.3.6 Depending upon the location of ESC members and the parties, the venue of the ESC meeting shall be either Delhi/Mumbai/Kolkata/Chennai or any other city whichever is most economical from the point of view of travel and stay etc. All the expenditure incurred in ESC proceedings shall be shared by the parties in equal proportion. 6.2.4 Fees & Facilities to the Members of the ESC The cost of conciliation proceedings including but not limited to fees for Conciliator, Airfare, Local transport, Accommodation, cost towards conference facility etc shall be as provided herein below: <table><tr><th>Sl. No.</th><th>Fees/ Facility</th><th>Entitlement</th></tr><tr><td>1</td><td>Fees</td><td>As paid to NTPC Independent Directors [Presently Rs. 20,000 per meeting]. In addition each conciliator to be paid Rs 10,000 for attending meeting to authenticate the settlement agreement. - max. of Rs. 2,10,000 per case per Conciliator.</td></tr><tr><td>2</td><td>Secretarial expenses</td><td>Rs. 10,000 lump sum (to 1 member only).</td></tr><tr><td>3</td><td>Transportation in the city of the meeting</td><td>Car as per entitlement or Rs. 2,000 per day</td></tr><tr><td>4</td><td>Venue for meeting</td><td>NTPC conference rooms</td></tr><tr><td colspan="3">Facilities to be provided to the out -stationed member</td></tr><tr><td>5</td><td>Travel from the city of residence to the city of meeting</td><td>As per entitlement of Independent Directors. Executive class air tickets/ first class AC train tickets/ Luxury car/ reimbursement of actual fare. However, entitlement of air travel by Business class shall be subject to austerity measures, if any, ordered by Govt of India.</td></tr><tr><td>6</td><td>Transport to and fro airport/railway station in the city of residence</td><td>Car as per entitlement or Rs. 3,000</td></tr><tr><td>7</td><td>Stay for out stationed members</td><td>As per entitlement of Independent Directors.</td></tr></table>	Sl. No.	Fees/ Facility	Entitlement	1	Fees	As paid to NTPC Independent Directors [Presently Rs. 20,000 per meeting]. In addition each conciliator to be paid Rs 10,000 for attending meeting to authenticate the settlement agreement. - max. of Rs. 2,10,000 per case per Conciliator.	2	Secretarial expenses	Rs. 10,000 lump sum (to 1 member only).	3	Transportation in the city of the meeting	Car as per entitlement or Rs. 2,000 per day	4	Venue for meeting	NTPC conference rooms	Facilities to be provided to the out -stationed member			5	Travel from the city of residence to the city of meeting	As per entitlement of Independent Directors. Executive class air tickets/ first class AC train tickets/ Luxury car/ reimbursement of actual fare. However, entitlement of air travel by Business class shall be subject to austerity measures, if any, ordered by Govt of India.	6	Transport to and fro airport/railway station in the city of residence	Car as per entitlement or Rs. 3,000	7	Stay for out stationed members	As per entitlement of Independent Directors.
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			8	Transport in the city of meeting	Car as per entitlement or Rs. 2000 per day
			Aforesaid fees is subject to revision by NTPC from time to time and subject to government guidelines on austerity measures, if any. All the expenditure incurred in the ESC proceedings shall be shared by the parties in equal proportions. The Parties shall maintain the account of expenditure and present to the other for the purpose of sharing on conclusion of the ESC proceedings.		
			6.2.5 If decision of NTPC is acceptable to the contractor, a Settlement Agreement under section 73 of the Arbitration and Conciliation Act 1996 will be signed within 15 days of contractor's acceptance and same shall be authenticated by all the ESC members. Parties are free to terminate conciliation proceedings at any stage as provided under the Arbitration and Conciliation Act 1996.		
			6.2.6 The parties shall keep confidential all matters relating to the conciliation proceedings. Parties shall not rely upon them as evidence in arbitration proceedings or court proceedings.		
		6.3	Arbitration		
			6.3.1 If the process of mutual consultation and/or ESC fails to arrive at a settlement between the parties as mentioned at GCC Sub-Clauses 6.1 & 6.2 above, Employer or the Contractor may, within Thirty (30) days of such failure, give notice to the other party, with a copy for information to the ESC (as applicable), of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. The mechanism of settling the disputes through arbitration shall be applicable only in cases where the disputed amount (i.e. total amount of Claims excluding claims of interest) does not exceed Rs. 25 crores. In case the disputed amount exceeds Rs. 25 Crores, the parties shall be within their rights to take recourse to remedies as may be available to them under the applicable laws other than Arbitration after prior intimation to the other party. There shall be no arbitration where the claim amount is only up to Rs. 5 lakhs.		
			The parties at the time of invocation of arbitration shall submit all the details of the claims and the counter-claims including the Heads/Sub-heads of the Claims/Counter-Claims and the documents relied upon by the parties for their respective claims and counter-claims. The parties shall not file any documents/details of the claims and counter-claims thereafter.		
			The claims and the counter claims raised by the parties at the time of invocation of the arbitration shall be final and binding on the parties and no further change shall be allowed in the same at any stage during arbitration under any circumstances whatsoever.		
			The parties to the contract shall invoke arbitration within Six months from the date of completion of the Facilities under the contract or the termination of the contract as the case may be and the parties shall not invoke arbitration later on after expiry of the		
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			said period of six months. The parties shall not invoke arbitration other than in the case of completion of the Facilities or the termination of the contract as mentioned above. Notwithstanding the above, in case of disputes with Indian Contractor who is a Central Government Department /Enterprise /organisation or a State Level Public Enterprise (SLPE), the aforesaid limit of Rs 25 crores shall not be applicable and arbitration proceeding may be commenced irrespective of the amount involved in dispute if the dispute could not be resolved through Conciliation as brought out at GCC Sub Clause 6.2 above. 6.3.2 Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with Sub-Clause 6.3.1 above, shall be finally settled by arbitration. 6.3.3 Any dispute raised by a party to arbitration shall be adjudicated by a Sole Arbitrator appointed by CMD, NTPC from the List of empanelled Arbitrators of NTPC in the following manner :- a) A party willing to commence arbitration proceeding shall invoke Arbitration Clause by giving 60 days notice to the other party. b) If the Arbitrator so appointed dies, resigns, becomes incapacitated or withdraws for any reason from the proceedings, it shall be lawful for CMD, NTPC to appoint another person in his place in the same manner as aforesaid. Such person shall proceed with the reference from the stage where his predecessor had left. c) It is agreed between the parties that the Arbitration proceedings shall be conducted as per the provisions of Fast Track Procedure as provided under section 29B of the Arbitration and Conciliation Act, 1996 as amended. d) Arbitrator shall be paid fees at the following rates: <table><tr><td>Amount of Claims and Counter Claims (excluding interest)</td><td>Lump sum fees (including fees for study of pleadings, case material, writing of the award, secretarial charges etc.) payable to each arbitrator (to be shared equally by the parties)</td></tr><tr><td>Upto Rs.50 lakhs</td><td>Rs. 10,000/- per meeting subject to a ceiling of Rs.1,00,000/-</td></tr><tr><td>Above Rs.50 lakhs to Rs.1 Crore</td><td>Rs.1,35,000/- plus Rs.1,800/- per lakh or a part there of subject to a ceiling of Rs.2,25,000/-</td></tr><tr><td>Above Rs.1 Crore and upto Rs.5 Crore</td><td>Rs.2,25,000/-plus Rs.33,750/-per crore or a part thereof subject to a ceiling of Rs.3,60,000/-</td></tr><tr><td>Above Rs.5 Crore</td><td>Rs.3,60,000/-plus Rs.22,500/-per</td></tr></table>	Amount of Claims and Counter Claims (excluding interest)	Lump sum fees (including fees for study of pleadings, case material, writing of the award, secretarial charges etc.) payable to each arbitrator (to be shared equally by the parties)	Upto Rs.50 lakhs	Rs. 10,000/- per meeting subject to a ceiling of Rs.1,00,000/-	Above Rs.50 lakhs to Rs.1 Crore	Rs.1,35,000/- plus Rs.1,800/- per lakh or a part there of subject to a ceiling of Rs.2,25,000/-	Above Rs.1 Crore and upto Rs.5 Crore	Rs.2,25,000/-plus Rs.33,750/-per crore or a part thereof subject to a ceiling of Rs.3,60,000/-	Above Rs.5 Crore	Rs.3,60,000/-plus Rs.22,500/-per
Amount of Claims and Counter Claims (excluding interest)	Lump sum fees (including fees for study of pleadings, case material, writing of the award, secretarial charges etc.) payable to each arbitrator (to be shared equally by the parties)												
Upto Rs.50 lakhs	Rs. 10,000/- per meeting subject to a ceiling of Rs.1,00,000/-												
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Above Rs.1 Crore and upto Rs.5 Crore	Rs.2,25,000/-plus Rs.33,750/-per crore or a part thereof subject to a ceiling of Rs.3,60,000/-												
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			and upto Rs.10 Crore crore or a part thereof subject to a ceiling of Rs.4,72,500/- Above Rs.10 Crore Rs.4,72,500 plus Rs.18,000/-per crore or part thereof subject to a ceiling of Rs.10,00,000/- If the claim is in foreign currency, the SBI Bills Selling Exchange rate prevailing on the date of claim shall be used for the purpose of converting the claim in Indian Rupee which may be used for determining the arbitration fee as brought out above. e) If after commencement of the Arbitration proceedings, the parties agree to settle the dispute mutually or refer the dispute to Conciliation, the arbitrator shall put the proceedings in abeyance until such period as requested by the parties. Where the proceedings are put in abeyance or terminated on account of mutual settlement of dispute by the parties, the fees payable to the arbitrator shall be determined as under: (i) 40% of the fees if the Pleadings are complete. (ii) 60% of the fees if the Hearing has commenced. (iii) 80% of the fees if the Hearing is concluded but the Award is yet to be passed. f) Each party shall pay its share of arbitrator's fees in stages as under: (i) 40 % of the fees on Completion of Pleadings. (ii) 40% of the fees on Conclusion of the Final Hearing. (iii) 20% at the time when arbitrator notifies the date of final award. g) The Claimant shall be responsible for making all necessary arrangements for the travel/ stay of the Arbitrator including venue of arbitration, hearings. The parties shall share the expenses for the same equally. h) The Arbitration shall be held at Delhi only. i) The Arbitrator shall give reasoned and speaking award and it shall be final and binding on the parties. j) Subject to the aforesaid conditions, provisions of the Arbitration and Conciliation Act, 1996 and any statutory modifications or re-enactment thereof shall apply to the arbitration proceedings under this clause. 6.34 In case the Indian Contractor is a Central Government Department/Enterprise/organisation or a State Level Public Enterprise (SLPE), the dispute arising between the Employer and the Contractor shall be referred for resolution to the Permanent Machinery of Arbitrators (PMA) of the Department of Public Enterprises,

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		6.4	Government of India as per Office Memorandum No. 4(1) 2011-DPE(PMA)-GL dated 12.06.2013 issued by Government of India, Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises and its further modifications and amendments. Notwithstanding any reference to the Conciliation or Arbitration herein, (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree. (b) the Employer shall pay the Contractor any monies due to the Contractor.
			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 Equipment including structural steel and the performance of all Installation Services and civil works, allied works etc. required for the design, the manufacture (including procurement, quality assurance, construction, installation, associated civil works, Pre-commissioning and delivery) of the Plant and Equipment and the installation, completion, commissioning and performance testing of the Facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Technical Specifications. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labour, materials, equipment, spare parts (as specified in GCC 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 Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement.
		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. However, the identity, specifications and quantities of such spare parts and the terms and conditions relating to the supply thereof are to be agreed between the Employer and the Contractor, and the price of such spare parts shall be that given in Price Schedule No. 5, which shall be added to the Contract Price. The price of such spare parts shall include the purchase price therefor and other costs and expenses (including the Contractor's fees) relating to the supply of spare parts. Prices of recommended spares
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			covered under price Schedule No. 5 shall be kept valid for a period of six (6) months after placement of Notification of Award for Main Equipment and Mandatory Spares. 7.3.1 The Contractor agrees that the spare parts recommended by him for 3 years operation and quoted in Schedule No. 5 shall be supplied by him at the same terms and conditions as are otherwise applicable to this Contract. Further, the Contractor also agrees to supply spare parts required for the operation and maintenance of the Facilities as per provision of subsequent paragraphs of this Sub-Clause. 7.3.1.1 All the spares for the equipment under the Contract will strictly conform to the Specification and other relevant documents and will be identical to the corresponding main equipment/components supplied under the Contract and shall be fully interchangeable. 7.3.1.2 All the mandatory spares covered under the Contract shall be produced alongwith the main equipment as a continuous operation and the delivery of the spares will be effected alongwith the main equipment in a phased manner and the delivery would be completed by the respective dates for the various categories of equipment as per the agreed network. In case of recommended spares the above will be applicable provided the order for the recommended spares have been placed with the Contractor prior to commencement of manufacture of the main equipment. 7.3.1.3 The Contractor will provide the Employer with the manufacturing drawings, catalogues, assembly drawings and any other document required by the Employer so as to enable the Employer to identify the recommended spares. Such details will be furnished to the Employer as soon as they are prepared but in any case not later than six months prior to commencement of manufacture of the corresponding main equipment. 7.3.1.4 To enable the Employer to finalise the requirement of recommended spares which are ordered subsequent to placement of order for main equipment/plant, in addition to necessary technical details, catalogue and such other information brought-out herein above, the Contractor will also provide a justification in support of reasonableness of the quoted prices of spares which will, inter-alia, include documentary evidence that the prices quoted by the Contractor to the Employer are not higher than those charged by him from other customers in the same period. 7.3.1.5 In addition to the spares recommended by the Contractor, if the Employer further identifies certain items of spares, the Contractor will submit the prices and delivery quotation for such spares within thirty (30) days of receipt of such request with a validity period of six (6) months for consideration by the Employer and placement of order for additional spares if the Employer so desires. 7.3.1.6 The quality plan and the inspection requirement finalised for the main equipment will also be applicable to the corresponding spares.
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			7.3.1.7 The Contractor will provide the Employer with all the addresses and particulars of his sub-suppliers while placing the order on vendors for items/components/equipment covered under the Contract and will further ensure with his vendors that the Employer, if so desires, will have the right to place order for spares directly on them on mutually agreed terms based on offers of such vendors. 7.3.1.8 The Contractor shall guarantee the long term availability of spares to the Employer for the full life of the equipment covered under the Contract. The Contractor shall guarantee that before going out of production of spare parts of the equipment covered under the Contract, he shall give the Employer atleast 2 years advance notice so that the latter may order his bulk requirement of spares, if it so desires. The same provision will also be applicable to Sub-contractors. Further, in case of discontinuance of manufacture of any spares by the Contractor and/or his Sub-contractor, Contractor will provide the Employer, two years in advance, with full manufacturing drawings, material specification and technical information including information on alternative equivalent makes required by the Employer for the purpose of manufacture/procurement of such items. 7.3.1.9 The prices of all future requirements of item of spares beyond 3 years operational requirement will be derived from the corresponding Ex-works price at which the order for such spares have been placed by Employer as a part of mandatory spares or recommended spares, or from the rates of mandatory spares or recommended spares as quoted by/negotiated with the Contractor. Ex-works order price of future spares shall be computed in accordance with the price adjustment provisions covered under the main Contract and there will be no ceiling on the amount of variation in the prices. The above option for procuring future recommended spares by the Employer shall remain valid for the period of 5 years from the date of Commissioning of the equipment. 7.3.1.10 The Contractor will indicate in advance the delivery period of the items of spares, which the Employer may procure in accordance with above sub-clause. In case of emergency requirements of spares, the Contractor would make every effort to expedite the manufacture and delivery of such spares on the basis of mutually agreed time schedule. 7.3.1.11 In case the Contractor fails to supply the mandatory, recommended or long term spares in the terms stipulated above, the Employer shall be entitled to purchase the same from the alternate sources at the risk and the cost of the Contractor and recover from the Contractor, the excess amount paid by the Employer over the rates worked on the above basis. In the event of such risk purchase by the Employer, the purchases will be as per the Works and Procurement Policy of the Employer prevalent at the time of such purchases and the Employer at his option may include a representative from the Contractor in finalising the purchases. 7.3.1.12 It is expressly understood that the final settlement between the parties in terms of relevant clauses of the Contract Documents

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			shall not relieve the Contractor of any of his obligations under the provision of long term availability of spares and such provisions shall continue to be enforced till the expiry of 5 years period reckoned from the scheduled date of Commissioning of the Plant and Equipment unless otherwise discharged expressly in writing by the Employer. Further, the provisions pertaining to long term availability of spares shall be extended beyond 5 years applicability period mentioned hereinabove if so desired by the Employer and at the mutually acceptable escalation formula. 7.3.1.13 The Contractor shall warrant that all spares supplied will be new and in accordance with the Contract Documents and will be free from defects in design, material and workmanship and shall further guarantee as under: (i) For 3 years operational spares (both mandatory and recommended) a) For any item of spares ordered or to be ordered by the Employer for 3 years operational requirement of the plant which are manufactured as a continuous operation together with the corresponding main equipment/component, the Defect Liability Period will be twelve (12) months from the scheduled date of commercial operation of main equipment/plant under the Contract. 'Commercial Operation' shall mean the conditions of operation in which the complete equipment covered under the Contract is officially declared by the Employer to be available for continuous operation at different loads upto and including rated capacity. Such declaration by the Employer, however, shall not relieve or prejudice the Contractor any of his obligations under the Contract. In case of any failure in the original component/equipment due to faulty designs, materials and workmanship, the corresponding spare parts, if any, supplied will be replaced without any extra cost to the Employer unless a joint examination and analysis by the Employer and the Contractor of such spare parts prove that the defect found in the original part that failed, can safely be assumed not to be present in spare parts. Such replaced spare parts will have the same Defect Liability as applicable to the replacement made for the defective original part/component provided that such replacement for the original equipment and the spare replaced are again manufactured together. The discarded spare parts will become the property of the Contractor as soon as they have been replaced by the Contractor. b) For the item of spares ordered or to be ordered by the Employer for 3 years operational requirement of the plant, which with the written approval of the Employer, are not manufactured as a continuous operation will be warranted for 7000 hrs of trouble free operation if used within a period of eighteen (18) months reckoned from the date of delivery at site.
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			However, if such spare parts are put to use after eighteen (18) months of the delivery at Site then the guarantee of such spares will stand valid till the expiry of thirty six (36) months from the scheduled date of Commissioning of equipment/plant covered under the contract or 7000 hrs of trouble free operation after such spares are put in service, whichever is earlier. c) For long term requirement For item of spares that may be ordered by the Employer to cover requirements beyond 3 years of Initial Operation of the plant, the warranty will be till the expiry of 7000 hrs of trouble free operation if used within a period of eighteen (18) months from the date of delivery at site. For item of spares that may be used after eighteen (18) months from the date of delivery at site, the warranty period will be 12 months from the date they are put to use or 7000 hrs of trouble free operation, whichever is earlier. In any case the defect liability of spares will expire at the end of forty eight (48) months from the date of their receipt at site. ii) The Defect Liability of spares covered in para (b) & (c) above, that are not used within 18 months from the respective date of the delivery at Site will, however, be subject to condition that all such spares being stored/maintained/preserved in accordance with Contractor's standard recommended practice, if any, and the same has been furnished to the Employer.
8.	Time for Commencement and Completion		
		8.1	The Contractor shall commence work on the Facilities from the date of Notification of Award and without prejudice to GCC Sub-Clause 26.2 hereof, the Contractor shall thereafter proceed with the Facilities in accordance with the time schedule specified in Appendix 4 (Time Schedule) to the Contract Agreement.
		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 time stated in the SCC or within such extended time to which the Contractor shall be entitled under GCC Clause 40 (Extension of Time for Completion) hereof.
9.	Contractor's Responsibilities		
		9.1	The Contractor shall design, manufacture (including associated purchases and/or subcontracting), install and complete the Facilities with due care and diligence in accordance with 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
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			inspection of the Site (if access thereto was available) and of other data readily available to it relating to the Facilities as at the date twenty-eight (28) days prior to deadline set for price bid submission. 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 in its name all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located that 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, approvals and/or licenses that are not the responsibility of the Employer under GCC Sub-Clause 10.3 hereof and that are necessary for the performance of the Contract.
		9.4	The Contractor shall comply with all laws in force in the country where the Facilities are installed and where the Installation Services are carried out. The laws will include all national, provincial, municipal 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 GCC Sub-Clause 10.1 hereof.
		9.5	Any Plant, Material and Services that will be incorporated in or be required for the Facilities and other supplies shall have their origin as specified under GCC Clause 3.13 (Country of Origin).
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 Appendix 6 (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 thereto, 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 Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in Appendix 6.
		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 the country where the Site is located which such authorities or undertakings require the Employer to obtain them in the Employer's name, are necessary for the execution of the Contract (they include those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract), including those specified in Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement.
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		10.4	If requested by the Contractor, the Employer shall use its best endeavours 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 undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.
		10.5	Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities ; and shall perform all work and services of whatsoever nature, to enable the Contractor to properly carry out Pre-commissioning, Commissioning and Guarantee Tests, all in accordance with the provisions of Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement at or before the time specified in the program furnished by the Contractor under GCC Sub-Clause 18.2 (Program of Performance) hereof and in the manner thereupon specified or as otherwise agreed upon by the Employer and the Contractor.
		10.6	The Employer shall be responsible for the continued operation of the Facilities after Completion, in accordance with GCC Sub-Clause 24.8, and shall be responsible for facilitating the Guarantee Test(s) for the Facilities, in accordance with GCC Sub-Clause 25.2.
		10.7	All costs and expenses involved in the performance of the obligations under this GCC 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 GCC 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 Form of Contract Agreement.
		11.2	The Contract Price shall be adjusted in accordance with provisions of Appendix-2 (Price Adjustment) to the Contract Agreement.
		11.3	Subject to GCC Sub-Clauses 9.2, 10.1 and 35 (Unforeseen Conditions) 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 Appendix 1 (Terms and Procedures of Payment) to the Contract Agreement. The procedures to be followed in making application for and processing payments shall be those outlined in the same Appendix 1.

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		12.2	No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Facilities or any part(s) thereof.
		12.3	The currency or currencies in which payments are made to the Contractor under this Contract shall be specified in Appendix 1 (Terms and Procedures of Payment) to the Contract Agreement, subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Contractor's bid.
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 Award of Contract, provide a security in an amount equal to the advance payment for supply of Plant & Equipment and 110% of the advance amount for Installation Services and Civil & Allied Works calculated in accordance with Appendix 1 (Terms and Procedures of Payment) to the Contract Agreement, and in the currency or currencies of the Contract, with an initial validity of up to ninety (90) days beyond the schedule date of Completion of the last facility covered under the package in accordance with GCC Clause 24. However, in case of delay in completion of the facilities under the package, the validity of this security shall be extended by the period of such delay. The advance payment security shall also cover the amount of GST as applicable on the advance payment to be paid to the contractor. 13.2.2 The security shall be in the form of an unconditional bank guarantee as per the proforma provided in Section VII (Forms and Procedures)- Form of Advance Payment Security. The Advance payment Security shall be reduced prorata every three (3) months after First Running Account Bill/Stage Payment under the Contract based on the value of the respective equipment/facilities received and applicable GST. The cumulative amount of reduction at any point of time shall not exceed seventy five percent (75%) of the advance and the amount of GST paid on the advance amount corresponding to cumulative value of the respective equipment/Facilities supplied and received as per certificate issued by the Project Manager. The balance shall be released after ninety (90) days beyond Completion of those Facilities. It should be clearly understood that reduction in the value of security for advance shall not in any way dilute the Contractor's responsibility and liabilities under the Contract including in respect of the Facilities for which the reduction in the value of security is allowed.
		13.3	Performance Security 13.3.1 The Contractor shall, within twenty-eight (28) days of the Notification of Award, provide securities for the due performance of the Contract for ten percent (10%) of the Contract Price of all the Contracts, with an initial validity upto ninety (90) days beyond

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		the end of scheduled Defect Liability Period of the last equipment covered under the package. However, in case of delay in completion of the defect liability period, the validity of all the contract performance securities shall be extended by the period of such delay. 13.3.2 The performance security shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the Employer, and shall be in the form of unconditional bank guarantee provided in Section-VII (Forms and Procedures)-Form of Performance Security of the bidding documents. 13.3.3 Unless otherwise stipulated in SCC, the security shall be reduced pro rata to the Contract Price of a part of the Facilities for which a separate time for Completion is provided, twenty one (21) months after Completion of the Facilities or where relevant part thereof, or fifteen (15) months after Operational Acceptance of the Facilities (or the relevant part thereof), whichever occurs first; provided, however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to GCC Sub-Clause 27.8 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. The security shall be returned to the Contractor immediately after its expiration, provided, however, that if the Contractor, pursuant to GCC Sub-Clause 27.10, is liable for an extended warranty obligation, the performance security shall be extended for the period and up to the amount agreed upon or as specified in the SCC. 13.4 Security for Joint Deed of Undertaking In case Deed(s) of Joint Undertaking by the Contractor along with his Collaborator(s) / Associate(s) form part of the Contract, then, in addition to the Contract performance securities furnished by the Contractor, the Collaborator(s) / Associate(s) shall furnish, within twenty eight (28) days of the Notification of Award, separate unconditional Bank Guarantee(s) towards faithful performance of the Deed(s) of Joint Undertaking for amount(s) specified in relevant Item of Bid Data Sheets and with validity till such period as specified in the corresponding format for Deed of Joint Undertaking. However, in case of delay in completion of defect liability period, the validity of Bank Guarantee(s) submitted towards faithful performance of Deed(s) of Joint Undertaking shall be extended by such period of delay. The Bank Guarantee(s) shall be denominated in the currency or currencies of Contract and shall be as per the proforma provided in Section-VII (Forms and Procedures) - Form of Bank Guarantee to be furnished by Associate(s) / Collaborator(s). 13.5 The Bank Guarantees submitted towards Advance Payment Security, Contract Performance Security and Security in compliance to the Deed of Joint Undertaking (if applicable) shall be essentially from any of the Banks listed at Annexure-I to Section-V (Special Conditions of Contract) of the bidding documents.
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			The bank guarantee submitted from within India towards Advance Payment Security, Contract Performance Security and Security for Deed of Joint Undertaking (if applicable) shall be issued on a stamp paper of appropriate value as per stamp act prevailing in the State of the issuing Bank in India or the state of U.P. in India or the State from where the BG shall be operated, whichever is higher.
14.	Taxes and Duties		
		14.1	Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Sub-contractor or their employees by all municipal, state or national government authorities in connection with the Facilities in and outside of the country where the Site is located.
		14.2	Notwithstanding GCC Sub-Clauses 14.1 above, the Employer shall bear and pay/reimburse to the Contractor Goods and Services Tax (GST) applicable on: (a) Plant and Equipment (including Type Test Charges) and Mandatory Spares to be supplied from within the Employer's country specified in Price Schedule No. 1 (and also on locally supplied Recommended Spare Parts quoted in Price Schedule No. 5, when awarded) to be incorporated in the Facilities, by the law of country where the site is located, (b) local transportation & insurance, other local costs incidental to delivery of plant & equipment including mandatory spares specified in Price Schedule No. 2 (and also of locally supplied Recommended Spare Parts quoted in Price Schedule No. 5, when awarded) and (c) Installation Services including Erection, Civil & Allied Works and other services specified in Price Schedule No. 3. However, all other taxes, duties & levies as may be applicable on goods and services specified in Price Schedules Nos. 1, 2 & 3 and on the materials used for civil construction works and erection & commissioning shall be to the contractor's account and no separate claim in this regard will be entertained by the Employer. Notwithstanding anything to contrary contained in the Contract, the Contractor's right to payment under the Contract is subject to issuance of valid tax invoice, payment of applicable GST to the credit of appropriate Government and submission of valid particulars of tax invoice under GST returns in accordance with GST Law. The Contractor shall issue tax invoices, file appropriate returns, and deposit the applicable GST to the account of appropriate government within the time limit prescribed under the GST Law. In the event of any default, Contractor shall be liable to pay any penalty/demand raised on NTPC due to default by Contractor, and the same shall be recovered/Contractor shall make good the loss. The Contractor shall be responsible for the issuance of e-way bill and other compliances relating to e-way bill as per GST law. The Employer will deduct GST at source at the applicable rates in case transactions under the contract are liable to GST deduction at source as per the prevailing provisions of GST Law.
		14.3	If any tax exemptions, reductions, allowances or privileges are available to the Contractor in the country where the Site is located, the Employer shall use its best endeavours to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.

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		14.4	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 on seven (7) days prior to the deadline set for price bid submission in the country where the Site is located (hereinafter called "Tax" in this GCC Sub-Clause 14.4). 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 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, in accordance with GCC Clause 36 (Change in Laws and Regulations) hereof. However, these adjustments would be restricted to direct transactions between the Employer and Contractor and Bought out items (dispatched directly from sub-vendor's works to Site). These adjustments shall not be applicable on procurement of raw materials, intermediary components and intermediary services etc. by the Contractor.
		14.5	if the Employer orders any spare at a later date as per GCC Cl 7.3, all applicable additional taxes & duties, if any, not included in the original price shall be to the account of Employer.
		14.6	Notwithstanding anything to contrary contained in the agreement/Purchase Order, Contractor/Supplier's right to payment under the contract/agreement/Purchase Order is subject to issuance of valid tax invoice, payment of applicable GST to the credit of appropriate Government and submission of a valid particulars of tax invoice under GST returns in accordance with GST Act.
		14.7	Unless expressly stated otherwise, a common mechanism for reconciliation of input credit mismatch, to be followed by both NTPC and Contractor/Supplier, shall be mutually agreed so that both parties follow the same procedure for disclosing the transactions in their respective returns. Notwithstanding anything in the agreement/ contract, penalty / damages shall be recovered in case the Contractor/Supplier makes a default in following the agreed procedure.
		14.8	Contractor/Supplier shall issue tax invoices, file appropriate returns, and deposit the applicable GST to the account of appropriate government within the time limit prescribed under the GST Law. In the event of any default, Contractor/Supplier shall be liable to pay the amount which may be imposed on NTPC due to such default.
		14.9	Contractor/Supplier should comply with the provisions of e-way bill notified by appropriate authorities from time to time. The existing provisions regarding road permit will continue till such time if applicable.
			D. Intellectual Property
15.	Copyright		
		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

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			suppliers 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 of the facilities.
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 GCC 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 and Equipment, construction or such other work and services as are required for the performance of the Contract.
		16.3	The obligation of a party under GCC Sub-Clauses 16.1 and 16.2 above, however, shall not apply to that information which (a) now or hereafter 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 hereto (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 GCC 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 GCC Clause 16 shall survive termination, for whatever reason, of the Contract.
			E. Work Execution
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
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			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. The Employer shall take reasonable care to see that no such appointment is made at such a time or in such a manner as to impede the progress of work on the Facilities. The Project Manager shall represent and act for the Employer at all times during the currency 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	The Contractor shall appoint the Contractor's Representative within fourteen (14) days of the Effective Date or before start of work whichever is earlier and shall request the Employer in writing to approve the person so appointed. 17.2.1.1 The Contractor's representative shall be a regular Employee/ Partner/ Director only and the Contractor shall be required to submit a Power of Attorney in original in favour of its representative. Notarized photocopy of the Power of Attorney shall be acceptable only if the Power of Attorney has been registered by the Contractor. The Employer may verify the photocopy of the Power of Attorney with the Original and the Contractor shall be required to produce the original Power of Attorney for verification, if required by the Employer. The relation of the Contractor's representative with the contractor such as Partner/ Employee etc. should be clearly brought out in the Power of Attorney. The Contractor would be required to submit a documentary proof of the relation of the Contractor's representative with the contractor in the form of self-attested copy of any of the following documents: - Previous financial year's Form 16 as available at TRACES site of Income tax department, if the Contractor's representative is an employee of contractor or his Appointment Letter/Salary Slip/other documentary evidence (only in case of recent appointment or where Form 16 details are not uploaded at TRACES). Further, the Contractor shall submit the copy of Form 16 as available through TRACES site for every subsequent year also in respect of the Contractor's representative till the period of authorization. - Article of Association / Registered Partnership Deed if the Contractor's representative is a partner or stake holder in Company. In case, the Contractor is not able to submit any of the documentary proofs as mentioned above at para (i) & (ii), he would be required to submit an affidavit stating the relationship between the Contractor's representative and the Contractor. 17.2.1.2 In case, the Contractor's representative is also doing some other Contract(s)/Work(s) as nominee of the same contractor, the
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			Contractor shall give a declaration citing list of all works where the Contractor's representative is the nominee. 17.2.1.3 If the Employer objects to the appointment giving the reason therefore, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GCC 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 currency 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 herein 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 GCC 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 thereby 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 GCC Sub-Clause 17.2.3 shall be deemed to be an act or exercise by the Contractor's Representative. 17.2.3.1 Notwithstanding anything stated in GCC Sub-clause 17.1 and 17.2.1 above, for the purpose of execution of contract, the Employer and the Contractor shall finalise and agree to a Contract Co-ordination Procedure and all the communication under the Contract shall be in accordance with such Contract Co-ordination Procedure. 17.2.4 From the commencement of installation of the Facilities at the Site until Operational Acceptance, the Contractor's Representative shall appoint a suitable person as the construction manager (hereinafter referred to 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

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			Manager is absent from the Site, a suitable person shall be appointed to act as his or her 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 GCC Sub-Clause 22.3. 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 GCC Sub-Clause 17.2.5, the Contractor shall, where required, promptly appoint a replacement. 17.2.7 In case any of the information/declaration/undertaking provided by Contractor/Contractor's representative is found to be false and/or the Contractor/Contractor's representative suppresses any relevant information at any stage, the Contractor will be liable for actions in terms of Employer's Banning policy.
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. The chart shall include the identities of the key personnel together with the curricula vitae of such key personnel to be employed within twenty-one (21) days of the Effective Date. The Contractor shall promptly inform 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 date of notification of award of Contract, the Contractor shall prepare and submit to the Project Manager a detailed program of performance of the Contract, made in the form of PERT Network and showing the sequence in which it proposes to design, manufacture, transport, assemble, install and precommission 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 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 Appendix 4 (Time Schedule) to the Contract Agreement and any other dates and periods specified in the Contract. The Contractor shall update and revise the program as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion given in the SCC and any extension granted in accordance with GCC Clause 40, and shall submit all such revisions to the Project Manager.
		18.3	Progress Report

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			The Contractor shall monitor progress of all the activities specified in the program referred to in GCC Sub-Clause 18.2 (Program of Performance) above, and supply a progress report to the Project Manager every month. The progress report shall be in a form acceptable to the Project Manager and shall also 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 If at any time the Contractor's actual progress falls behind the program referred to in GCC Sub-Clause 18.2 (Program of Performance), 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 GCC Sub-Clause 8.2 (Time for Commencement and Completion), any extension thereof entitled under GCC Sub-Clause 40.1 (Extension of Time for Completion), or any extended period as may otherwise be agreed upon between the Employer and the Contractor.
		18.5	Work Procedures The Contract shall be executed in accordance with the Contract Documents and the procedures given in the section on Forms and Procedures of the Contract Documents. If agreed between the Employer and the Contractor, the Contractor may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Contract.
		18.6	Maintenance of Records of Weekly Progress Review Meetings at Site The Contractor shall be required to attend all weekly site progress review meetings organized by the 'Project Manager' or his authorised representative. The deliberations in the meetings shall inter alia include the weekly program, progress of work (including details of manpower tools and plants deployed by the contractor vis-à-vis agreed schedule), inputs to be provided by Employer, delays, if any and recovery program, specific hindrances to work and work instructions by Employer. The minutes of the weekly meetings shall be recorded in triplicate in a numbered register available with the Project Manager or his authorized representative. These recordings shall be jointly signed by the Project Manager or his authorized representative and the Contractor and one copy of the signed records shall be handed over to the Contractor".
19.	Subcontracting		
		19.1	Appendix 5 (List of Approved Subcontractors) to the Contract Agreement specifies major items of supply or services and a list of approved Subcontractors against each item, including vendors. 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

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			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 GCC Sub-Clause 19.1.
		19.3	For items or parts of the Facilities not specified in Appendix 5 (List of Approved Subcontractors) to the Contract Agreement, the Contractor may employ such Subcontractors as it may select, at its discretion.
20.	Design And Engineering		
		20.1	Specifications and Drawings 20.1.1 The Contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice. 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, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Employer. 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 date twenty-eight (28) days prior to deadline set for price bid submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied after approval by the Employer and shall be treated in accordance with GCC Clause 39 (Changes Originating from Contractor).
		20.3	Approval/Review of Technical Documents by Project Manager 20.3.1 The Contractor shall prepare (or cause its Subcontractors to prepare) and furnish to the Project Manager the documents listed in Appendix 7 (List of Documents for Approval or Review) to the Contract Agreement for its approval or review as specified and as in accordance with the requirements of GCC Sub-Clause 18.2 (Program of Performance).

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			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 GCC 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 therefor and the modifications that the Project Manager proposes. 20.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with some specified provision of 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 GCC Sub-Clause 20.3.2. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), and upon resubmission with the required modifications the document shall be deemed to have been approved. The procedure for submission of the documents by the Contractor and their approval by the Project Manager shall be discussed and finalised with the Contractor. 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 Expert Settlement Council (ESC) for determination in accordance with GCC Sub-Clause 6.2 hereof. If such dispute or difference is referred to ESC, 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 ESC upholds the Contractor's view on the dispute and if the Employer has not given notice under GCC Sub-Clause 6.3.1 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 ESC 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
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			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 (Change in the Facilities) shall apply to such request.
21.	Procurement		
		21.1	Plant and Equipment Subject to GCC Sub-Clause 14.2, the Contractor shall manufacture or procure and transport all the Plant and Equipment in an expeditious and orderly manner to the Site.
		21.2	Employer-Supplied Plant, Equipment, and Materials If Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement provides that the Employer shall furnish any specific items of machinery, equipment or materials 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 (Program of Performance), 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 (Defect Liability) or under any other provision of Contract.
		21.3	Transportation

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			21.3.1 The Contractor shall at its own risk and expense transport all the Plant and Equipment and the Contractor's Equipment to the Site by the mode of transport that the Contractor judges most suitable under all the circumstances. Packing Material The Contractor shall ensure that all the plant and equipment are suitably packed and protected to prevent damage or deterioration during its transportation to site, handling and storage at site till the time of its installation. The ownership of all such packing material (except empty shipper's containers on which the customs duty has been paid by the Contractor pursuant to GCC Clause 14.2) shall stand transferred to the Employer upon dispatch of the plant and equipment and endorsement of dispatch documents in favour of the Employer. 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 Plant and Equipment and the Contractor's Equipment. 21.3.3 Upon despatch of each shipment of the Plant and Equipment and the Contractor's Equipment, the Contractor shall notify the Employer by telex, cable, facsimile or Electronic Data Interchange (EDI) of the description of the Plant and Equipment and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and 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 Plant and Equipment 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 Plant and Equipment and the Contractor's Equipment to the Site.
		21.4	Customs Clearance (Applicable in case of ICB Tender only) The Contractor shall, at its own expense, handle all imported Plant and Equipment and Contractor's Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Employer's obligations under GCC Sub-Clause 14.2, provided that if applicable laws or regulations require any application or act to be made by or in the name of the Employer, the Employer shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance due to fault of the Employer, the Contractor shall be entitled to an extension in the Time for Completion, pursuant to GCC Clause 40.
22.	Installation		

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		22.1	Setting Out/Supervision/Labour 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. 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. 22.1.2 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. 22.1.3 Labour: (a) 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 shall preferably engage skilled/semiskilled/unskilled workers from amongst the land oustees of the Project. (b) Unless otherwise provided in the Contract, the Contractor shall be responsible for the recruitment, transportation, accommodation and catering of all labour, local or expatriate, required for the execution of the Contract and for all payments in connection therewith. (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 into the country where the Site is located. (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 their various home countries. 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.
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			(e) The Contractor shall at all times during the progress of the Contract use its best endeavor to prevent any unlawful, riotous or disorderly conduct or behaviour by or amongst its employees and the labour of its Subcontractors. (f) 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	Contractor's Equipment 22.2.1 All Contractors' 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. 22.2.2 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. 22.2.3 The Employer will, if requested, use its best endeavor 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	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.
		22.4	Opportunities for Other Contractors 22.4.1 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. 22.4.2 If the Contractor, upon written request from the Employer or the Project Manager, makes available to other contractors any roads or ways the maintenance for 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

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			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. 22.4.3 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. 22.4.4 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.
		22.5	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.
		22.6	Site Clearance 22.6.1 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. 22.6.2 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 clean and safe. 22.6.3 Disposal of Scrap "The Contractor shall with the agreement of the Employer promptly remove from the site any 'Scrap' generated during performance of any activities at site in pursuance of the Contract. The term 'Scrap' shall refer to scrap / waste / remnants arising

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			out of the fabrication of structural steel work and piping work at the project site in the course of execution of the contract and shall also include any wastage of cables during the termination process while installing the cables. The ownership of such Scrap shall vest with the Contractor except in cases where the items have been issued by the Employer from its stores for their installation only without any adjustment to the Contract Price. The removal of scrap shall be subject to the Contractor producing the necessary clearance from the relevant authorities (Custom, Excise etc.), if required by the law, in respect of disposal of the scrap. The liability for the payment of the applicable taxes/duties shall be that of the Contractor. The Contractor shall also indemnify to keep the Employer harmless from any act of omission or negligence on the part of the Contractor in following the statutory requirements with regard to removal/disposal of scrap. The Indemnity-cum-Undertaking Agreement shall be furnished by Contractor as per proforma enclosed in Section-VII (Forms and Procedure). Further, in case the laws require the Employer to take prior permission of the relevant Authorities before handing over the scrap to the Contractor, the same shall be obtained by the Contractor on behalf of the Employer".
		22.7	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	Shift Work
		22.8.1	To achieve the required rate of progress in order to complete the Facilities within the Time for Completion, the Contractor may carry on the work, round the clock, in multiple shifts per day, as may be necessary. The Contractor shall however be responsible to comply with all applicable laws in this regard.
		22.8.2	No additional payment will be made on account of round the clock working in multiple shifts.
		22.8.3	Wherever the work is carried out at night adequate lighting of working areas and access routes for pedestrians or vehicles shall be provided by the Contractor at his cost. Sufficient notice should be given by the Contractor to the Employer regarding the details of works in shifts so that necessary supervision could be provided.
23.	Test And Inspection		
		23.1	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 Equipment and any part of the Facilities as are specified in the Contract.

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		23.2	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 travelling and board and lodging expenses.
		23.3	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.
		23.4	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.
		23.5	The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, where the purpose of these tests / inspection is to verify compliance with the Technical Specifications and are feasible without creating a risk of damage to the Works, 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.
		23.6	If any Plant and Equipment or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant and Equipment or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GCC Sub-Clause 23.3.
		23.7	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 and Equipment or part of the Facilities that cannot be settled between the parties within a reasonable period of time, it may be referred to the Expert Settlement Council (ESC) for determination in accordance with GCC Sub-Clause 6.2.
		23.8	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 and Equipment 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.
		23.9	The Contractor agrees that neither the execution of a test and/or inspection of Plant and Equipment or any part of the Facilities, nor the attendance by the Employer or the Project Manager, nor the issue of any

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			test certificate pursuant to GCC Sub-Clause 23.4, shall release the Contractor from any other responsibilities under the Contract.
		23.10	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 part 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.
		23.11	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 part 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 installation of the Facilities or any part thereof has, in the opinion of the Contractor, been completed as specified in the Technical Specifications, 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 Employer shall supply the operating and maintenance personnel and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services as specified in Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement, required 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 raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters, if so specified in Appendix 6 (Scope of Works and Supply by the Employer)/ Technical Specifications, 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 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 commence Commissioning as per procedures stipulated in Technical Specifications, and as soon as Commissioning is satisfactorily completed, the Contractor shall so notify the Project Manager in writing.
		24.5	The Project Manager shall, within fourteen (14) days after receipt of the Contractor's notice under GCC Sub-Clause 24.4, either issue a Completion Certificate in the form specified in the Forms and Procedures
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			section in the bidding documents, stating that the Facilities or that part thereof have reached Completion as at the date of the Contractor's notice under GCC Sub-Clause 24.4, or 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 at 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 fourteen (14) 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	As soon as possible 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.
		24.8	Upon Completion, 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.	Commissioning, Guarantee Tests and Operational Acceptance		
	25.1	Commissioning	
	25.1.1	Commissioning of the Facilities or any part thereof shall be completed by the Contractor as per procedures detailed in the Technical Specifications. The Employer shall, unless otherwise specified in Appendix 6 (Scope of Works and Supply by the Employer)/ Technical Specifications, supply the operating and maintenance personnel and all raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Commissioning of the Facilities.	
	25.2	Guarantee Test	
	25.2.1	The Guarantee Test (and repeats thereof) shall be conducted by the Contractor after Commissioning of the Facilities or the	
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			relevant part thereof to ascertain whether the Facilities or the relevant part can attain the Functional Guarantees specified in the Contract Documents. The Contractor's and Project Manager's advisory personnel shall attend the Guarantee Test. The Employer shall promptly provide the Contractor with such information as the Contractor may reasonably require in relation to the conduct and results of the Guarantee Test (and any repeats thereof). 25.2.2 If for reasons attributable to the Employer, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the period of twelve months from the date of Completion of respective facility, the payment towards Successful Completion of Guarantee Test, shall be released to the Contractor against Bank Guarantee. Such Bank Guarantee shall have initial validity of one (1) year. The Bank Guarantee shall be extended for any subsequent period, if required, such that the same remains valid till the Successful Completion of Guarantee Test.
		25.3	Operational Acceptance 25.3.1 Subject to GCC Sub-Clause 25.4 (Partial Acceptance) below, Operational Acceptance shall occur in respect of the Facilities or any part thereof when (a) the Guarantee Test has been successfully completed and the Functional Guarantees are met; or (b) the Contractor has paid the liquidated damages specified in GCC Sub-Clause 28.3 hereof; and (c) any minor items mentioned in GCC Sub-Clause 24.7 hereof relevant to the Facilities or that part thereof have been completed. 25.3.2 At any time after any of the events set out in GCC Sub-Clause 25.3.1 have 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 at the date of such notice. 25.3.3 The Project Manager shall, after consultation with the Employer, and within forty five (45) days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate. 25.3.4 If within forty five (45) 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 at the date of the Contractor's said notice.
		25.4	Partial Acceptance

Clause No.			GENERAL CONDITIONS OF CONTRACT (GCC)
			25.4.1 If the Contract specifies that Completion and Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Completion and Commissioning including the 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. 25.4.2 If a part of the Facilities comprises facilities such as buildings, for which no Commissioning or Guarantee Test is required, then the Project Manager shall issue the Operational Acceptance Certificate for such facility when it attains Completion, provided that the Contractor shall thereafter complete any outstanding minor items that are listed in the Operational Acceptance Certificate.
			F. Guarantees and Liabilities
26.	Completion Time Guarantee		
		26.1	The Contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified in the SCC) within the Time for Completion specified in the SCC pursuant to GCC Sub-Clause 8.2, or within such extended time to which the Contractor shall be entitled under GCC Clause 40 (Extension of Time for Completion) 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 GCC Clause 40 (Extension of Time for Completion), the Contractor shall pay to the Employer liquidated damages in the amount computed at the rates specified in the SCC. The aggregate amount of such liquidated damages shall in no event exceed the amount specified as "Maximum" in the SCC. Once the "Maximum" is reached, the Employer may consider termination of the Contract, pursuant to GCC Sub-Clause 42.2.2. 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 GCC Clause 40 (Extension of Time for Completion). 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 GCC Sub-Clause 26.2, the failure by the Contractor to attain any milestone or other act, matter or thing by any date specified in Appendix 4 (Time Schedule) to the Contract Agreement and/or other program of work prepared pursuant to GCC Clause 18 (Program of Performance) shall not render the Contractor liable for any loss or damage thereby suffered by the Employer.
		26.3	No bonus shall be given for earlier completion of the facilities or part thereof.
27.	Defect Liability		

Clause No.			GENERAL CONDITIONS OF CONTRACT (GCC)
		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 and Equipment supplied and of the work executed.
		27.2	The Defect Liability Period shall be eighteen (18) months from the date of Completion of the Facilities (or any part thereof) or twelve (12) months from the date of Operational Acceptance of the Facilities (or any part thereof), whichever first occurs, unless specified otherwise in the SCC. If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Plant and Equipment 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, at its discretion, determine) 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 (c) normal wear and tear.
		27.3	The Contractor's obligations under this GCC Clause 27 shall not apply to (a) any materials that are supplied by the Employer under GCC Sub-Clause 21.2 (Employer-Supplied Plant, Equipment and Materials), 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 (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 GCC 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 GCC Clause 27. The Contractor may, with the consent of the Employer, remove from the Site any Plant and Equipment 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.
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		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 in character shall in any case be not less than what has already been agreed by the Employer and the Contractor for the original equipment/part of the Facilities.
		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 fifteen (15) 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 to the Contractor or claimed under the Performance Security.
		27.8	If the Facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Employer because of any of the aforesaid reasons. Upon correction of the defects in the Facilities or any part thereof by repair/replacement, such repair/replacement shall have the Defect Liability Period extended by a period of twelve (12) month from the time such replacement/repair of the Facilities or any part thereof. 27.8.1 At the end of the Defect Liability Period, the contractor liability ceases except for latent defects. The contractor's liability for latent defects warranty shall be limited to a period of five (5) years from the end of Defect Liability Period. For the purpose of the this clause, the latent defects shall be the defects inherently lying within the material or arising out of design deficiency which do not manifest themselves during the Defect Liability Period in this GCC clause 27, but later.
		27.9	Except as provided in GCC Clauses 27 and 33 (Loss of or Damage to Property / Accident or Injury to Workers/Indemnification), 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 and Equipment, 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 the gross negligence, fraud, criminal or wilful action of the Contractor.
		27.10	In addition, the Contractor shall also provide an extended warranty for any such component of the Facilities and during the period of time as may be specified in the SCC. Such obligation shall be in addition to the defect liability specified under GCC Sub-Clause 27.2.
28.	Functional Guarantees		

Clause No.			GENERAL CONDITIONS OF CONTRACT (GCC)
		28.1	The Contractor guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the Functional Guarantees specified in Appendix 8 (Functional Guarantees) to the Contract Agreement, subject to and upon the conditions therein specified.
		28.2	If, for reasons attributable to the Contractor, the guaranteed level of the Functional Guarantees specified in Appendix 8 (Functional Guarantees) to the Contract Agreement are not met either in whole or in part, the Contractor shall, within a mutually agreed time, 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 such Guarantees. The Contractor shall notify the Employer upon completion of the necessary changes, modifications and/or additions, and shall seek the Employer's consent to repeat the Guarantee Test. If the specified Functional Guarantees are not established even during the repeat of the Guarantee Test, the Employer may at its option, either (a) Reject the Equipment and recover the payments already made, or (b) Terminate the Contract pursuant to GCC Sub-Clause 42.2.2 and recover the payments already made, or (c) Accept the equipment after levy of liquidated damages in accordance with the provisions specified in Appendix-8(Functional Guarantees) to the Contract Agreement.
		28.3	In case the Employer exercises its option to accept the equipment after levy of liquidated damages, the payment of liquidated damages under GCC Sub-Clause 28.2, up to the limitation of liability specified in the Appendix-8 (Functional Guarantees) to the Contract Agreement, shall completely satisfy the Contractor's guarantees under GCC Sub-Clause 28.2, 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 GCC 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.
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		29.2	If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in GCC 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 defence 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 wilful 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, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer and (b) the aggregate liability of the either party to the other party, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to any obligation of the Contractor to indemnify the Employer with respect to patent infringement. Notwithstanding anything contained hereinabove, the aggregate liability of the Employer to the Contractor shall not exceed the Total Contract Price, less payments already released to the Contractor, if any.
			G. Risk Distribution
31.	Transfer of Ownership		

Clause No.			GENERAL CONDITIONS OF CONTRACT (GCC)
		31.1	Ownership of the Plant and Equipment
			Ownership of the Plant and Equipment (including spare parts) procured in the country where the Site is located shall be transferred to the Employer when the Plant and Equipment are loaded on to the mode of transport to be used to convey the Plant and Equipment from the works to the site and upon endorsement of the despatch documents in favour of the Employer.
		31.2	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.
		31.3	Disposal of Surplus Material "Ownership of any Plant and Equipment in excess of the requirements for the Facilities (i.e. surplus material) shall revert to the Contractor upon Completion of the Facilities and Guarantee Test or at such earlier time when the Employer and the Contractor agree that the Plant and Equipment 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. The Contractor shall remove from the site such surplus material brought by him in pursuance of the Contract, subject to the Contractor producing the necessary clearance from the relevant authorities (Customs, Excise etc.), if required by law, in respect of re-export or disposal of the surplus material locally. The liability for the payment of the applicable taxes/duties, if any, on the surplus material so re-exported and/or disposed locally shall be that of the Contractor. The Contractor shall also indemnify to keep the Employer harmless from any act of omission or negligence on the part of the Contractor in following the statutory requirements with regard to removal/disposal of surplus material. The Indemnity-cum-Undertaking Agreement shall be furnished by contractor as per proforma enclosed in Section-VII (Part 3 of 3 -Forms and Procedures). Further, in case the laws require the Employer to take prior permission of the relevant Authorities before handing over the surplus material to the Contractor, the same shall be obtained by the Contractor on behalf of the Employer."
		31.4	Notwithstanding the transfer of ownership of the Plant and Equipment, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GCC Clause 32 (Care of Facilities) hereof until Completion of the Facilities or the part thereof in which such Plant and Equipment are incorporated.
		31.5	In case of two/three Contracts entered into between the Employer and the Contractor as per GCC Sub-Clause 3.6 or where the Employer 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 despatch documents furnish Trust Receipt for Plant, Equipment and Materials and also execute an Indemnity-cum-Undertaking Agreement in favour of the Employer in the form acceptable to Employer for keeping the equipment in safe custody and to utilise the same exclusively for the purpose of the said Contract. Proforma for the Trust Receipt and Indemnity-cum-Undertaking Agreement is enclosed under Section-VII (Forms and Procedures). The Employer shall also issue a separate Authorisation Letter to the Contractor to enable him to take

Clause No.			GENERAL CONDITIONS OF CONTRACT (GCC)
			physical delivery of plant, equipment and materials from the Employer as per proforma enclosed under Section-VII (Forms and Procedures).
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 Completion of the Facilities pursuant to GCC Clause 24 (Completion of the Facilities) or, where the Contract provides for Completion of the Facilities in parts, until the date of Completion 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 GCC Clause 27 (Defect Liability). 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 GCC Sub-Clauses 32.2 and 38.1.
		32.2	If any loss or damage occurs to the Facilities or any part thereof or to the Contractor's temporary facilities by reason of (a) (insofar as they relate to the country where the Site is located) nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GCC Clause 34 (Insurance) hereof (b) any use or occupation by the Employer or any third party (other than a Subcontractor) authorized by the Employer of any part of the Facilities (c) any use of or reliance upon any design, data or specification provided or designated by or on behalf of the Employer, or any such matter for which the Contractor has disclaimed responsibility herein, the Employer shall pay to the Contractor all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the Contractor the replacement value of all temporary facilities and all parts thereof lost, destroyed or damaged. If the Employer requests the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Contractor shall make good the same at the cost of the Employer in accordance with GCC Clause 39 (Change in the Facilities). If the Employer does not request the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Employer shall either request a change in accordance with GCC Clause 39 (Change in the Facilities), excluding the performance of that part of the Facilities thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the Employer shall terminate the Contract pursuant to GCC Sub-Clause 42.1 (Termination for Employer's Convenience) hereof,
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			except that the Contractor shall have no entitlement to profit under paragraph (e) of GCC Sub-Clause 42.1.3 in respect of any unexecuted Facilities as at the date of termination.
		32.3	The Contractor shall be liable for any loss of or damage to any Contractor's Equipment, or any other property of the Contractor used or intended to be used for purposes of the Facilities, except (i) as mentioned in GCC Sub-Clause 32.2 (with respect to the Contractor's temporary facilities), and (ii) where such loss or damage arises by reason of any of the matters specified in GCC Sub-Clauses 32.2(b) and (c) and 38.1.
		32.4	With respect to any loss or damage caused to the Facilities or any part thereof or to the Contractor's Equipment by reason of any of the matters specified in GCC Sub-Clause 38.1, the provisions of GCC Sub-Clause 38.3 shall apply.
33.	Loss of or Damage to Property; Accident or Injury to workers; Indemnification		
		33.1	Subject to GCC 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 death or injury 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 GCC 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 defence 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 GCC Clause 34 (Insurances), provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor.

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		33.4	The party entitled to the benefit of an indemnity under this GCC 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 Appendix 3 (Insurance Requirements) to the Contract Agreement, 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 and Equipment (including spare parts therefor) 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 Completion 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 in any country where the Contract or any part thereof is executed. (g) Other Insurances

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			Such other insurances as may be specifically agreed upon by the parties hereto as listed in the said Appendix 3.
		34.2	The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GCC 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-insureds 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 Appendix 3 (Insurance Requirements) to the Contract Agreement, 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 Appendix 3 (Insurance Requirements) to the Contract Agreement.
		34.6	If the Contractor fails to take out and/or maintain in effect the insurances referred to in GCC 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 GCC 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 GCC Clause 34, and all monies payable by any insurers shall be paid to the Contractor as per the procedure outlined in GCC Sub-Clause 34.8 below. 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
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			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.
		34.8	(i) Wherever total damages/loss of equipment/material, would occur, the Contractor will be entitled to payment of all payments received from the underwriters except the following amounts: (a) The amount paid to the Contractor under the Contract in respect of equipment/material damaged/lost (excluding the pro-rata initial advance) but including the entire amount of escalation, if any, already paid to the Contractor. (b) Taxes and duties which have already been paid by the Employer. In the event the claim money settled, is less than the total of the amount in a & b above, then the entire claim money settled will be retained by the Employer and the Contractor will forthwith pay the Employer the short fall amount between the claim money and the total of amounts as per a & b mentioned above. Subsequent payments, if any, due under the Contract shall be regulated by the relevant terms of payment. (ii) In case of damage to any equipment/material during any stage, the Contractor upon rectification of the damaged equipment to the satisfaction of the Employer shall be paid to the extent of full claims settled by the underwriters.
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 and Equipment 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 Equipment 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

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			(d) the additional cost and expense that the Contractor is likely to incur. On receiving any notice from the Contractor under this GCC Sub-Clause 35.1, the Project Manager shall promptly consult with the Employer and Contractor and 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 GCC Sub-Clause 35.1 shall be paid by the Employer to the Contractor as an addition to the Contract Price.
		35.3	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 GCC Sub-Clause 35.1, the Time for Completion shall be extended in accordance with GCC Clause 40 (Extension of Time for Completion).
36.	Change in Laws and Regulations		
		36.1	If, after the date seven (7) days prior to the deadline set for Price Bid submission, in the country where the Site is located, 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. However, these adjustments would be restricted to direct transactions between the Employer and Contractor and Bought out items (to be dispatched directly from the sub-vendor's works to NTPC Site). These adjustments shall not be applicable on procurement of raw materials, intermediary components, and intermediary services etc. by the Contractor. 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, in accordance with the Appendix 2 to the Contract Agreement.
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.
		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 occurrence of such event.

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		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 GCC Clause 40 (Extension of Time for Completion).
		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 fulfil its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under GCC Sub-Clauses 37.6 and 38.5.
		37.5	No delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall (a) constitute a default or breach of the Contract (b) (subject to GCC Sub-Clauses 32.2, 38.3 and 38.4) give rise to any claim for damages or additional cost or expense occasioned thereby if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.
		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 the dispute shall be resolved in accordance with GCC Clause 6.
		37.7	Notwithstanding GCC 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 of the following events occurring or existing in or near the country (or countries) where the Site is located: (a) war, hostilities or warlike operations (whether a state of war is 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, and (c) any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war.
		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 & Equipment, or any part thereof

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			(b) destruction of or damage to property of the Employer or any third party (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 and Equipment 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 and Equipment 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 so far as may be required by the Employer, and as may be necessary for completion of the Facilities, (c) replacing or making good any such destruction or damage to the Facilities or the Plant and Equipment or any part thereof. 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 GCC Clause 39 (Change in the Facilities), 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 GCC Sub-Clause 42.1 (Termination for Employer's Convenience).
		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, 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 the dispute will be resolved in accordance with GCC Clause 6.
		38.6	In the event of termination pursuant to GCC Sub-Clauses 38.3, the rights and obligations of the Employer and the Contractor shall be specified in GCC Sub-Clauses 42.1.2 and 42.1.3, except that the Contractor shall

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			have no entitlement to profit under paragraph (e) of GCC Sub-Clause 42.1.3 in respect of any unexecuted Facilities as of the date of termination.
			H. Change in Contract Elements
39.	Change In The Facilities		
		39.1	Introducing a Change 39.1.1 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. The Employer may at its discretion approve or reject any Change proposed by the Contractor. 39.1.3 Notwithstanding GCC 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 GCC Sub-Clauses 39.2 and 39.3.
		39.2	Changes Originating from Employer 39.2.1 If the Employer proposes a Change pursuant to GCC 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 any other provisions of the Contract. 39.2.2 The pricing of any change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If the rates and prices of any change are not available

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			in the Contract, the parties thereto shall agree on specific rates for the variation of the change. 39.2.3 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 GCC 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 (15) percent, 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 and the Contractor shall agree on specific rates for valuation of the change. 39.2.4 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained including agreement on rates if such rates are not available in the Contract or if the limit of 15% set forth in Clause 39.2.3 has been exceeded. 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. 39.2.5 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 Expert Settlement Council (ESC) in accordance with the provisions of GCC Sub-Clause 6.2.
		39.3	Changes Originating from Contractor 39.3.1 If the Contractor proposes a Change pursuant to GCC 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 GCC Sub-Clause 39.2.1.

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			Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Sub-Clauses 39.2.4 and 39.2.5.
40.	Extension of Time for Completion		
		40.1	The Time(s) for Completion specified in the SCC 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 GCC Clause 39 (Change in the Facilities) (b) any occurrence of Force Majeure as provided in GCC Clause 37 (Force Majeure), unforeseen conditions as provided in GCC Clause 35 (Unforeseen Conditions), or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clause 32.2 (c) any suspension order given by the Employer under GCC Clause 41 (Suspension) hereof or reduction in the rate of progress pursuant to GCC Sub-Clause 41.2 or (d) any changes in laws and regulations as provided in GCC Clause 36 (Change in Laws and Regulations) or (e) any default or breach of the Contract by the Employer, specifically including failure to supply the items listed in Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement, or any activity, act or omission of any other contractors employed by the Employer or failure to give possession of site under GCC Clause 10.2. (f) 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.
		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 the Expert Settlement Council (ESC), pursuant to GCC Sub-Clause 6.2.
		40.3	The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.
		40.4	Documents for Consideration of Time Extension

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			The following documents shall form the principal basis for consideration of Time Extension pursuant to GCC clause 40 with or without LD, levy of liquidated damages pursuant to GCC clause 26 and settlement of extra claims during the execution of contract: 1. The joint recordings in the weekly meetings register 2. Records of Technical Coordination Meetings. 3. Records of Contract Review meetings. 4. Written notices issued by the "Project Manager" or his authorized representative to Contractor in the relevant period.
41.	Suspension		
		41.1	The Employer/ Project Manager may, by notice to the Contractor, 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/ Employer. If, by virtue of a suspension order given by the Project Manager/Employer, 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 GCC Clause 39 (Change in the Facilities), 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 GCC Clause 39 (Change in the Facilities) or, where it affects the whole of the Facilities, as termination of the Contract under GCC Sub-Clause 42.1 (Termination for Employer's Convenience).
		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 Appendix 1 (Terms and Procedures of Payment) to the Contract Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, 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, 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

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			(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 GCC 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 fourteen (14) days' 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 GCC Clause 41, then the Time for Completion shall be extended in accordance with GCC 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 and Equipment, 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 GCC Sub-Clause 42.1. 42.1.2 Upon receipt of the notice of termination under GCC 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 (d) In addition, the Contractor, subject to the payment specified in GCC Sub-Clause 42.1.3, shall (i) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination

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			(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 and Equipment as at the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors (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 GCC 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 GCC Sub-Clause 42.1.2 (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 therefor to the Contractor, referring to this GCC 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

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			(b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 43 (Assignment). (c) if the Contractor, in the judgement of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract. For the purpose of this Sub-Clause : "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution. "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Employer and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition. 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 GCC 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 (d) refuses or is unable to provide sufficient materials, services or labour to execute and complete the Facilities in the manner specified in the program furnished under GCC Clause 18 (Program of Performance) 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 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 GCC Sub-Clause 42.2. 42.2.3 Upon receipt of the notice of termination under GCC 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
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			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 Works and to the Plant and Equipment as at the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors (e) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at 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 GCC Sub-Clause 42.2.6, the Contractor shall be entitled to be paid the Contract Price attributable to the Facilities executed as at the date of termination, the value of any unused or partially used Plant and Equipment 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 GCC Sub-Clause 42.2.3. Any sums due to 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 GCC Sub-Clause 42.2.5, plus the reasonable costs incurred by

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			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 to the Contractor under GCC Sub-Clause 42.2.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due to the Contractor under GCC 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 Contractor
			42.3.1 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 Appendix 1 (Terms and Procedures of Payment) of the Contract Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, 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, 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 which the Employer is required to obtain as per provision of the Contract or as per relevant applicable laws of the country, 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 GCC 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 GCC 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
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS			BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - IV (GCC)
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Clause No.			GENERAL CONDITIONS OF CONTRACT (GCC)
			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 GCC 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 Subcontractor's personnel from the Site (d) In addition, the Contractor, subject to the payment specified in GCC Sub-Clause 42.3.4, shall (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 and Equipment as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors (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 GCC Sub-Clauses 42.3.1 or 42.3.2, the Employer shall pay to the Contractor all payments specified in GCC Sub-Clause 42.1.3 and reasonable compensation for all loss 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 GCC 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 GCC Sub-Clause 42.3.
		42.4	In this GCC Clause 42, the expression "Facilities executed" shall include all work executed, Installation Services provided, any or all Plant and Equipment 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 GCC 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
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS			BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - IV (GCC)
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Clause No.			GENERAL CONDITIONS OF CONTRACT (GCC)
			payment paid pursuant to Appendix 1 (Terms and Procedures of Payment) to the Contract Agreement.
43.	Assignment		
		43.1	The Contractor shall not, without the express prior written consent of the Employer, assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, 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.
44.	Contractor Performance Feedback and Evaluation System		
			The Employer has in place an established 'Contractor Performance and Feedback System' against which the Contractor's performance during the execution of Contract shall be evaluated on a continuous basis at regular intervals on the following seven parameters: • Engineering & Quality Assurance Capability • Finance • Supply • Construction/ Installation • Field Quality • Safety • Claims & Disputes The score-based feedback formats based on which Contractor's performance shall be evaluated is enclosed at Annexure-A. In case the performance of the Contractor is found unsatisfactory, the Contractor shall be considered ineligible for participating in future tenders for three years. On completion of the above ineligibility period, the Contractor would be required to submit a request to NTPC for participating in future tenders specifying the measures taken to improve their performance. The Contractor may also request for early revocation of suspension after completion of at least two (2) year of the suspension period. On receipt of such request, the performance of the Contractor shall be assessed/evaluated by NTPC and if the performance is found to be satisfactory, the Contractor shall be considered eligible for participation in future tenders.
45.	Fraud Prevention Policy		
			"The contractor along with their associate / collaborator / subcontractors / sub-vendors / consultants / service providers shall strictly adhere to the Fraud Prevention policy of the Employer displayed on its tender website http://www.ntpctender.com. The Contractor along with their associate / collaborator / subcontractors / sub-vendors / consultants / service providers shall observe the highest standard of ethics and shall not indulge or allow anybody else working in their organization to indulge in fraudulent activities during execution of the contract. The contractor shall immediately apprise the Employer about any fraud or suspected fraud as soon as it comes to their notice.

Clause No.		GENERAL CONDITIONS OF CONTRACT (GCC)	
46.	Withholding/Banning		
			The Employer has in place a Policy for withholding and Banning of Business Dealings as enclosed at Annexure-II to Special Conditions of Contract (SCC) of the Bidding Documents. Business dealings may be withheld or banned with the Contractor on account of any Default by the Contractor under GCC Clause 42.2.1 & 42.2.2 or any of the grounds as detailed in the said Banning Policy.
47	Contractor's Labour Information Management System (CLIMS)		
			(a) The Contractor has to necessarily get itself registered in the Contractor's Labour Information Management System (CLIMS), which will be installed by the Employer. (b) The entry and exit of all contract labour to the plant premises will be through Gate Access Control System of above 'Contractor's Labour Information Management System'. (c) It will be the responsibility of the Contractor to ensure timely exit of all labours from the plant premises after completion of job of that day. (d) The contractor has to abide with all the statutory compliance applicable to its workers and employees and update the details of the same in the above System.
48.	No Claim for interest or damage		
		48.1	Interest on money due to the contractor: No omission on the part of the Employer to pay the amount due upon measurement or otherwise shall vitiate or make void the contract, nor shall the contractor be entitled to interest upon any guarantee/security/retention money or payments in arrears nor upon any balance which may on the final settlement of his account be due to him
		48.2	No claim for interest or damage: No claim for interest or damage will be entertained or be payable by the Employer in respect of any amount or balance which may be lying with the Employer or may become due upon settlement/adjudication of any dispute, difference or misunderstanding between the parties by way of arbitration or court proceedings or otherwise or in respect of any delay or omission on the part of the Employer in making intermediate or final payment or in respect of any amount/damage which may be claimed through arbitration or court proceedings or in any other respect whatsoever
49.	Integrity Pact		If the Employer has terminated the contract pursuant to Section-3 of the Integrity Pact (IP), the Employer shall encash the Contract Performance Bank Guarantee, in accordance with Section 4 of Integrity Pact.
50.	Independent External Monitors (IEM)s		
			In respect of this package, the Independent External Monitors (IEMs) would be monitoring the bidding process and execution of contract to oversee implementation and effectiveness of the Integrity Pact Program. The Independent External Monitor(s) (IEMs) have been appointed by NTPC, in terms of Integrity Pact (IP) which forms part of the NTPC Tenders/Contracts and details of the IEMs are available on NTPC tender website: www.ntpctender.com (under the tab "Integrity Pact").

Clause No.		GENERAL CONDITIONS OF CONTRACT (GCC)																
		This panel is authorized to examine/consider all references made to it under this tender. The bidder(s), in case of any dispute(s)/complaint(s) pertaining to this package may raise the issue either with the designed 'Nodal Officer' in NTPC or directly with the IEMs. The Independent External Monitors (IEMs) has the right to access without restriction to all Project documentations of the Employer including that provided by the Contractor. The Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his Project Documentations. The same is applicable to Subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder / Contractor / Sub-Contractors / JV Partners / Consortium member with confidentiality. The Nodal officer for necessary coordination in this regard shall be as under: <table><tr><td>(i)</td><td>GM(CS)/AGM(CS) heading the concerned group</td><td>:</td><td>if the issue pertains to Contract Services</td></tr><tr><td>(ii)</td><td>Head of Contracts & Materials Department</td><td>:</td><td>if the issue pertains to regional office</td></tr><tr><td>(iii)</td><td>Head of concerned department</td><td>:</td><td>if the issue pertains to other departments</td></tr><tr><td>(iv)</td><td>Head of Project</td><td>:</td><td>if the issue pertains to Project/Station</td></tr></table>	(i)	GM(CS)/AGM(CS) heading the concerned group	:	if the issue pertains to Contract Services	(ii)	Head of Contracts & Materials Department	:	if the issue pertains to regional office	(iii)	Head of concerned department	:	if the issue pertains to other departments	(iv)	Head of Project	:	if the issue pertains to Project/Station
(i)	GM(CS)/AGM(CS) heading the concerned group	:	if the issue pertains to Contract Services															
(ii)	Head of Contracts & Materials Department	:	if the issue pertains to regional office															
(iii)	Head of concerned department	:	if the issue pertains to other departments															
(iv)	Head of Project	:	if the issue pertains to Project/Station															

ANNEXURE-A

PERFORMANCE REPORT OF CONTRACTOR

GUIDELINES FOR FILLING THE FORMAT

- 1.0 The feedback shall be based on records, evidences and documents (hindrance register, DPR, monthly PRT MoM, contractor's MPR, etc). Due diligence shall be taken to capture the actual progress, hindrances, if any from the monthly progress report to be submitted by the concerned agency. As Daily Progress Report / Weekly Progress Report / Monthly Progress Report are key documents / inputs for Vendor Performance measurement. Non-submission of the aforesaid documents may also be reckoned as poor performance.
- 2.0 For measurement of contractor performance in various activities in supply, site execution etc, the Contractor shall submit quantified L-2 schedule within 3 months after scheduled completion of Basic Engg or 180 days from date of award, whichever is earlier. Based on the progress of detailed Engg, quantified L-2 shall be updated as and when required.
- 3.0 This vendor performance rating system is applicable for a particular package being executed by the vendor. If the same vendor is executing multiple packages in a project or at number of NTPC projects, the performance report shall be prepared package wise and the screening committee may then take a final view for evaluating the overall performance of the vendor before initiating action for issuance of Notice for Withholding of business dealings with the concerned contractor, in case the performance is found unsatisfactory.

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FORMAT FOR ENGG & QA SCORE

(TO BE FILLED IN BY NTPC ENGG.)

S.No.	Parameters	Max Score (A)	Act % age w.r.t. sch (B)	Marks obtained (C) = (A)x(B)
(i)	%age of “ Approval ” category drgs/ docs submitted within submission schedule.	30		
(ii)	%age of “ Information ” category drgs/ docs submitted within submission schedule.	20		
(iii)	%age of drgs/docs approved within approval schedule (in Cat-I/IV)*	20		
(iv)	%age of drgs/docs approved within approval schedule (in Cat-II/IVR)*	20		
(v)	%age of Sub-vendor proposal for items identified in “DR” category & submitted within agreed schedule (i.e. 3 months prior to schedule date of ordering identified in L2)**	10		
	TOTAL	100		

* For (iii) & (iv) above - If all drawings/documents due for approval are approved in Cat-I/IV within approval schedule, then marks allocated against (iii) & (iv) above shall be clubbed for calculation purpose.

** In case no “DR” proposal is submitted and orders are placed on already approved vendors, then full marks shall be given for calculation purpose against item (v).

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FORMAT FOR FINANCE SCORE

(TO BE FILLED IN BY NTPC PP&M PRT COORDINATOR ON MONTHLY BASIS DURING PRT MEETING, BASED ON DETAILS TO BE FURNISHED BY NTPC SITE P&S)

S. no	Parameters	Max Score (A)	% Rating (B)	Marks Obtained (C) = (A) *(B)
(i)	Number of instances NTPC has to issue Comfort letters to sub-vendors for getting supplies.	25		
(ii)	Number of instances vendor has requested for advance against BG from NTPC (beyond contractual provision)	25		
(iii)	Number of instances of supply delay beyond 1 month after issuance of MDCC.	25		
(iv)	Number of instances of direct supply / diversion of materials / consumables by NTPC.	25		
	TOTAL	100		

*Performance to be captured by NTPC PP&M PRT Coordinator on monthly basis during PRT Meeting, based on details to be furnished by site P&S.

*(No instances = 100%

Up to 1 instance = 50%

more than 1 instances = 0%).

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FORMAT FOR SUPPLY SCORE

(TO BE FILLED IN BY NTPC CONTRACTS)

S. no	Parameters	Max Score (A)	Actual % w.r.t. L2 schedule (B)	Marks Obtained (C) = (A) *(B)
(i)	Ordering of Bought out items as per approved L2 network*			
	Major Bought out items	20		
	Minor Bought out items	5		
	Number of instances of cancellation / changes of Bol orders (No instances = 100% Up to 1 instances = 50% more than 1 instances = 0%).	10		
(ii)	Supply of Main Equipment per approved L2 network	60		
(iii)	Supply of Mandatory spares as per approved L2 network	5		
	TOTAL	100		

*If Major & Minor Bought out items are not separately identified in L-2 network then both shall be clubbed into single line item with Max score of 25.

Note: Overall % of actual progress vis-à-vis L2 schedule in Col (B) shall be arrived in the following manner:

- (i) Let there be n type of Items/systems identified in L2/Quantified L2 schedule i.e. E1, E2, E3En.
- (ii) Let % progress for each type of Item/system vis-à-vis L2 schedule be %E1, %E2, %E3.....%En.
- (iii) Overall % in Col (B) = (%E1+ %E2+ %E3.....+%En)/n

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FORMAT FOR CONSTRUCTION/INSTALLATION SCORE

(TO BE FILLED IN BY NTPC SITE)

S. no	Parameters	Max Score (A)	% of actual vis-à-vis L2 schedule (B)	Marks Obtained (C)=(A) *(B)
(i)	Physical progress i.e. Installation of equipment / item, Civil works(i.e. Excavation, RCC, Piling, etc), Structural Works (i.e. Structural Fabrication, Erection, etc) as per approved L2 network	95		
(ii)	Project Management Capability and resource Management by Vendor at site. (5 Negative marks per instance)			
	Number of instances of delay due to inadequate deployment of equipment and T&P, based on record maintained in hindrance register, monthly PRT MoM, contractor's MPR, etc.	(-)5		
	Number of instances of direct payment by NTPC to Contractor's sub-vendors to expedite supplies / services / the progress of work at site affected due to strike / delay in payments to labourers.	(-)5		
(iii)	Submission of Monthly Report in specified formats.	5		
	TOTAL	100		

Details of Area-wise performance is mentioned below:

Sr No.	Activities	Scope	L2 Finish Date	Actual Completed till L2 Finish	%age Comp
1	Excavation				
2	RCC				
3	Structural / Equipment Erection				
				Avg Comp %	

Note: For Physical Progress, overall % of actual progress vis-à-vis quantified L2 schedule in Col (B) shall be arrived in the following manner (Unit of measurement shall be as per approved BBU for respective activities):

- (i) Let there be n category of works identified in L-2/Quantified L2 schedule i.e. W1, W2, W3Wn.**
- (ii) Let % progress for each category of work vis-à-vis L2 schedule be %W1, %W2, %W3.....%Wn.**
- (iii) Overall %in Col (B) = (%W1+ %W2+ %W3.....+%Wn)/n**

Note:

- All incidences shall be relevant to the current performance evaluation cycle.
- In case of delay in front (including construction drawings for civil packages and other inputs, if any) release by NTPC, measurement of delay in execution by the contractor shall be normalized proportionally.
- Contractor will have to submit monthly progress report capturing actual physical progress viv-a-vis L2 schedule and delay in hand over of front by NTPC, if any. In case of front delay the same has to be jointly signed by NTPC engineer & Vendor.

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FORMAT FOR QUALITY SCORE

(TO BE FILLED IN BY NTPC SITE)

S. no	Parameters	Max Score (A)	% Rating (B)	Marks Obtained (C)=(A) *(B)
(i)	Availability of Testing facilities (Available as per contractual requirement – 100% Not available – 0%)	25		
(ii)	Preventing recurrence of defects/complaints (up to 5 cases – 100%, Up to 10 cases – 40%, more than 10 cases – 0%)	25		
(iii)	Proper Storage & Preservation of Equipment/Material (Nil violation – 100%, Up to 1 case of violation – 40%, more than 1 cases of violation – 0%)	25		
(iv)	Deployment of Qualified Quality Officers/Manpower as per Contract (% deployment w.r.t. contractual requirement)	25		
	TOTAL	100		

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FORMAT FOR SAFETY SCORE

(TO BE FILLED IN BY NTPC SITE)

S. no	Parameters	Max Score (A)	% Rating (B)	Marks Obtained (C)=(A) *(B)
(i)	Having safety policy and approved Safety Assurance Plan (available as per requirement – 100%, Not-available – 0%)	10		
(ii)	Violation of safety requirement as per Safety Assurance Plan. (0 violation = 100% Upto 3 violations = 50% more than 3 = 0%)	20		
(iii)	No. of incidence of Fatal accidents due to contractor's negligence (0 incidence = 100% 1 incidence = 50% more than 1 cases, or multiple fatalities in one instance = 0%)	50		
(iv)	No. of incidence of Non-Fatal accidents due to contractor's negligence (0 incidence = 100% Up to 5 incidence = 50% more than 5 = 0%)	10		
(v)	Deployment of Qualified Safety Officers as per contract (% deployment w.r.t. contractual requirement)	10		
	TOTAL	100		

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FORMAT FOR CLAIMS & DISPUTE SCORE

(TO BE FILLED IN BY NTPC SITE)

S. no	Parameters	Max Score (A)	% Rating (B)	Marks Obtained (C)=(A) *(B)
(i)	No. of cases where Contractor stopped work on account of non-admittance/non settlement of claims (No case = 100% Upto 3 cases = 50% more than 3 cases = 0%)	70		
(ii)	No. of arbitration/legal cases resorted to by the Contractor (No case – 100%, otherwise 0%)	30		
	TOTAL	100		

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Overall Performance Evaluation

S.No.	Parameters	Max Score (A)	Score Obtained (B)	Weightage (C)	Max Weighted Score (D) = (A)*(C)	Weighted Score obtained (E) = (B)*(C)
(i)	Engineering & QA	100		0.20	20	
(ii)	Finance	100		0.20	20	
(iii)	Supply	100		0.20	20	
(iv)	Construction/Installation	100		0.20	20	
(v)	Quality	100		0.05	05	
(vi)	Safety	100		0.10	10	
	Claims & Disputes	100		0.05	05	
	Total			1.00	100	

Note: In case of Civil Contracts, score of Engineering & QA and Supply shall be NIL and weightage of Construction/Installation shall be 0.60.

Performance Rating

Total Weighted Score obtained	Performance Grade
Upto 50	Unsatisfactory
>50 to 70	Satisfactory
>70 to 80	Good
>80	Excellent

SECTION – V

SPECIAL CONDITION OF CONTRACT (SCC)

Special Conditions (SCC No.)	GCC Clause Ref., if any	Special Conditions
SECTION - V SPECIAL CONDITIONS OF CONTRACT <i>The following Special Conditions of Contract (SCC), Section-V, shall supplement/amend the General Conditions of Contract (GCC), Section-IV. Wherever there is a conflict, the provisions in SCC shall prevail over those in the GCC. The corresponding clause number of the GCC is indicated in parentheses.</i> Name of Package: EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GAS POWER STATION Document No.: CS-2600-001-9 IFB no.: 40088007		
1.	Definitions (GCC Clause 1)	The Employer is: Name of Employer : NTPC Limited Address of Employer NTPC Limited, Contract Services (C&M), 6th Floor, Engg. Office Complex, Plot A-8A, Sector 24, Noida-201301 Distt. Gautam Budh Nagar, State of U.P., India Telephone No. 0120-4946671/4948669 Fax No. 0120-2410284/2410011 The Project Manager is : Name of Project Manager: General Manager, Kawas GPS Address of Project: Kawas Gas Power Station Manager PO Aditya Nagar, Surat-394516, India. Time for Completion : Time for Completion of Facilities from the date of Notification of Award shall be 30 months.
2.	GCC 7.3	Prices of recommended spares covered under price Schedule No. 5 shall be kept valid for a period of six (6) months after placement of Notification of Award for Main Equipment and Mandatory Spares.
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS		BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - V (SCC)
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Special Conditions (SCC No.)	GCC Clause Ref., if any	Special Conditions
3.	Time for commencement & Completion (GCC Clause 8.2)	Time for Completion of Facilities from the date of Notification of Award shall be 30 months.
4.	Securities (GCC Clause 13.3.3 & 13.4)	The provisions regarding reduction in Performance Security is not applicable.
4.1	New clause	Add a new GCC Sub-Clause 13.6 as under: Security against O&M charges The successful Bidder, to whom the work is awarded, shall provide Bank Guarantee of Five percent (5%) of total O&M contract value at the beginning of O&M Contract period, from a Bank listed at Annexure-I to SCC, in the form as provided in Section-VII (Forms and Procedures) - Form of Security against O&M Charges, in favor of the Employer. The above Security shall be valid up to (90) days after the end of Operation & Maintenance (O&M) period as specified in the Technical Specifications. CPG upon its expiry, shall be released only after submission of the above BG by the Contractor. The above security will be returned to the contractor without any interest at the end of Operation & Maintenance (O&M) period.
5.	GCC Clause 25.2.1	The Guarantee test of the Facilities shall be successfully completed within 18 months from the date of completion.
6.	Completion Time Guarantee (GCC 26.1)	Time for Completion of Facilities from the date of Notification of Award shall be 30 months.
6.1	Completion Time Guarantee(GCC clause 26.2	Applicable rate for liquidated damages : a) Liquidated Damages for delay in successful Completion of Facilities shall be as under:

Special Conditions (SCC No.)	GCC Clause Ref., if any	Special Conditions
7.	Defect Liability (GCC Clause 27) GCC 27.8.1	If the contractor fails to achieve the successful completion of facilities within 30 months from date of Notification Award for reasons attributable to him, then the Employer shall deduct as liquidated damages and not as penalty, a sum calculated at the rate of INR 11,79,974/- (INR Eleven Lakh Seventy Nine Thousand Nine Hundred Seventy Four only) for each day of delay. b) Maximum deduction for liquidated damages: The total amount of liquidated damages for delay under the contract will be subject to a maximum of five percent (5%) of the total Contract Price [total of First & Second contract] excluding O&M and Training charges. Add the following at the end of Clause No. 27.8.1 of GCC: In case, there is any dispute between Employer and Contractor regarding latent defects, any of the parties listed hereunder or any other third party as mutually agreed upon by the Employer and the Contractor shall be engaged by the Employer for settling the dispute : (a) M/s KEMA, Netherland (b) M/s TUV, Germany (c) M/s EPRI, USA The third party, so engaged by the Employer, shall be paid free plus reasonable expenditures incurred in the execution of its duties as mentioned above. These costs shall be initially paid by the Employer. In case of latent defect being proved, such costs shall be recoverable from the Contractor and the Contractor shall bear and reimburse such costs to the Employer. If the dispute regarding latent defects cannot be settled as above, then the dispute shall be settled as per provision of GCC Clause 6 (Settlement of Disputes).
8.	GCC Clause 28	Following to be read in conjunction with Functional Guarantee wherever appearing The words "Appendix-8 (Functional Guarantee)" appearing in the GCC Clause 28 and at any other places in bidding
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS		BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - V (SCC)
		PAGE3 OF 8

Special Conditions (SCC No.)	GCC Clause Ref., if any	Special Conditions																														
9.	Suspension (GCC 41.3)	documents shall be read in conjunction with Technical Specification, Section-VI of Bidding Documents. Add the following at the end of Clause No. 41.3 of GCC: The Bank Guarantee and Insurance Charges for the extended period on account of delays attributable to the Employer shall be reimbursed at the following rates: Rate applicable for reimbursement of BG Charges: 0.25% p.a. + GST, or actual, whichever is lower, subject to documentary evidence. Rate applicable for Insurance Charges as per tables below : (I) Basic Rates* (Rates in INR) <table border="1"> <thead> <tr> <th>S. No.</th><th>Extended Period</th><th>Rate</th></tr> </thead> <tbody> <tr> <td>(i)</td><td>upto 6 months</td><td>May be granted Pro rata + 20% basis of the original premium</td></tr> <tr> <td>(ii)</td><td>exceeding 6 months but not exceeding 9 months</td><td>INR 0.56 per thousand of Sum Insured</td></tr> <tr> <td>(iii)</td><td>exceeding 9 months but not exceeding 12 months</td><td>INR 0.64 per thousand of Sum Insured</td></tr> <tr> <td>(iv)</td><td>Exceeding 12 months but not exceeding 15 months</td><td>INR 0.72 per thousand of Sum Insured</td></tr> <tr> <td>(v)</td><td>Exceeding 15 months but not exceeding 18 months</td><td>INR 0.80 per thousand of Sum Insured</td></tr> <tr> <td>(vi)</td><td>Exceeding 18 months but not exceeding 21 months</td><td>INR 0.88 per thousand of Sum Insured</td></tr> <tr> <td>(vii)</td><td>Exceeding 21 months but not exceeding 24 months</td><td>INR 0.96 per thousand of Sum Insured</td></tr> <tr> <td>(viii)</td><td>Exceeding 24 months but not exceeding 30 months</td><td>INR 1.04 per thousand of Sum Insured</td></tr> <tr> <td>(ix)</td><td>exceeding 30 months but not exceeding 36 months</td><td>INR 1.12 per thousand of Sum Insured</td></tr> </tbody> </table>	S. No.	Extended Period	Rate	(i)	upto 6 months	May be granted Pro rata + 20% basis of the original premium	(ii)	exceeding 6 months but not exceeding 9 months	INR 0.56 per thousand of Sum Insured	(iii)	exceeding 9 months but not exceeding 12 months	INR 0.64 per thousand of Sum Insured	(iv)	Exceeding 12 months but not exceeding 15 months	INR 0.72 per thousand of Sum Insured	(v)	Exceeding 15 months but not exceeding 18 months	INR 0.80 per thousand of Sum Insured	(vi)	Exceeding 18 months but not exceeding 21 months	INR 0.88 per thousand of Sum Insured	(vii)	Exceeding 21 months but not exceeding 24 months	INR 0.96 per thousand of Sum Insured	(viii)	Exceeding 24 months but not exceeding 30 months	INR 1.04 per thousand of Sum Insured	(ix)	exceeding 30 months but not exceeding 36 months	INR 1.12 per thousand of Sum Insured
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Terrorism		INR 0.30 per thousand of Sum Insured /																			

Special Conditions (SCC No.)	GCC Clause Ref., if any	Special Conditions
10.	Limitation of Liability (GCC Clause 30)	Add the following under GCC Clause No. 30.1: The Limitation of total Liability of the DJU Partner(s) (other than Contractor) to the Employer shall be limited to the Liability amount specified in the respective Deed of Joint Undertaking(s).
11.	New Clause	Add a new GCC Clause 51 as below: Royalty 1. If the Contractor intends to engage itself in quarrying or mining of soil/earth, sand, stone/aggregates, metals, minerals or minor minerals required for the Civil works, as the case may be, it shall obtain necessary permits under the applicable law for such mining or quarrying from the State/Central Government authorities and pay the fee or charges applicable thereto. 2. The Civil works component of the Contract Price shall be inclusive of any Royalties or Seigniorage Fee or Cess or other charges payable on the quarried or mined metal, minerals, or minor minerals, as the case may be, at the rate(s) prevailing as on seven (7) days prior to the deadline set for Price Bid submission. 2.1 It shall be the responsibility of the Contractor to ensure that the Royalties or Seigniorage Fee or Cess or other charges on the quarried or mined metal, minerals or minor minerals are paid to the statutory authorities. 2.2 The component of Royalties or Seigniorage Fee or Cess or other charges, if applicable in a running account bill, shall only be released by the Employer to the Contractor on submission of the following documents in original: A) In case the Contractor is the primary license holder of the quarry / mines: i) Vehicle wise challan / transit permit and proof of payment of royalty, and
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS		BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - V (SCC) PAGE6 OF 8

Special Conditions (SCC No.)	GCC Clause Ref., if any	Special Conditions
		ii) Any other document required as per the relevant Acts/Rules of the concerned state. B) In case the Contractor is the purchaser of soil/earth, sand, stone/aggregates, metals, minerals or minor minerals: i) Purchase voucher and vehicle wise challan / transit permit and proof of payment of royalty, and ii) Any other document required as per the relevant Acts/Rules of the concerned state. 2.3 In case the Contractor fails to provide the required proof of royalty payment with the RA bill then an amount based on the prevailing rates of the royalty shall be deducted from the respective RA bill, which shall be refunded to the Contractor on submission of proof of royalty payment. However, if the Contractor fails to provide the proof of royalty payment within a period of 60 days from the date of RA bill, NTPC shall issue a notice to the Contractor giving 30 days' time for submission of the proof of royalty payment. In case of non-submission of the proof of payment of royalty by the Contractor, the amount so deducted shall be deposited by NTPC to the concerned authority. Engineer in charge shall be responsible to ensure the compliance of the Royalty payment 2.4 The Contractor shall pay and indemnify the Employer against any default in payment of Royalties or Seigniorage Fee or Cess or other charges by the Contractor or the agency from which the Contractor purchases soil/earth, sand, stone/aggregates, metals, minerals or minor minerals. 2.5 In the event of there being a statutory increase in the rates of royalty charges/fresh levy of royalty on materials, the same shall be reimbursed to the Contractor upon submission of original challan by him of having made the payments at revised rates. In the event of there being a decrease in such rates, the same shall be recovered from the Contractor. The base date for calculating the increase or decrease shall be the rate as on seven (7) days prior to the deadline set for Price Bid submission. The total reimbursement (positive or negative) as specified above, to be paid or recovered, shall however be calculated on the quantity of materials actually considered while making the
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS	BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - V (SCC)	PAGE 7 OF 8

Special Conditions (SCC No.)	GCC Clause Ref., if any	Special Conditions
12.	GCC 12 Terms of Payment	royalty payments to the concerned authorities, or the theoretical consumption of these materials (calculated on the basis of the volume of concrete or fill accepted for payment), whichever is less, and on the basis of documentary evidence of Govt. Notification. However, the Contractor will settle claims, if any, on account of over charge by the State Authorities. Add the following sub-clause at the end of GCC Clause 12.3 12.4 For payments related to Erection / Civil / Site Fabricated Structural works: A single designated ESCROW account shall be opened by the Contractor in any Scheduled Bank of India under intimation to Employer. All payments related to Erection /Civil / Site Fabricated Structural works by the Employer due under the contract to the Contractor shall be released into above-mentioned ESCROW account set up as per the Tri-Partite Escrow Agreement between Employer, Contractor and Escrow Bank. The payment shall be disbursed in accordance with the mechanism set out in the Contract and Escrow Agreement. The purpose of the Escrow Account would be to ensure that payments received under the contract are solely used for implementation of the Contract. Under Tri-partite Escrow Agreement, the Escrow Bank will agree to ensure that amounts received in the ESCROW Account are utilized for making payments only to suppliers of goods and services, statutory authorities, establishment expenses etc. as may be required in the performance of the contract. All expenses/charges for opening /operation (including Annual Fee) of the Escrow Account shall be paid by the Contractor. The draft agreement is annexed as Annexure-III to Appendix-1 to Form of Contract Agreement, Section-VII, Book 3 of 3 (Part-1), which shall be followed for executing Escrow Account Agreement. The Detailed Operative Procedure and Terms and Conditions of Escrow Account (Schedule III of draft agreement) shall be finalized between the Employer, Contractor and the Escrow Bank within 15 days of the placement of award.
13.	General	Supply of Mandatory Spares -NOT APPLICABLE.
EPC PACKAGE FOR WASTE TO ENERGY PROJECT (2x350 TPD) AT KAWAS GPS		BIDDING DOCUMENT NO. CS-2600-001-9 SECTION - V (SCC)
		PAGE 8 OF 8

**LIST OF BANKS ACCEPTABLE FOR SUBMISSION
OF BANK GUARANTEE FOR ADVANCE PAYMENTS & PERFORMANCE SECURITIES**

SCHEDULED COMMERCIAL BANKS

A STATE BANK OF INDIA

B NATIONALISED BANKS

1. Allahabad Bank
2. Andhra Bank
3. Bank of India
4. Bank of Maharashtra
5. Canara Bank
6. Central Bank of India
7. Corporation Bank
8. Dena Bank
9. Indian Bank
10. Indian Overseas Bank
11. Oriental Bank of Commerce
12. Punjab National Bank
13. Punjab & Sind Bank
14. Syndicate Bank
15. Union Bank of India
16. United Bank of India
17. UCO Bank
18. Vijaya Bank
19. Bank of Baroda

ANNEXURE-I TO SPECIAL CONDITIONS OF CONTRACT**C SCHEDULED PRIVATE BANKS (INDIAN BANKS)**

1. Catholic Syrian Bank
2. City Union Bank
3. Dhanlaxmi Bank Ltd.
4. Federal Bank Ltd
5. Jammu & Kashmir Bank Ltd
6. Karnataka Bank Ltd
7. Karur Vysya Bank Ltd
8. Lakshmi Vilas Bank Ltd
9. Nainital Bank Ltd
10. Kotak Mahindra Bank
11. RBL Bank Limited
12. South Indian Bank Ltd
13. Tamilnad Mercantile Bank Ltd
14. ING Vysya Bank Ltd
15. Axis Bank Ltd.
16. IndusInd Bank Ltd
17. ICICI Bank
18. HDFC Bank Ltd.
19. DCB Bank Ltd
20. Yes Bank Ltd
21. IDFC Bank Limited
22. Bandhan Bank Limited

ANNEXURE-I TO SPECIAL CONDITIONS OF CONTRACT

D SCHEDULED PRIVATE BANKS (FOREIGN BANKS)

1. Abu Dhabi Commercial Bank PJSC
2. Bank of America NA
3. Bank of Bahrain & Kuwait B.S.C.
4. Mashreq Bank p.s.c.
5. Bank of Nova Scotia
6. Crédit Agricole Corporate and Investment Bank
7. BNP Paribas
8. Barclays Bank
9. Citi Bank N.A.
10. Deutsche Bank A.G.
11. The HongKong Shanghai Banking Corporation Ltd
12. Societe Generale
13. Sonali Bank Ltd.
14. Standard Chartered Bank
15. J.P. Morgan Chase Bank, National Association
16. State Bank of Mauritius Ltd.
17. DBS Bank Ltd.
18. Bank of Ceylon
19. PT Bank Maybank Indonesia TBK
20. A B Bank
21. Shinhan Bank.
22. CTBC Bank Co. Ltd.
23. Mizuho Bank Ltd
24. Krung Thai Bank Public Company Ltd.

ANNEXURE-I TO SPECIAL CONDITIONS OF CONTRACT

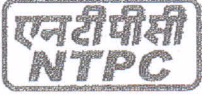
25. The Bank of Tokyo-Mitsubishi UFJ Limited.
26. Austalia & Newzealand Banking Group Limited
27. Sumitomo Mitsui Banking Corporation
28. American Express Banking Corporation
29. Qatar National Bank SAQ
30. Credit Suisse A.G.
31. FirstRand Bank Ltd.
32. Industrial & Commercial Bank of China Ltd.
33. JSC VTB Bank
34. National Australia Bank
35. Cooperatieve Rabobank U.A.
36. Sberbank
37. United Overseas Bank Ltd.
38. Westpac Banking Corporation
39. Woori Bank
40. The Royal Bank of Scotland plc
41. Doha Bank Qsc
42. Industrial Bank of Korea
43. KEB Hana Bank
44. First Abu Dhabi Bank PJSC
45. Emirates NBD Bank (P.J.S.C)

E OTHER PUBLIC SECTOR BANKS

1. IDBI Bank Ltd

*In case, Bank Guarantee is getting issued from State Bank of India, Bidder to take note of NTPC letter ref. NTPC/FC/CS/BG/01 dated 03.09.2014 and SBI letter ref. CAG-I/AMT-1/2014-15/370 dated 04.09.2014 attached herewith.

*Note - Any Addition/ Deletion/ Modification in Bank list shall be as per changes in Second Schedule List by RBI from time to time.



एन टी पी सी लिमिटेड
(भारत सरकार का उद्यम)

NTPC Limited
(A Govt. of India Enterprise)

केन्द्रीय कार्यालय/Corporate Centre

Date : 03rd September 2014

Ref. No.: NTPC/FC/CS/BG/01

Deputy General Manager,

State Bank of India,

CAG Branch,

12 th floor, Jawahar Vyapar Bhavan, 1, Tolstoy Marg,
New Delhi 110 001

Kind Atten: Sh. Sandeep Mishra

Sub: Format of the Bank Guarantee (BG) issued by State Bank of India – reg.

Dear Sir,

NTPC Limited is India's largest Power Company and a 'Maharatna PSU' with a significant presence in the entire value chain of power generation business. The procurement process of NTPC requires its participating Bidders to submit Bank Guarantees (BGs) as Bid security/other securities in a fixed format provided by NTPC.

It has been observed recently that BGs issued by various branches of State Bank of India are inserting the following additional clause.

QUOTE

Notwithstanding anything contrary contained in any law for the time being in force or banking practice, this guarantee shall not be assignable or transferable by the beneficiary. Notice or invocation by any person such as assignee, transferee of agent of beneficiary shall not be entertained by the bank. Any invocation of guarantee can be made only by the beneficiary directly.

UNQUOTE

The inclusion of the aforesaid clause in the BGs restricts the rights of NTPC under the BG and it may not be possible for NTPC to accept the aforesaid clause in the BGs submitted to us by our Bidders. It may also be mentioned that incorporation of the above additional clause in the BG results in the BG being returned by NTPC and consequently rejection of the bids of parties that have submitted such BGs.

In view of the above, it is requested that please take up at appropriate levels so that suitable instructions are issued to all your branches not to incorporate any such additional clause and henceforth BGs may be issued strictly as per NTPC format only.

Kindly acknowledge the receipt of this letter

Yours faithfully,

(K.P.Gupta)

General Manager (Finance)

Copy for Kind information: ED(CC&M) for kind info of u.s.

एन टी पी सी भवन स्कोप कॉम्प्लेक्स, 7, इंस्टीट्यूशनल एरिया, लोधी रोड, नई दिल्ली-110003 टेल/Tel.: 24360100, फैक्स/Fax: 011-24361018
NTPC Bhawan, SCOPE Complex, 7, Institutional Area, Lodhi Road, New Delhi-110003, वेबसाइट/Website: www.ntpc.co.in



भारतीय स्टेट बैंक
State Bank of India

कॉरपोरेट लेखा समूह शाखा, जवाहर व्यापार भवन,
11-12 वां तल, 1, टॉलस्टोय मार्ग, नई दिल्ली-110 001

Corporate Accounts Group Branch, Jawahar Vyapar Bhawan,
11th & 12th Floor, 1, Tolstoy Marg, New Delhi-110 001

Tel. : 23374525, 23374505, 23374541 (AMT-1), 23353022 (DGM & COO), 23701043, 23359506 (A & A), 23352995 (CS), 23352968 (IB)
Fax : 23353101 (Sectt.), 23352793 (CS), 23353029 (IB)

Shri K.P. Gupta,
General Manager (Finance),
NTPC Limited
Scope Complex, 7, Institutional Area,
Lodhi Road,
New Delhi: 110 003.

CAG-I/AMT-1/2014-15/370

04.09.2014

Dear Sir,

Format of the Bank Guarantee (BG) issued by State Bank of India

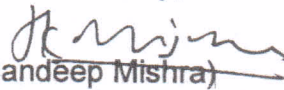
We refer to your letter dated 3rd September 2014 wherein you have requested for excluding bidders/vendors of NTPC from insertion of additional Clause restraining assignment/transferability of BG.

Looking at our relationship with NTPC, as a very special case, we have since obtained waiver from our Authorities for excluding NTPC from insertion of the referred clause for BGs issued in your favour.

We are taking steps to issue suitable instructions to our offices for exclusion of this clause for BGs issued in favour of NTPC. In case any bidder or vendor submits to you a Bank Guarantee issued by any of our Branches containing the additional clause as mentioned above, request you to please bring it to our notice and advise us so that we can take-up with the concerned Branch for excluding it.

This is for your information and necessary action please.

Yours faithfully,


(Sandeep Mishra)

Deputy General Manager &
Relationship Manager, AMT-1

Annexure-II

Policy & Procedure for Withholding and Banning of Business Dealings

INDEX

S.No.	TOPIC
1)	Introduction
2)	Scope
3)	Definitions
4)	Withholding of business dealings
4.1	Grounds
4.2	Procedure
4.3	Notice of Default
4.4	Area of Operation
4.5	Effect of Withholding
4.6	Duration of Withholding
4.7	Revocation of Orders
5)	Banning of Business Dealings
5.1	Grounds
5.2	Procedure
5.3	Show Cause Notice
5.4	Speaking Orders
5.5	Communication to Agencies
5.6	Period of banning
5.7	Area of operation
5.8	Effect of Banning
5.9	Process of reply
5.10	Hosting at NTPC Website
5.11	Appeal
5.12	Revocation
6)	Participation of Agency under Different Name
7)	Participation of Agency as an Associate/Collaborator/Sub-Vendor & Procurement in Operating Stations

1. Introduction

- 1.1 NTPC Ltd.deals with Agencies, who are expected to adopt ethics of highest standards and a very high degree of integrity, transparency, commitments and sincerity towards the work undertaken. It is not in the interest of NTPC to deal with any Agency, which commits deception, fraud or other misconduct of whatsoever nature in the tendering process and/or execution. NTPC is committed for timely completion of the projects within the awarded value without compromising on quality.
- 1.2 Since suspension/banning of business dealings involves civil consequences for an Agency concerned it is incumbent that adequate opportunity of hearing is provided and the explanation, if tendered, is considered before passing any order in this regard keeping in view the facts and circumstances of the case.

2. Scope

- 2.1 NTPC reserves its right to withhold or ban business dealings with any Agency, if such Agency is found to have committed misconduct or any of its action(s) fall into any such categories as laid down in this policy.
- 2.2 The procedure for (i) Withholding and (ii) Banning of Business Dealing with any Agency, has been laid down in these guidelines.
- 2.3 The provisions of this Policy supersede and will have overriding effect on all earlier guidelines, procedures & system circulars issued for the similar purpose.
- 2.4 This policy comes into force from the date of its issuance.
- 2.5 The provisions of this policy will be effective on investigations conducted or misconduct/irregularities noticed on the part of any Agency in all contracts awarded on or after the date of implementation of this policy and in the contracts under execution or contracts not yet closed, on the date of the implementation of this policy.
- 2.6 The provisions of this Banning Policy shall also be applicable for JVs/Subsidiaries of NTPC as well.

3. Definitions

In these Guidelines, unless the context otherwise requires:

- i) **Agency** shall mean Contractor / Supplier / Applicant/ Purchaser / Bidder/ NTPC approved Sub-contractor of a Contractor to whom work has been awarded. It shall include, but not limited to, a public limited company or a private limited company, a firm whether registered or not, any individual, a cooperative society or an association or a group of persons engaged in any commerce, trade industry, or constituents of an unincorporated Joint Venture Company, etc.
- ii) **Competent Authority and 'Appellate Authority'** shall mean the following :-
 - a) **For Company (entire NTPC) wide Banning for Contracts awarded/processed from Corporate Centre for NTPC and its JVs/Subsidiaries of NTPC**

The CMD shall be the 'Competent Authority' for the purpose of these guidelines. Board of Directors / Sub-committee of the Board of Directors / Group of Directors, nominated for the said purpose shall be the 'Appellate Authority' in respect of such cases.
 - b) **For Region wide Banning for Contracts awarded/processed from Regions**

The Regional ED shall be the Competent Authority for the purpose of these guidelines. The CMD shall be Appellate authority in respect of such cases.
 - c) **For Contracts awarded/processed from individual Projects / Units/ JVs/Subsidiaries**

The Head of Project/CEO shall be the 'Competent Authority' for the purpose of these guidelines. The Regional Executive Director shall be the 'Appellate Authority' in respect of such cases.
- iii) **'Investigating Department'** shall mean any Department or Unit of NTPC, investigating into the conduct of the Agency and shall include the NTPC Vigilance Department, Central Bureau of Investigation, the State Police or any other department set up by the Central or State Government having powers to investigate.
- iv) **'List of Enlisted Agencies'** –shall mean and include list of Enlisted Parties / Contractors / Suppliers / Bidders, etc.

- v) **State** – includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.
- vi) **Fraud Prevention Policy** – shall mean the policy related to prevention of fraud displayed on NTPC tender website <http://www.ntpctender.com>.
- vii) **Contractor Performance Feedback and Evaluation System** – The guidelines outlined in relevant NTPC circular for evaluating the Contractor's performance by the Screening Committee in respect of Contracts awarded by Corporate Contracts Services.
- viii) **Completion of Facilities** shall mean the term '**Completion of Facilities**' as defined in the Contract.
- ix) **Standing Committee** shall mean the following :-
 - a) For Contracts awarded/processed from Corporate Centre

A Committee constituted for the purpose of these guidelines and comprising members from CC&M (Convener), Finance and Engineering/Indenting department. Additional member(s) from any other deptt/site/region as considered appropriate may also be co-opted on case to case basis. The level of the committee members shall be E8 and above.
 - b) For Contracts awarded/processed from Regions

A Committee constituted for the purpose of these guidelines and comprising HODs (not below E-7 level) from C&M (Convener), Finance and Indenting department. Additional member(s) from any other deptt/site as considered appropriate may also be co-opted on case to case basis.
 - c) For Contracts awarded/processed from individual Projects / Units

A Committee constituted for the purpose of these guidelines and comprising HODs (not below E-7 level) from C&M (Convener), Finance and Indenting department. Additional member(s) from any other deptt as considered appropriate may also be co-opted on case to case basis.

- x) **Suspension/Banning** – In the context of these guidelines, the words suspension and banning are interchangeable and shall have same connotation & meaning.

4. Withholding of business dealings

4.1 Grounds

The business dealing with the Agency may be withheld, if they are found to be in breach of the terms & conditions of the Contract, on account of the reasons attributable to them, which shall include, but not be limited to the following:

if the Agency

- a) Either fails to commence work on the Facilities in terms of contract or suspends the progress of Contract performance.
- b) Fails to achieve the 'Completion of Facilities' or execute the contract milestones within time schedule stipulated in the contract
- c) Suspends/stops work on any unfounded pretext including seeking higher compensation.
- d) Fails to conduct the Guarantee test in the time limit stipulated in the contract.
- e) Diverts funds advanced to the Contractor for purpose other than the Contract.
- f) Does not deploy or withdraws the technical staff or equipment considered necessary as per the terms & conditions of contract;
- g) Fails to furnish the required documents / information as required under the terms & conditions of contract;
- h) Does not fulfill the obligations as required under the Contract .
- i) Violates terms & conditions of the contract.
- j) Does not Supply material /supplies material of inferior quality with respect to Technical Specifications under the Contract.

- k) On prima-facie scrutiny, work executed found to be of poor quality beyond acceptable limits stipulated in the Technical Specifications under the Contract.
- l) If a disaster / major failure / accident / collapse of a structure/ system caused during erection or during defect liability period *prima facie* appears to be due to negligence of contractor or design deficiency or poor quality of execution.
- m) Assigns, transfers, sublets or attempts to assign, transfer or sublet the entire Works or any portion thereof without the prior written approval of the Employer;
- n) Misbehavior or physical manhandling by the Agency or his representative or any person acting on his behalf with any official of the company dealing with the concerned contract.
- o) If NTPC prima-facie of the view that the Agency is guilty of an offence involving corrupt, fraudulent practices including misrepresentation of facts as per NTPC Fraud Prevention Policy, moral turpitude in relation to the business dealings.
- p) If the Central Vigilance Commission, Central Bureau of Investigation or any other Central Government investigation Agency or any other Central Government Department recommends such a course in respect of a case under investigation;
- q) If the security consideration, including questions of loyalty of the Agency to the state, so warrants ;
- r) The finished work either prematurely fails or fails to give the desired output/service during the defect liability period and the Agency fails to rectify it.
- s) On any ground as per which doing business dealings with the Agency is not in the public interest in the opinion of Competent Authority.
- t) If the Agency fails to comply with any of the statutory laws and regulations in force, in totality, even after completion of work.

4.2 Procedure

- (a) For Site/Regional/Corporate Packages

The concerned department at Site/Region/Corporate Centre on noticing any non/under performance and/or irregularities and/or misconduct and/or unethical practice as mentioned above, shall refer the matter to Convener of the Standing Committee along with relevant details. The Standing Committee shall analyze the referred case and if considered appropriate, shall put up the proposal for issuing Notice of Default for the purpose of withholding of business dealings with the Agency for approval of the Head of Project (for Site packages)/RED (for Regional packages)/CMD (for Corporate Packages).

In case the Standing Committee recommends waiver of withholding of business dealings with the Agency, the proposal along with reasons thereof shall be put up for approval of the RED (for Site packages)/CMD (for Regional packages)/CMD (for Corporate packages).

All the above proposals shall be routed through Vigilance department.

Besides the Standing Committee, Vigilance Department of each Project / Unit / Corporate Vigilance may also be competent to initiate the proposal for withholding.

4.3 Notice of Default

Once the proposal for issuance of Notice of default is approved by the Competent Authority, a 'Notice of Default' duly vetted by legal deptt shall be issued by the Competent Authority himself or by a person authorized for the said purpose to the Agency giving them a period of twenty eight (28) days to remedy the default.

If Agency fails to remedy or take adequate steps to remedy the default to the satisfaction of NTPC within the notice period mentioned above, then business dealings shall be withheld with the Agency after approval of the Competent Authority. The order of such withholding of business dealings shall be communicated to the Agency (after vetting by legal deptt) by the Competent Authority himself or by a person authorized for the said purpose.

4.4 Area of Operation

A decision to withhold business dealings with any Agency for Regional/Site awarded contracts shall be restricted to such Regions/Sites only and for Corporate awarded contracts withholding shall apply throughout the Company.

For Regional/Site wise withholding of any Agency, circular for such withholding shall be issued by respective Regions/Sites under intimation to

RED and ED (CC&M) and also uploaded at intranet of respective Regions/Sites. However, in case of company wide withholding of any Agency, circular shall be issued by Corporate Contracts and uploaded at intranet of CC&M.

4.5 Effect of Withholding

The Agency, after issue of order of withholding of business dealings, would not be allowed to participate in any future tender enquiry and if the Agency has already participated in any tender process and the price bids are not opened, his techno-commercial bid will be rejected and price bid will be returned unopened. However, where the price bids of Agency have been opened prior to order of withholding, bids of the Agency shall not be rejected.

4.6 Duration of Withholding

Duration of withholding the Agency shall be for a period of one year. Within this period, if the Agency rectifies the reason / ground on which the Agency has been withheld, to the satisfaction of the Competent Authority, then on written representation of the Agency, the Competent Authority can review and, if satisfied, may revoke the order of withholding of business dealing. Provided further that, even till completion of one year of withholding period, if the Agency does not rectify, then the Competent Authority after reviewing the situation may issue order extending the period of withholding for one more year or advise initiation of action for banning of business dealings with Agency in accordance with the procedure prescribed in Para 5.2 below.

4.7 Revocation of Orders

An order for withholding of business dealing passed for a certain specified period, including extension thereof, shall not be revoked automatically. Such withholding shall be revoked only after order in this respect is issued with the approval of Competent Authority.

5. Banning of business dealings

5.1 Grounds on which Banning of business dealings can be initiated

Banning of business dealings can be initiated against Agency, on following grounds :-

- a) If the Agency fails to accept the award of contract or has abandoned or repudiated the Contract.
- b) If the Contractor is found to be non-performing in execution of contract by the Screening Committee (nominated as per NTPC established 'Contractor Performance Feedback and Evaluation System').
- c) If a disaster / major failure / accident / collapse of a structure / system is caused during erection or during defect liability period due to negligence of contractor or design deficiency or poor quality of execution.
- d) Misbehavior or physical manhandling by the Agency or his representative or any person acting on his behalf with any official of the Company dealing with the concerned contract is established.
- e) If the Director / Owner of the Agency, proprietor or partner of the Agency, is convicted by a court of law for offences involving corrupt and fraudulent practices including moral turpitude in relation to its business dealings with the government or NTPC or NTPC's group companies, during the last five years.
- f) If the proprietor of the Agency have been guilty of malpractices such as bribery, corruption, fraud, substitution of the tenders, interpolations, etc.
- g) If the Agency continuously refuses to return / refund the dues of NTPC or NTPC's group companies, without showing adequate reason and this is not due to any reasonable dispute which would attract proceedings in arbitration or court of Law;
- h) If the Agency employs a public servant dismissed / removed or employs a person convicted for an offence involving corruption or abetment of such offences ;

- i) If business dealings with the Agency have been banned by the Ministry of Power or Government of India and the ban is still in force,
- j) If it is established that Agency has resorted to corrupt, fraudulent practices including misrepresentation of facts;
- k) If the Agency uses intimidation/threatening or brings undue outside pressure on the NTPC or NTPC's group companies, or its official in acceptance / performance of the job under the contract.
- l) If the Agency indulges in repeated and / or deliberate use of delay tactics in complying with contractual stipulations;
- m) If the Agency is found to be involved in cartel formation during bidding.
- n) On willful indulgence by the Agency in supplying sub-standard material with respect to Technical Specifications under the Contract irrespective of whether pre-dispatch inspection was carried out by Company (NTPC) or not;
- o) Based on the findings of the investigation report of CBI/Police against the Agency for malafide/unlawful acts or improper conduct on his part in matters relating to the Company (NTPC) or even otherwise;
- p) If the Agency is declared bankrupt or insolvent or its financial position has become unsound, and in the case of a limited company, it is wound up or liquidated.
- q) Established litigant nature of the Agency to derive undue benefit;
- r) Continued poor performance of the Agency;
- s) If the Agency violates the provisions of the Integrity Pact provided in the Contract.
- t) If the Agency commits fraud as defined under the Fraud Prevention Policy of NTPC.
- u) If the Agency has assigned or transferred the contract or engaged sub-contractor(s) without the prior approval of the Competent Authority in violation of the provisions of the contract.

- v) If the Agency misuses the premises or facilities of the NTPC forcefully occupies, tampers or damages the Company's properties including land, water resources, forests / trees, etc.
- w) If the security consideration, including questions of loyalty of the Agency to the state, so warrants;

(Note: The examples given above are only illustrative and not exhaustive. The Competent Authority may decide to ban business dealing for any good and sufficient reason).

5.2 Procedure

(a) For Site/Regional Packages where banning is proposed at Site/Regional level respectively

The concerned department on noticing any non/under performance and/or irregularities and/or misconduct and/or unethical practice as mentioned above, shall refer the matter to Convener of the Standing Committee along with relevant details. The Standing Committee shall analyze the referred case and if considered appropriate, shall put up the proposal for issuing Show Cause Notice for the purpose of banning of business dealings with the Agency for approval of the Competent Authority

In case the Standing Committee recommends waiver of banning of business dealings with the Agency, the proposal along with reasons thereof shall be put up for approval of one level above the Competent Authority.

All the above proposals shall be routed through Vigilance department.

Besides the Standing Committee, Vigilance Department of each Project / Unit / Corporate Vigilance may also be competent to initiate the proposal for banning.

(b) For Site Packages where Region wide banning is proposed

For Site cases, if the gravity of the misconduct is such that it would not be in the interest of the concerned Region as a whole to deal with such an Agency, the Competent Authority of the Site may put up his recommendation to RED.

(c) For Site/Regional Packages where Company wide banning is proposed

For Regional/Site cases, if the gravity of the misconduct is very serious and it would not be in the interest of NTPC as a whole to deal with such an Agency, the Competent Authority of the Site/Region may put up his recommendation to CMD through RED (for site cases), ED(CC&M) and Chief Vigilance Officer (CVO), NTPC.

(d) For Corporate Packages

The concerned department on noticing any non/under performance and/or irregularities and/or misconduct and/or unethical practice as mentioned above, shall refer the matter to Convener of the Standing Committee along with relevant details. The Standing Committee shall analyze the referred case and if considered appropriate, shall put up the proposal for issuing Show Cause Notice for the purpose of banning of business dealings with the Agency for approval of the Competent Authority.

In case the Standing Committee recommends waiver of banning of business dealings with the Agency, the proposal along with reasons thereof shall be put up for approval of CMD.

All the above proposals shall be routed through Vigilance department.

Besides the Standing Committee, Corporate Vigilance and Screening Committee (under Contractor Performance Feedback and Evaluation System) may also be competent to initiate the proposal for banning.

5.3 Show Cause Notice

Once the proposal for issuance of Show Cause Notice is approved by the Competent Authority, a 'Show Cause Notice' duly vetted by legal department shall be issued by the Competent Authority himself or by a person authorized for the said purpose to the delinquent Agency. The Agency shall be asked to submit the reply of Show Cause Notice within 15 days of its issuance. Further, the Agency shall be given an opportunity for Oral hearing to present its case in person, if it so desires, and the date for Oral Hearing shall be necessarily indicated in the Show Cause Notice.

In cases where investigation has been carried out by Vigilance Department or CBI etc., the show cause notice will also be vetted by Vigilance Department before issuance. Statement containing the imputation of misconduct or misbehavior may be appended to the Show Cause Notice.

The purpose of issuing the Show Cause Notice is only that the Agencies concerned shall be given an opportunity to explain their stand before any action is taken. All that is required in such cases is that the grounds on which action is proposed to be taken shall be disclosed to the Agency inviting representation and after considering that representation, orders may be passed. Such orders require only the subjective satisfaction of the authority that passed the final orders.

If the Agency requests for inspection of any relevant document in possession of NTPC, necessary facility for inspection of documents may be provided.

In cases processed by Vigilance deptt, oral hearing shall be conducted by a separate committee (constituted on case to case basis) comprising members from C&M and Vigilance deptt. Additional member(s) from any other deptt/site as considered appropriate may also be co-opted on case to case basis.

During the conductance of oral hearing, only the regular employees of Agency will be permitted to represent the Agency and no outsider shall be allowed to represent the Agency on its behalf.

Reply to the Show Cause Notice given by the Agency and their submissions in oral hearing, if any, will be processed by the Standing Committee for obtaining final decision of the Competent Authority in the matter. Further, reply to the Show Cause Notice given by the Agency and submissions in oral hearing, if any, with regards to Vigilance cases shall be processed by a Separate Committee which shall put up its final recommendations to the Competent Authority in the matter.

In case, no reply to Show Cause Notice is received from the Agency within stipulated time, action for processing ex-parte against the concerned Agency shall be initiated

5.4 Speaking Order

The speaking order for banning the business dealing with the Agency shall be issued (after vetting by legal deptt) by the Competent Authority himself or by a person authorized for the said purpose. In cases where investigation has been carried out by Vigilance Department or CBI etc., the speaking order will also be vetted by Vigilance Department before issuance.

5.5 Communication to Agencies

The decision regarding banning of business dealings taken after the issue of a Show Cause Notice and consideration of representation, if any, in reply thereto, shall be communicated to the Agency concerned along with a reasoned order. The fact that the representation has been considered shall invariably be mentioned in the communication. Also the fact that if no reply was received to the Show Cause Notice shall invariably be indicated in the final communication to the Agency.

5.6 Period of banning

The period for which the ban would be operative may be mentioned in the order. The banning shall normally be for a period of three years. However, in cases processed under provisions of Integrity pact and Contractor Performance Feedback and Evaluation System, the banning would be operative for a period as specified therein.

In case the information/documents submitted by Agency in competing for the tender found to be false/forged then NTPC, without prejudice to any other rights or remedies it may possess, shall recover from Agency the cost incurred in carrying out physical assessment for establishing veracity of such information/documents. In case Agency refuses to reimburse such cost to NTPC then banning period of Agency shall be extended by another one year.

5.7 Area of Operation

For contracts awarded by Site, banning shall be restricted to such Site only except where approval has been obtained for Region/Company wide banning.

For contracts awarded by Region, banning shall be restricted to such Region only except where approval has been obtained for Company wide banning.

For contracts awarded by Corporate Centre banning shall apply throughout the Company.

For Regional/Site wise banning of any Agency, circular for such banning shall be issued by respective Regions/Sites under intimation to RED and ED (CC&M). However, in case of company wide banning of any Agency, circular shall be issued by Corporate Contracts

5.8 Effect of Banning

The Agency, after issue of the order of banning of business dealings, would not be allowed to participate in any future tender enquiry and if the Agency has already participated in tender process and the price bids are not opened, his techno-commercial bid will be rejected and price bid will be returned unopened. However, where the price bids of Agency have been opened prior to order of banning, bids of Agency shall not be rejected.

5.9 Process of reply

The Agency shall be separately advised of the decision regarding banning of business, taken in reply to their representation, if any. As regard any further representation from the Agency, business dealings with whom have been banned, the same shall be processed by the concerned C&M department in consultation with Vigilance department, wherever applicable. If any reply is considered necessary to be sent to the Agency, the same shall be sent by the concerned C&M Department.

5.10 Hosting at NTPC website

- a) The names of the Agencies with whom Business Dealings have been banned at Site/Region/Company level shall be hosted at NTPC website by CC&M (for company wide banning cases) and respective Sites/ Regions (for respective Site/ Regional cases).

5.11 Appeal against the Decision of the Competent Authority.

The Agency may file an appeal against the order of the Competent Authority banning of business dealing before Appellate Authority. Such an appeal shall be preferred within one month from the date of receipt of the order of banning of business dealing. Appellate Authority would consider the appeal and pass appropriate order which shall be communicated to the Agency as well as the Competent Authority.

5.12 Revocation of Orders

- a) The banning under 'Contractor Performance Feedback and Evaluation System' shall not be revoked automatically. Such banning shall be revoked only after re-evaluation of the performance of the Agency by the Screening Committee as detailed under the 'Contractor Performance Feedback and Evaluation System'.

- b) In all other cases, an order for banning passed for a certain specified period shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal orders of revocation, except that an order of banning passed on account of doubtful loyalty or security consideration shall continue to remain in force until it is specifically revoked.
- c) An order of banning for the reasons mentioned at para 5.1 (e) above may be revoked if, in respect of the same facts, the accused has been wholly exonerated by a Court of Law.

6.0 During the banning/withholding period, if it is found at any stage that Agency has participated in tender enquiry under a different name then such Agency would immediately be debarred from the tender/contract and its Bid Security/Performance Security would be forfeited. Payment, if any, made shall also be recovered.

7.0 Further in case of banning/withholding following would also be applicable:

(i) Participation of Agency as an Associate/Collaborator of the Main Contractor

Where Stage-I bids have been opened prior to banning/withholding of Agency and such Agency has been proposed as Associate/Collaborator by any of the bidders, in such cases the tendering process shall not be annulled on this ground and the Agency shall be permitted to continue as Associate/Collaborator for such bidding.

However where opening of Stage-I bids (Two Stage Bidding) / Envelope-I Techno-Commercial bids (Single Stage Two Envelope Bidding) has not taken place prior to banning/withholding of Agency then in such case Agency shall not be permitted to participate as Associate/Collaborator in such bidding.

(ii) Participation of Agency as an approved Sub-Vendor of the Main Contractor

After banning/withholding order, the banned/withheld Agency shall not be allowed to participate as Sub-Vendor in the tenders for supplying/manufacturing equipment (s)/component (s)/service if it has been banned on grounds of supplying sub-standard material/equipment/service.

Further, if the banned/withheld agency is an approved Sub-vendor under any Contract for such equipment/component/service, the Main Contractor shall not be permitted to place work order/Purchase

order/Contract on the banned/withheld agency as a sub-vendor after the date of banning/withholding even though the name of the party has been approved as a sub-vendor earlier.

(iii) Procurement of spares/awarding of Contracts in operating stations

There would be no bar on procuring the spares and awarding Contracts towards Annual Maintenance (AMC)/ O&M/ Repair works on Agencies pertaining to the packages for which they have been banned provided the Equipment has been supplied by such Agency.

8.0 For JVs/Subsidiaries of NTPC

(i) Tenders/Contracts of JVs/Subsidiaries, whose Pre-award and/ or Post award activities are handled by NTPC Corporate Centre

The Tenders/Contracts of JVs/Subsidiaries, whose pre-award and/or post award activities are handled by NTPC Corporate Centre, the cases of non/under performance and/or irregularities and/or misconduct and/or unethical practice observed in such tenders/contracts may be processed in NTPC under the policy and procedures for withholding/banning of business dealings and/or Contractor Performance Feedback System. The Notice of Default or Order for Withholding of business dealings (under Para 4.3)/Show Cause Notice or Speaking Order for banning of business dealing (under Para 5.3 and 5.4), after approval in NTPC, shall be forwarded to CEO of concerned JVs/Subsidiaries for issuance of such Notice or Order to the delinquent agency.

Further, the appeal of the Agency against the above Order (under Para 5.12) shall be reviewed by appropriate Appellate Authority in NTPC. Appellate Authority would consider the appeal and pass appropriate order which shall be communicated to the Agency as well as the Competent Authority and CEO of concerned JVs/Subsidiaries.

(ii) The Tenders/Contracts which are handled by JVs/Subsidiaries themselves

The procedure prescribed in the Banning Policy for Sites shall appropriately be used by concerned JVs/Subsidiaries to deal with the cases of non/under

performance and/or irregularities and/or misconduct and/or unethical practice observed in tenders/contracts handled by them.

- (iii) The Agencies with whom business dealings have been withheld/banned by NTPC at pan NTPC level, the business dealings with such Agencies shall be deemed to be withheld/banned in JVs/Subsidiaries of NTPC as well. Further, for contracts of JVs/Subsidiaries which have been processed at Corporate Centre of NTPC, business dealings withheld/banned with Agencies by JVs/Subsidiaries, shall be applicable to NTPC as well.
- (iv) Further, for packages awarded from JVs/Subsidiaries, banning of business dealings at pan NTPC level may be proposed under para 5.2 (c) of this banning policy.
- (v) Further, Agencies with whom Business Dealings have been banned by JVs/Subsidiaries shall be hosted at websites of concerned JV/Subsidiary and NTPC.